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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

KARINA ALBINO TITO, Petitioner, v. MARKWAYNE MULLIN[1], *et al.*, Respondents,	No. 3:26-cv-02178-TLT **RESPONDENTS' RESPONSE TO MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER**

[1] Markwayne Mullin is a sitting U.S. Senator and it's unclear what custodial status he would have over Petitioner. Kristi Noem is the Secretary of Homeland Security until March, 31, 2026. *See Message from Secretary Kristi Noem,* Dept. Of Homeland Security (Mar. 5, 2026), https://www.dhs.gov/employee-resources/news/2026/03/05/message-secretary-kristi-noem.

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I. INTRODUCTION

Petitioner is a noncitizen in removal proceedings and subject to Immigration and Customs Enforcement ("ICE")'s Intensive Supervision Appearance Program ("ISAP"). She is subject to regularly scheduled check-in appointments and her next appointment was scheduled for 9 a.m. today. Petitioner was not told that ICE intends to arrest her at this appointment. Yet she now asks this Court essentially to provide her with an "escort service" to this appointment, seeking the extraordinary relief of a temporary restraining order ("TRO") to prevent her hypothetical future custody. This relief exceeds the permissible scope of habeas relief and should be denied. If Petitioner is in fact detained at her check-in and she claims that the arrest was improper, he can file a petition at that time, and the Court can then evaluate the basis for any detention.

Petitioner's motion should be dismissed for lack of jurisdiction. Petitioner lacks Article III standing because she has failed to allege any concrete, imminent injury. In the alternative, the Court should deny Petitioner's motion for TRO because the motion and Petitioner's Complaint fail to demonstrate that Petitioner is likely to suffer harm in the absence of preliminary relief. Petitioner has not "clearly demonstrated" that ICE is likely to arrest Petitioner at her scheduled appointment this morning. She does not meet the heavy burden required to obtain preliminary injunctive relief. She has not shown a likelihood of prevailing on the merits because the circumstances of any future detention, if it does occur, are not known, and accordingly there can be no determination at this juncture that any future detention would be unlawful. Petitioner has not shown that immediate and irreparable harm is *likely*, as she must.

II. FACTUAL BACKGROUND

Petitioner Karina Albino Tito ("Petitioner") is a noncitizen who last entered the United States on July 1, 2024, without admission or parole. Dkt. No. 1-9. She was encountered and detained by immigration agents after crossing the border. Dkt. No. 1 ¶ 32. She was paroled pursuant to section 212(d)(5)(A) of the Immigration and Nationality Act ("INA") [8 U.S.C. § 1182(d)(5)(A)]. Dkt. No. 1-2 at 2. Immigrations and Customs Enforcement ("ICE") placed Petitioner into removal proceedings as an alien present in the United States without being admitted or paroled, and as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document, and charged her with inadmissibility under

8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(7)(A)(i)(I). ICE enrolled Petitioner in their ISAP and Alternatives to Detention ("ATD") program, and failure to comply with the program would result in redetermination of release conditions or arrest and detention. Petitioner was scheduled for an ISAP appointment on March 13, 2026. Dkt. No. 2 at 10. Petitioner believes ICE is using this appointment to re-detain her. *Id.*

Petitioner filed this action on March 12, 2026, along with an *ex parte* motion for a temporary restraining order ("TRO"), seeking to enjoin Respondents from detaining Petitioner unless they provide at least 7 days' notice to Petitioner that they will seek a pre-deprivation bond hearing before a neutral arbiter. Dkt. Nos. 1 at 14–15; 2 at 12.

III. LEGAL STANDARD

A. The Temporary Restraining Order Standard

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that "he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

The purpose of a preliminary injunction is to preserve the status quo pending final judgment rather than to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). "A preliminary injunction can take two forms." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and 'preserves the status quo pending a determination of the action on the merits.'" *Id.* (internal quotation omitted). "A mandatory injunction orders a responsible party to take action," as Petitioner seeks here. *Id.* at 879 (internal quotation omitted). "A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* "In general, mandatory injunctions are not granted unless extreme or very serious damage will result and are not issued in doubtful cases." *Id.* Where plaintiffs seek a mandatory

injunction, "courts should be extremely cautious." *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1319 (9th Cir. 1994) (internal quotation omitted). The moving party "must establish that the law and facts *clearly favor* [their] position, not simply that [they are] likely to succeed." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis original).

B. Habeas Corpus.

Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). In immigration cases, the federal courts' habeas jurisdiction is limited by 8 U.S.C. § 1252(a)(2)(B), which provides that "no court shall have jurisdiction to review" "decision[s]" for which the statute grants "discretion" to the Attorney General.

IV. ARGUMENT

Petitioner cannot show a substantial likelihood of success on the merits because the Court lacks jurisdiction. Because Petitioner is required to show all four factors and Petitioner cannot demonstrate a substantial likelihood of success on the merits, the Court need not consider the remaining three factors in its analysis.

Federal courts may only adjudicate actual "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. Article III gives rise to four justiciability doctrines: ripeness, standing, mootness, and political question. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Both standing and ripeness are lacking here.

A. Petitioner Lacks Standing For Prospective Injunctive Relief.

Petitioner must establish Article III standing to seek prospective injunctive relief. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 412 (2013). That means she must show a future injury that is "imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Petitioner cannot make that showing.

Petitioner lacks standing because she has suffered no injury in fact but instead seeks relief for conjectural or hypothetical injuries that she believes may occur at some point in the future. Petitioner's claims are not ripe because the events of which she complains have not occurred and may not occur as she anticipates or at all. Both standing and ripeness are required for the Court to adjudicate Petitioner's

claims. Because those are lacking, Petitioner's claim is not likely to prevail or even reach a merits analysis before this Court.

An injury in fact requires "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quoting *Lujan*, 504 U.S. at 560); *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972); *see also Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) ("For standing purposes, a loss of even a small amount of money is ordinarily an 'injury.'").

In light of the facts that Petitioner has presented, therefore, she cannot establish that any future injury is imminent and reasonably certain. *See J.P. v. Santacruz*, No. 25-cv-1640, 2025 WL 2998305, at *4 (C.D. Cal. Oct. 24, 2025) (dismissing petitioner's challenge to "his future detention and/or arrest at another physical appointment" because petitioner "fails to present sufficient allegations or evidence of the threat of future injury to confer Article III standing"). Because the "alleged threat of future injury is too speculative and unripe," *id.*, at *4, Petitioner does not have standing before this Court.

B. Habeas Relief Is Both Inappropriate and Premature Because Petitioner Is Challenging Her Hypothetical Future Detention.

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. U.S. Const. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) ("The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody "); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody."). An individual does not need to be in actual physical custody to seek habeas relief; the "in custody" requirement may be satisfied where an individual's release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted "custody" for habeas purposes).

Here, Petitioner alleges that she meets the "in custody" requirement because she is subject to certain conditions of release, including ISAP monitoring. Dkt. No. 1 ¶ 9. But this habeas petition does not purport to challenge that custodial arrangement or secure her release from any present "custody."

Petitioner is not in physical custody and is not challenging whatever restraints ICE has currently imposed. Rather, Petitioner seeks an injunction to prevent her hypothetical future arrest and the possibility of future detention. The habeas relief that she seeks is not connected to the immigration custody on which she bases her petition. Thus, Petitioner does not seek a remedy that sounds in habeas. *See J.P. v. Santacruz, et al.*, No. 25-cv-1640, 2025 WL 2633198 (C.D. Cal. Aug. 27, 2025). In *J.P.*, the court held that even assuming that ICE's order of supervision ("OSUP") satisfied the "in custody" requirement, "Petitioner fails to adequately demonstrate he is challenging his confinement." *Id.* at *3. The court specifically noted that challenges to *future* detention did not fall within habeas jurisdiction:

> Here, Petitioner does not challenge the lawfulness of his alleged custody. . . . Rather, Petitioner challenges his *potential* confinement absent a pre-deprivation hearing before a neutral adjudicator. . . . Petitioner's concern about re-detention stems from Respondents indication that they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled. . . . Based on the record in this case, the court would not find that Petitioner adequately demonstrates a challenge to his custody.

Id. Petitioner's claim here similarly challenges her hypothetical future confinement, not her present "custody," and therefore habeas jurisdiction is inappropriate.

Petitioner was released on humanitarian parole pursuant to 8 U.S.C.§ 1182(d)(5)(A). Dkt. No. 1-2 at 2. For any individual released under this humanitarian parole provision, "such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182 (d)(5)(A). Petitioner's parole was valid for one year, automatically terminating at the end of the one-year period, and was conditioned on Petitioner complying with the terms and conditions of her release. Dkt. No. 1-2 at 2.

Petitioner here does not know whether she will be detained at her appointment this morning. She is apparently unaware of any precipitating event that would cause ICE to re-detain her. *Cf. Guillermo M. R. v. Kaiser*, No. 25-cv-5436, 2025 WL 1983677, at *3 (N.D. Cal. July 17, 2025) (habeas petition filed after petitioner was instructed to go in for a "case review" with ICE, where he was advised that he would be detained).

This does not provide the basis for the extraordinary remedy of a temporary restraining order. Without any knowledge that her arrest is likely or imminent, Petitioner is seeking an insurance policy from the Court to guarantee that she will not be detained. That is not the purpose of a habeas petition, and it is not the purpose of a TRO. Thousands of individuals are subject to orders of supervision and are required to report to ICE on a periodic basis as part of those orders. If each such individual were entitled to bring a habeas petition in advance of every such appointment and secure a temporary restraining order to prevent ICE from undertaking hypothetical future actions, this would expand the Court's habeas jurisdiction into virtually unlimited territory, and impose unreasonable burdens on both the Court and Respondents. The implicit requirement that ICE must in all instances inform individuals in advance of their check-in appointments what will transpire at those appointments, on penalty of being enjoined from undertaking hypothetical enforcement actions, is unwarranted, and would unduly interfere with ICE's enforcement mission. The sheer volume of check-ins every day, combined with the potential risk to officer safety, risk of flight of certain individuals, and need to maintain enforcement discretion and secrecy in some instances, makes any advance disclosure requirement both unreasonable and potentially dangerous.

In sum, this petition is premature. If Petitioner is in fact detained at her appointment this morning and she believes that the detention is unwarranted, she can file a petition and TRO motion at that time. If the Court agrees that the standard for a TRO has been met, based on the actual facts presented by the arrest, it can issue an appropriate TRO. But the Court should not be in the business of providing an escort service for every individual who is subject to an order of supervision and is required to appear at periodic check-in appointments with ICE.

V. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny the motion for a TRO.

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DATED: March 13, 2026

Respectfully submitted,

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