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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Karina Albino Tito

Petitioner

vs.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No. 3:26-cv-2178 - TLT

REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

I. SUPPLEMENTAL STATEMENT OF FACTS

Petitioner provides this supplemental statement to clarify the timeline of their escalated supervision and to address facts arising since the filing of the Petition.

On February 27, 2026, Petitioner appeared at her check-in at ICE located at 630 Sansome Street, San Francisco. At the check-in, an ICE officer told Petitioner that their ICE supervision would be "escalated." When Plaintiff asked the officer why, the officer stated that she did not know and could not tell Plaintiff why. Plaintiff believes it was because they missed mobile notifications during the two weeks from February 12 to February 27, when they changed phones. The officer told Petitioner that she would schedule another check-in for March 13, 2026, at the ISAP office and that Petitioner had to appear in

person. Since that February 27th meeting, Plaintiff has remained under this heightened threat of re-detention.

Fearing re-detention, Petitioner's counsel filed the Writ of Habeas Corpus and the Motion for a Temporary Restraining Order on March 12, 2026.

On March 13, 2026, Petitioner went to the check-in at the ISAP office on Tehama Street, San Francisco. Petitioner was not detained on March 13, 2026. Petitioner believes they were not detained because of the Court's orders issued in this case as a result of the habeas filing.

Petitioner's next mandatory check-in is scheduled for March 27, 2026, exactly one month after they were first notified of the escalated status and one day after the hearing on this Order to Show Cause. ICE has also scheduled Petitioner for another ISAP check-in on June 5, 2026. Respondents have not indicated that they will refrain from re-detaining Petitioner at either of these appointments.

II. THE COURT CORRECTLY FOUND ARTICLE III STANDING, AND THE GOVERNMENT OFFERS NO LEGITIMATE BASIS FOR RECONSIDERATION

This Court already found that Plaintiff has standing and noted that the standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. (Order Granting Temporary Restraining Order, Dkt. 11, pgs. 4-7) Respondents in their Response argue that (1) Plaintiff's claim is too speculative and unripe; (2) potential class membership in *Garro Pinchi v. Noem*, No. 25-cv-5632, 2025 WL 3691938 (N.D.Cal. Dec. 19, 2025) does not confer standing; (3) there is no intention that ICE intends to escalate Petitioner's supervision again. These arguments are not persuasive.

A. The Dispute is Ripe, and the Threat of Injury is Imminent

Respondents have merely re-stated the argument that they made in their Opposition/Response to the Motion for the Temporary Restraining Order (Dkt. 9, p. 4) citing to *J.P. v. Santacruz,* No. 25-cv-1640, 2025 WL 2998305, at *4 (C.D. Cal. Oct. 24, 2025) that plaintiff lacks standing because they cannot establish that any future injury is imminent and reasonably certain. (Respondents' Response to Order to Show Cause, p. 4). This Court already ruled against those arguments and should do so again.

1. Petitioner's threat of detention is ongoing

In *J.P. v. Santacruz,* the plaintiff had been compliant with virtual check-ins since 2023. *Id. at *1.* After an arrest in July 2025, ICE scheduled the petitioner for an in-person appointment on July 29,

2025. *Id. at *2.* The petitioner filed an Application for a Temporary Restraining Order and Motion for a Preliminary Injunction to prevent his re-arrest. *Id.* The Court denied the Application and for lack of habeas jurisdiction and ordered the Petitioner to show cause in writing no later than September 4, 2025, why the Court should not dismiss the Petition for lack of subject matter jurisdiction. *Id.* The Court noted that the Petitioner had an in-person appointment on October 9, 2025, and he was not arrested or detained. *Id.* The Court denied the Petition on October 24, 2025, stating that the events giving rise to Petitioner's fears had passed and he had not been detained or arrested. *Id. at *4.* Moreover, Petitioner failed to present sufficient allegations of evidence of the threat of future injury to confer Article III standing. *Id.*

This case is easily distinguishable from Petitioner Albino Tito's case. First, the Court neglected to mention that the case had been pending at the federal court during both of Plaintiff's check-ins. Although a TRO had expired, ICE was aware that a petition was on file with the Court, and the habeas proceedings prevented the arrest. Petitioner Albino Tito may not fare so well. Petitioner has another in-person check-in the day after the hearing in this case. Depending on what happens on Thursday, Petitioner may be at risk of being re-detained on Friday, March 27.

Second, we do not know if the Petitioner had other check-ins scheduled after the two mentioned in the case. The case is silent about "allegations or evidence of the threat of future injury." *Id. at *4.* Petitioner Albino Tito has presented evidence of the continued escalation in their case. Petitioner has weekly phone check-ins, an in-person check-in on March 27 on Sansome Street, only a month after they were just there for a check-in, and another in-person appointment at the ISAP facility on Tehema Street on June 5, 2026. Petitioner's "threat of future injury" is ongoing. *Id.*

As this Court has already recognized, Petitioner's standing is based on the exposure to the imminent injury of re-detention, which is ongoing and not singular by nature. (Order Granting Temporary Restraining Order, Dkt. 11 p. 4). Respondents incorrectly claim that a single past instance of non-detention, such as at Petitioner's last check-in, disproves the imminent future harm being alleged. (Respondents' Response to Order to Show Cause, p. 9). If Petitioner's future re-detention were truly hypothetical, then we would not need a preliminary injunction preventing detention. Respondents have refused to say whether or not Petitioner will be re-detained at her upcoming check-ins.

2. Other courts have not followed *J.P. Santacruz*

Respondents cite *J.P. Santacruz* as if it is binding authority. It is not. It has not been followed by all courts. In fact, this Court and others have enjoined the government from re-detaining noncitizens where the threat of re-detention has been shown to be more than hypothetical. (Order Granting Temporary Restraining Order, Dkt. 11 p. 5). For instance, in *Alerov v. Santacruz,* EDCV 26-375 MWF (SP), 2026 WL 473120, at *2 (C.D. Cal. Feb. 19, 2026) and in *Carballo v. Semaia,* 5:25-cv-03176-SPG-AJR, 2026 WL 381608, at *5 (C.D. Cal. Feb. 10, 2026), the petitioners were both detained on two occasions - first, when they entered the United States and again at check-in appointments. The Courts declined to follow *J.P. Santacruz* because of the petitioners' second arrests at check-in appointments. "[P]etitioner has already alleged he has been detained once without adequate due process and thus has put forward allegations supporting a high risk that the government would erroneously deprive-and already has erroneously deprived Petitioner's liberty interest absent a predetention hearing in front of a neutral arbiter. *Aleroev*, at *2. (internal citations and quotations omitted).

Similarly, Petitioner does not have to wait until ICE arrests and detains them, as Respondents have already told Petitioner that they are escalating Petitioner's supervision, and they have scheduled Petitioner for another ISAP appointment on June 5, 2026. Respondents claim that "there's been no indication that ICE intends to again escalate Petitioner's supervision, which was what initially raised the concern." (Respondents' Response to Order to Show Cause, p. 5) Respondents' claim is inconsistent. The escalation is ongoing. They are continuing to escalate Petitioner's supervision by scheduling the ISAP appointment. If they want to de-escalate the supervision, they could cancel the June 5 appointment or tell Petitioner that they would not be arrested. They have done neither. Petitioner has presented sufficient facts to show immediate threat of re-detention. The claim is ripe, and Petitioner thus requests that this Court issue a preliminary injunction.

B. Petitioner's standing is not based on her being a class member of *Garro Pinchi v. Noem*

Respondents incorrectly characterize Petitioner's argument regarding standing as being based on mere "awareness" of her class membership in *Garro Pinchi v. Noem*. (Respondents' Response to Order to Show Cause, p. 4) Petitioner believes that they are a member of the provisional class in this case but never

stated that they have standing in this habeas action because of it. To the contrary, Petitioner's standing is based on the objective, individualized enforcement action Respondents took on February 27, 2026, when they formally escalated Petitioner's supervision. This escalation was a change in their custodial status, and this threat remains.

When the government escalates supervision of an individual while simultaneously refusing to disclaim its intent to arrest that individual at the next check-in, the resulting threat to liberty is concrete and imminent, regardless of any other pending litigation.

Respondents do not indicate whether they agree or not that Petitioner is a class member of *Garro Pinchi v. Noem*, but then go on to say that they are "unaware of any instances in this district where ICE has re-detained a noncitizen who is a member of the class in *Garro Pinchi*. (Respondents' Response to Order to Show Cause, p. 5). This allegation does not help Petitioner when Respondents refuse to say whether Petitioner is a class member, leaving them to wait until they are arrested to find out. Petitioner's counsel does not have the ability to determine the accuracy of Respondents' statement that they are unaware of any instances "in the district" when ICE has re-detained a member of the class in *Garro Pinchi*. And it is not clear to counsel what "district" means because the geographic area in *Garro Pinchi* covers more than just the Northern District. *Garro Pinchi*, 2025 WL 3691938 at *15 ("the class and subclass consist of noncitizens spread across ICE's vast San Francisco area of responsibility, which covers northern California, Hawaii, Guam, and Saipan").

However, a very cursory search reveals that in fact ICE detained an individual after the class was certified in the same procedural posture as Petitioner, and that person was most likely a class member, though membership in the class was not the basis for the Court's Order releasing the individual. *See Moawad v. Albarran et. al,* Case No. 1:26-cv-01555-JLT-SAB Doc. 7 (E.D. Cal. Mar. 16, 2026).[1] In *Moawad*, the petitioner was an asylum seeker from Egypt who entered the United States on August 6, 2024, was apprehended by immigration officials, and released on his own recognizance and with a Notice to Appear. *Id.* He filed an asylum application, complied with all the conditions of his release and

[1] https://cases.justia.com/federal/district-courts/california/caedce/1:2026cv01555/482602/7/0.pdf)

maintained a clean criminal record, yet was arrested on **January 13, 2026,** at his ICE check-in, and after the date the provisional class was certified. *Id.*

The other cases that respondents cite do not support their position and, if anything, prove that ICE engages in a policy of arrest and detention, without investigation. For example, in *Kaharitonova v. Albarran, No. 26-cv-1362, 2026 WL 413607, at *1,* ICE arrested a 66-year-old woman with no criminal history who was legally admitted to the United States more than a dozen years ago and has a pending asylum application. The officers did not have a warrant, nor was the Court aware of any exigent basis for her arrest. *Id.* Her legal counsel filed a habeas, and she was released the same day. This case makes everyone afraid.

It is strange that Respondents feel that Petitioner has not expressed a concern about re-detention at her two upcoming hearings, on March 27 and June 5. It should go without saying that Petitioner is "concerned." Not only is Petitioner "concerned" every time they go to a check-in, but they are in fact extremely frightened by Respondents' lack of clarity as to their intentions every time. Of course, Petitioner fears detention at her upcoming check-ins. To be very clear, see the Supplemental Declaration being submitted with this response.

Petitioner has presented sufficient facts to show that their threat of detention is more than hypothetical. Petitioner's supervision has been escalated without any explanation from Respondents, and the threat remains ongoing.

II. HABEAS IS APPROPRIATE BECAUSE PETITIONER IS "IN CUSTODY" AND APPROPRIATELY CHALLENGES THE PRESENT, NON HYPOTHETICAL ESCALATION OF SUPERVISION

Respondents' claim that habeas relief is premature because Petitioner is challenging a "hypothetical future arrest" rather than their present custodial arrangement. (Respondents' Response to Order to Show Cause, p. 6) This argument fails for two reasons.

C. Habeas Jurisdiction Attaches Because Petitioner is Subject to Present Substantial Restraints on their Liberty

Respondents argue that habeas jurisdiction only exists for those seeking release from a prior physical confinement. (Respondents' Response to Order to Show Cause, p. 6) A court in this district has already had occasion to consider and reject this interpretation in *He v. Lyons,* 3:25-cv-10639-JSC,(N.D.

Cal. Feb. 3, 2026)[2]. In *He,* the Petitioner had been in the United States since 2019. She applied for political asylum and had lost her case. *Id.*, at 2. She had not appealed and had been placed on an Order of Supervision since 2020. She had complied with the conditions of her order including all check-ins. *Id.* On December 12, 2025, Petitioner received a message to report to ICE. *Id.* Her attorney contacted ICE to inquire about their intention to re-detain her. Not receiving a response, Petitioner's counsel filed a habeas petition and TRO seeking to enjoin Defendants from re-detaining her absent prior notice and a pre-deprivation hearing. *Id.* The government in *He* made the same argument that the government in Petitioner in Tito Albino's case is making, namely, "Petitioner does not meet the 'in custody' requirement as (1) she does not seek release from any present custody, and (2) she does not challenge the terms of her order of supervision, and 'instead seeks an injunction to prevent her *future* arrest and detention." *Id.* (Compare with Respondents' Response to Order to Show Cause, p. 6 - "[T]his habeas petition does not purport to…secure their 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 their hypothetical future arrest and the possibility of future detention.")

The *He* Court rejected the government's argument. First, the Court noted that the Supreme Court has "very liberally construed the 'in custody' requirement. *Maleng v. Cook*, 490 U.S. 488, 492 (1989). "This liberal construction provides "[a] person need not be physically imprisoned to be in custody under the statute; instead, habeas relief is available where the individual is subject to 'restraints not shared by the public generally.'" *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) (quoting *Jones v. Cunningham*, 371 U.S. 236, 240 (1963))." *Id.,* at 3.

The *He* Court then continued on to review all the restraints on the petitioner's liberty noting that she could not travel outside California for more than 48 hours without providing notice, must provide notice of change of address or employment, must consent to physical or mental examinations, must appear for regular check-ins and noted that violations would subject her to fine, detention or prosecution. *Id.* The

[2] This case is not available on Westlaw. It is available online here: https://www.courtlistener.com/docket/72031171/15/he-v-lyons/ Citations are to the pages of the document itself.

He court found that, given the restraints the Petitioner had, she was in custody for purposes of federal habeas jurisdiction. *Id.*

Here, Petitioner has similar restraints. They cannot change their place of residence without notifying ICE. (Dkt. 1, Exhibit C) They have to check in every Monday using the phone app and send a picture of themself with the check in. (Dkt 1, Exhibit A, Exhibit F) They have mandatory check-ins at Sansome Street (and now ISAP detentions on Tehama Street) (Supplemental Declaration of Karina Albino Tito.) They have to report a change of address and a change of phone number. (Dkt. 1, Exhibit A) And they were warned that failure to comply with the ATD program would result in a redetermination of her release conditions or arrest and detention. (Dkt. 1, Exhibit C) The same determination that the Court made in *He* is required here. Petitioner's restraints cause her to be "in custody" for habeas jurisdiction.

B. Petitioner has a Constitutional liberty interest in remaining out of custody and free from civil detention

Respondents argue that Petitioner's claim is premature and that they should wait until they are arrested and then file a new petition. (Respondents' Response to Order to Show Cause, p. 7) They explain that the "sheer volume" of check-ins, combined with potential risk to officers and the need to maintain enforcement discretion and secrecy, makes "any advance disclosure requirement both unreasonable and potentially dangerous." At the outset, it is not the Petitioner's problem that ICE is calling everyone in for check-ins, and they have a heavy volume. They have the power to control this. Secondly, they have never told Petitioner why her supervision was escalated. They have not alleged non-compliance; there is no allegation of flight risk, and there is no allegation that Petitioner has a criminal record. There is no harm in telling Petitioner that she will not be detained, yet there is plenty of harm to Petitioner to keep her in the dark, so she is afraid every time there is a check-in.

It is impracticable for Petitioner to file a habeas as soon as they are arrested and expect to be released. Once a noncitizen is detained at 630 Sansome Street, they are frequently transferred to remote detention centers (such a Mesa Verde or Golden State Annex) within hours, effectively severing their access to counsel and this Court's immediate oversight. Petitioner does not have a team of lawyers ready to jump in the minute they are detained.

III. Conclusion

This Court has already rejected the government's argument that Petitioner should just wait and see, and instead has ruled that Petitioner likely faces irreparable injury and harm to liberty absent relief. (Order Granting Temporary Restraining Order, Dkt. 11, pgs. 8-9) Petitioner is experiencing the threat now and needs the protection now. For the foregoing reasons, the petitioner respectfully requests that the Court issue the preliminary injunction.

Dated: March 24, 2026

Geri N. Kahn, Esq.

/s/ Geri Kahn

By: _____
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