

1 Petitioner now seeks release from custody and return to home confinement pending a
2 decision on her Petition for Writ of Habeas Corpus under 18 U.S.C. § 2241 (ECF No.
3 1). Respondents argue that the Motion should be denied because this Court lacks
4 jurisdiction and statutory authority. (See Kuzmenko Opp'n (ECF No. 10) at 1.) For the
5 reasons discussed below, the Court GRANTS the Motion for Temporary Restraining
6 Order and orders Ms. Kuzmenko transferred back into to prerelease custody.

7 **I. Background**

8 **A. Statutory Background**

9 This Motion arises in the context of the First Step Act. The Act was signed into
10 law in December 2018 and amended 18 U.S.C. §§ 3621, 3624, and 3632. First Step
11 Act, Pub. L. 115-391, 132 Stat. 5194 (2018). These amendments provide that the
12 Bureau of Prisons give prisoners the chance to receive "earned time credits" for
13 participating in "recidivism reduction programs." See 18 U.S.C. §§ 3621(h), 3632(a);
14 see also *Bottinelli v. Salazar*, 929 F.3d 1196, 1197-98 (9th Cir. 2019). Section 3632
15 provides that a prisoner may receive earned time credits, explains how the credits are
16 to be applied, and states what disqualifies a prisoner from receiving such credits.
17 Principally at issue in this case is section 3632(d)(4)(C), which reads:

18
19 Time credits earned under this paragraph by prisoners who
20 successfully participate in recidivism reduction programs
21 or productive activities shall be applied toward time in
22 prerelease custody or supervised release. The Director of the
23 Bureau of Prisons shall transfer eligible prisoners, as determined
24 under section 3624(g), into prerelease custody or supervised
25 release.

24 18 U.S.C. § 3632(d)(4)(C).

25 **B. Factual Background**

26 Petitioner Vera Kuzmenko brings a Motion for Temporary Restraining Order
27 seeking immediate release from custody and return to home confinement pending a
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1 decision on her Petition for Writ of Habeas Corpus under 18 U.S.C. § 2241.²
2 Alternatively, she seeks release pending resolution of her habeas petition. In 2016,
3 Petitioner had been sentenced to a term of 168 months, followed by three years of
4 supervised release for wire fraud and related counts. (Mot. TRO at 3.) While in prison,
5 Petitioner participated in recidivism programs, received no disciplinary write ups, and
6 paid off the financial obligations arising from her conviction. (*Id.*) As a result, she
7 earned Good Time Conduct and FSA Credits while she served her sentence. (*Id.*) In
8 October 2024, the BOP determined she earned enough credits to be eligible for
9 prerelease custody to either a halfway house or home confinement. (*Id.* at 3-4.) By
10 January 16, 2025, Petitioner was transferred to home confinement. (*Id.* at 4.) Upon
11 her release, she reported to a Residential Reentry Center in San Francisco, California.
12 (*Id.*) While released, Petitioner lived with her daughter in an approved home in
13 Loomis, California and contends that she met all of the conditions of her home
14 confinement. (*Id.*)

15 In February 2025, the Residential Reentry Center in San Francisco told
16 Petitioner that her home confinement was to be taken over by a Sacramento agency.
17 (*Id.*) When Petitioner first reported to the new agency, staff made copies of her
18 license and green card. (*Id.*) After being told to wait in conference room, deputies
19 from the U.S. Marshals Service arrested her. (*Id.*) In what the Court considers a
20 troubling exchange, the deputies asked if she had violated the terms of her home
21 confinement, and after telling them she had not, they told her that they did not know
22 why they were instructed to arrest her. (*Id.*) Petitioner was taken to Sacramento
23 County Jail, and she continues to be detained.³ (*Id.*)

24 _____
25 ² The Court DENIES without prejudice Respondents' request to dismiss and strike all improperly named
26 individuals given the expediting briefing schedule here. The Court also DENIES Respondents' request
27 to stay proceedings in this matter pending the resolution of the motion for compassionate release filed
28 in 2:11-cr-00210-DAD-DB.

³ During oral argument, Petitioner's counsel informed the Court that Petitioner was recently transferred
from Sacramento County Jail to a federal prison.

1 To this day, Petitioner has not received an explanation as to the reason for her
2 arrest or subsequent detention. (*Id.*) Rather, her counsel has unofficially been
3 informed that her arrest and detention was pursuant to a BOP National Directive
4 instructing Residential Reentry Centers to arrest and detain all persons in the centers
5 and home confinement who have active immigration detainers. (*Id.* at 4-5.)
6 Petitioner, who has an unresolved immigration detainer⁴, believes that this
7 explanation is consistent with a BOP Memorandum issued on January 30, 2025. (*Id.* at
8 5.) The Memorandum cancels all referrals and transfers to residential reentry centers
9 and home confinement for BOP prisoners with unresolved immigration detainers. (*Id.*)
10 Respondents oppose the instant Motion, arguing primarily that this Court lacks
11 jurisdiction over the matter.⁵

12 **II. Subject Matter Jurisdiction**

13 Respondents first argue that this Court lacks jurisdiction to hear the underlying
14 habeas petition because where Petitioner serves her time on prerelease custody is not
15 within the “core of habeas.” (Kuzmenko Opp’n at 3.) “[T]he essence of habeas corpus
16 is an attack by a person in custody upon the legality of that custody.” *Preiser v.*
17 *Rodriguez*, 411 U.S. 475, 484 (1973). However, where success on a petitioner’s claim
18 “would not necessarily lead to [her] immediate or earlier release from confinement”
19 then it “does not fall within ‘the core of habeas corpus.’” *Nettles v. Grounds*, 830 F.3d
20 922, 935 (9th Cir. 2016) (citation omitted). While the federal courts do not have
21 jurisdiction to review discretionary decisions about individuals made by BOP, see
22 *Reeb v. Thomas*, 636 F.3d 1224, 1228 (9th Cir. 2011), the Ninth Circuit has
23 emphasized repeatedly that “courts have jurisdiction over habeas petitions alleging

24 ⁴ Petitioner is uncertain if she will ever actually be arrested on this detainer given her citizenship status.
25 She was born in the Soviet Union and is not considered a citizen of Uzbekistan, which is the modern-day
area of where she was born. (Mot. TRO at 5 n.2.)

26 ⁵ Given that there is a related case in this matter, 2:25-cv-00687-DJC-AC, that addresses similar issues
27 of fact and the same questions of law, the Court also considers arguments made in the Respondents’
28 opposition filed in that case. (Martin Opp’n, (ECF No. 12.)) The Court provided the Petitioners in this
case the opportunity to file a sur reply to address the arguments raised in that filing.

1 'that BOP action is contrary to established federal law, violates the United States
2 Constitution, or exceeds its statutory authority.'" *Close v. Thomas*, 653 F.3d 970, 970-
3 74 (9th Cir. 2011) (citing *Reeb*, 636 F.3d at 1228).

4 Petitioner's claim is that the BOP violated the First Step Act by denying her from
5 applying her earned FSA Credits based on her unresolved immigration detainer. (See
6 Mot. TRO at 7-8.) Respondents contend that the success of Petitioner's claim does
7 not change her duration in confinement and that her placement while serving her
8 term is squarely within the BOP's discretion. (Martin Opp'n at 3-4.) Respondents rely
9 on the Supreme Court's holding in *Sandin v. Conner*, 515 U.S. 472 (1995), to argue
10 that removing Petitioner from home confinement and returning her to prison does not
11 deprive her of any liberty interest because confinement in prison is not atypical of
12 what inmates endure as part of a custodial sentence.

13 However, *Sandin v. Conner* involved the difference in placing a prisoner in
14 disciplinary segregated confinement versus remaining in the general population. *Id.*
15 at 486. In making its determination, the Court explained that segregated confinement
16 did "not present a dramatic departure from the basic conditions of" the prisoner's
17 indeterminate sentence. *Id.* at 485. Rather, disciplinary segregation, with insignificant
18 exceptions, did not exceed similar, but discretionary, confinement in either duration
19 or degree of restriction. *Id.* at 486. The Court acknowledges that although
20 Petitioner's claim here may not ultimately change the length of her custody, success
21 on her argument would lead to her "earlier release from confinement." Unlike the
22 differences in confinement outlined in *Sandin*, the difference between home
23 confinement and detention in a custodial setting is undoubtedly significant.

24 More relevant is the Supreme Court's decision in *Young v. Harper*, 520 U.S. 143
25 (1997). In that case, the Court reviewed a habeas petition after the respondent was
26 placed on a preparole program and spent five months outside the penitentiary but
27 was ultimately denied parole and sent back into custody without the procedural
28 protections outlined in *Morrissey v. Brewer*, 408 U.S. 471 (1972). *Harper*, 520 U.S. at

1 144-45. The Supreme Court found that preparole, as it existed at the time of
2 respondent's release, was sufficiently equivalent to parole so as to warrant similar due
3 process protections. *Id.* at 147. Importantly, the Court noted that although
4 respondent was not free from limitations of his personal liberty, he was released from
5 prison before the expiration of his sentence, kept his own residence, maintained a job,
6 and "relied on at least an implicit promise that [preparole] will be revoked only if he
7 fails to live up to the [preparole] conditions." *Id.* at 147-48. This Court finds it
8 significant that (1) the Supreme Court considered the habeas petition in a matter
9 where the ultimate duration of the custody appeared to remain the same, but success
10 on the claim could result in an earlier release from incarceration, and (2) that the
11 Supreme Court endorsed the view that preparole is "very different from that of
12 confinement in a prison." *Id.* at 147. Here, it is more likely that home confinement,
13 which grants Petitioner many of the freedoms outlined in *Young*, resembles a
14 preparole situation more so than one of an institutional setting. Thus, relief from
15 incarceration would constitute an immediate or earlier relief from confinement and
16 gives this Court subject matter jurisdiction.

17 To be sure, the Director of BOP is granted some discretion in how to effectuate
18 section 3632(d)(4)(C). For instance, he or she may require that prerelease custody be
19 served in a residential reentry center or in home confinement. That decision arguably
20 implicates section 3621, and in any event is not one that can be reviewed by this
21 Court. Similarly, as discussed below, the Director may decide whether to apply the
22 FSA credits to prerelease custody or supervised release, a discretionary decision that
23 may also not be reviewed by this Court. Many of the cases cited by Respondent in
24 support of her argument that the Court lacks jurisdiction involve these discretionary
25 decisions, which are distinguishable from this case. For example, the CARES Act
26 allowed the BOP Director to "lengthen the maximum amount of time for which the
27 Director is authorized to place a prisoner in home confinement, under the first
28 sentence of section 3624(c)(2) of title 18, United States Code, as the Director deems

1 appropriate.” CARES Act, Pub. L. No. 116-135, § 12003(b)(2) (2020) (emphasis
2 added). Given the clear, discretionary language, courts routinely concluded they
3 lacked jurisdiction to review home confinement eligibility under the CARES Act. See
4 *Diaz-Lozano v. B.M. Trate*, No. 1:22-cv-01403 JLT SKO, 2022 WL 17417716, at *1 (E.D.
5 Cal. Dec. 5, 2022) (collecting cases) (listing cases finding federal habeas petitions
6 cannot be based on the CARES Act).

7 The Court recognizes that to some extent, the issue of subject matter
8 jurisdiction raises and falls with the interpretation of the FSA. However, the core of
9 Petitioner’s claim centers on the BOP exceeding its statutory authority as it pertains to
10 FSA credit application, rather than an individualized, discretionary decision. Thus, the
11 Court finds that it has subject matter jurisdiction. See e.g., *Martinez v. Gutierrez*, No.
12 4:22-cv-00505 RM, 2023 WL 6466490, at *4 (D. Ariz. July 14, 2023), *report and*
13 *recommendation adopted*, 2023 WL 6464850 (D. Ariz. Oct. 4, 2023) (finding that
14 jurisdiction existed where petitioner challenged BOP policy as contrary to section
15 3632(d)); *Ramirez v. Phillips*, No. 2:23-cv-02911 KJM JDP, 2023 WL 8878993, at *2
16 (E.D. Cal. Dec. 22, 2023) (finding that petitioner’s claim that BOP rescinded his FSA
17 credits in violation of federal law falls within the core of habeas corpus because
18 success would necessarily lead to a speedier release).

19 **III. Exhaustion of Remedies**

20 A habeas petitioner must ordinarily exhaust available administrative remedies
21 before filing a petition under section 2241, and a petition may properly be dismissed
22 for failure to exhaust the administrative remedies made available by the BOP. See
23 *Martinez v. Roberts*, 804 F.2d 570, 571 (9th Cir. 1986). However, courts have
24 discretion to waive the exhaustion requirement when administrative remedies are
25 inadequate or their exercise would be futile, or irreparable injury would result without
26 immediate judicial intervention. See *Laing v. Ashcroft*, 370 F.3d 994,1000 (9th Cir.
27 2004). A key consideration in exercising this discretion is whether “relaxation of the
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1 requirement would encourage deliberate bypass of the administrative scheme.” *Id.* at
2 1000 (citation and quotation omitted).

3 Respondent argues that administrative exhaustion is required because there is
4 no final order or record from BOP to review. That is a problem of BOP’s own making,
5 however: it has not given Petitioner a reason for her confinement despite having her in
6 their custody for three weeks. Moreover, Petitioner argues that administrative
7 exhaustion would be futile because BOP’s arrest was allegedly due to its national
8 policy and because a showing of irreparable harm exists here. Because the Court
9 finds that irreparable harm exists here, the Court waives the exhaustion requirement.

10 **IV. Temporary Restraining Order**

11 **A. Legal Standard**

12 A temporary restraining order may be issued upon a showing “that immediate
13 and irreparable injury, loss, or damage will result to the movant before the adverse
14 party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). In determining whether
15 to issue a temporary restraining order, courts apply the factors that guide the
16 evaluation of a request for preliminary injunctive relief: (1) likelihood of success on the
17 merits; (2) irreparable harm in the absence of preliminary relief (3) the balance of
18 equities and (4) the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555
19 U.S. 7, 20 (2008); *see Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
20 839 n.7 (9th Cir. 2001) (explaining that the analysis for temporary restraining orders
21 and preliminary injunctions is “substantially identical”).

22 There is an even higher burden where the type of injunction sought is a
23 “mandatory injunction.” *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)
24 (explaining that the plaintiff faced a “doubly demanding” burden for a mandatory
25 injunction). To obtain a mandatory injunction, a plaintiff must show that “the law and
26 facts *clearly favor* her position, not simply that she is likely to succeed.” *Id.* (emphasis
27 in original). Because a mandatory injunction requires that a responsible party take an
28 action, they are “not granted unless extreme or very serious damage will result. . . .”

1 *Marlyn Nutraceuticals, Inc., v. Mucos Pharma GmbH & Co.*, 571 F.3d 878–79) (9th Cir.
2 2009). The Court finds that this heightened burden is met in this case.

3 **B. Discussion**

4 **1. Likelihood of the Success on the Merits**

5 The first *Winter* factor, the likelihood of success on the merits, “is a threshold
6 inquiry and is the most important factor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir.
7 2023) (quoting *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)).
8 Petitioner argues that the BOP violated the FSA by denying her the ability to apply her
9 earned FSA Credits toward home confinement based on her unresolved immigration
10 detainer. Specifically, Petitioner contends that the language of section 3632(d)(4)(C)
11 imposes a mandatory duty on the BOP to allow eligible prisoners to apply their FSA
12 Credits.

13 As an initial matter, the Court is deeply concerned by BOP’s failure to provide
14 Petitioner with a reason as to why she has been taken back into custody. Detaining an
15 individual without any explanation is not only chilling, but also flatly inconsistent with
16 any notion of due process. Petitioner also contends, and the Respondents do not
17 deny, that she had not violated any terms of her home confinement prior to her arrest.
18 Rather, in their Opposition Respondents concede that the reason for Petitioner’s
19 detention was her active immigration detainer and do not provide any other basis for
20 her detention. (Kuzmenko Opp’n at 3.)

21 The Court now turns to the text of section 3632(d)(4)(C), which reads:

22
23 Time credits earned under this paragraph by prisoners who
24 successfully participate in recidivism reduction programs or
25 productive activities shall be applied toward time in prerelease
26 custody or supervised release. The Director of the Bureau
27 of Prisons shall transfer eligible prisoners, as determined under
28 section 3624(g), into prerelease custody or supervised release.

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1 18 U.S.C. § 3632(d)(4)(C) (emphasis added). Other courts in the Ninth Circuit,
2 including a court in this District, have interpreted this language to mean that the BOP
3 does not have the discretion to exclude an eligible prisoner from having his earned
4 time credits applied under the FSA, because the FSA language in 18 U.S.C.
5 § 3632(d)(4)(C) is mandatory. *Ramirez*, 2023 WL 8878993, at *4 (agreeing with other
6 courts in finding that the language in section 3632(d)(4)(C) is mandatory); see *Jones v.*
7 *Engleman*, No. 2:22-cv-05292 MGS GJS , 2022 WL 6563744, at *10 (C.D. Cal. Sept. 7,
8 2022), *report and recommendation adopted in part, rejected in part*, 2022 WL
9 6445565, at *1 (C.D. Cal. Oct. 7, 2022) (adopting in relevant part the statutory analysis
10 in the findings and recommendations finding that section 3632(d)(4)(C) is mandatory);
11 see also *Woodley v. Warden, USP Leavenworth*, No. 5:24-cv-03053 JWL, 2024 WL
12 2260904, at *3 (D. Kan. May 15, 2024) (stating that a plain reading of the section
13 3632(d)(4)(D) requires BOP to transfer a prisoner to prerelease custody or supervised
14 release if the prisoner is “eligible” as pursuant to subsection 3624(g)). Under this
15 reading, it appears to the Court that Petitioner had a right to apply her earned credits
16 to a non-prison setting, although the form of custody (home confinement versus a
17 residential reentry center) would be up to the BOP’s discretion.

18 Respondents argue⁶ that even though the section uses the word “shall”, section
19 3632(d)(4)(C) does not eliminate the BOP’s discretion over the use of prerelease
20 custody under section 3621(b). In making this claim, Respondents contend that
21 section 3632(d)(4)(C) incorporates section 3624(g), titled “prerelease custody or
22 supervised release for risk and needs assessment system participants”, by reference.
23 The Court does not disagree with this reading. Respondents further argue that
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25 ⁶ Respondents also attempt to analogize to the Second Chance Act of 2007, but these arguments are
26 likewise not convincing. The Second Chance Act amended 18 U.S.C. § 3624 to provide that the BOP
27 “shall, to the extent practicable” ensure that prisoners may spend a portion of their final months in
28 conditions that allow for reentry into the community, including a community correctional facility. 18
U.S.C. § 3624(c)(1). (emphasis added). The language “to the extent practicable” expressly modifies the
language shall and expressly provides the BOP with discretion. Such qualifying language is notably
absent from 18 U.S.C. § 3632(d)(4)(C).

1 section 3624(g)(10) in turn references a portion of section 3624(c) that discusses
2 prerelease time limits and also a provision expressly incorporating and preserving
3 BOP's discretion under section 3621(b). Respondent then argues that this provision
4 regarding BOP's discretion also applies to section 3632(d)(4)(C). The Court finds that
5 this argument is flawed.

6 Section 3624(g)(10) reads: "[t]he time limits under subsections (b) and (c) shall
7 not apply to prerelease custody under this subsection." 18 U.S.C. § 3624(g)(10).
8 Subsection (c), at issue here and which predates the FSA, limits prerelease custody to
9 twelve months. Subsection (g)(10)'s exclusion of this time limit makes sense given that
10 subsection (c) would have otherwise created a conflict with the requirements of
11 section 3632(d)(4)(C) if eligible prisoners were constrained in the number of FSA
12 credits that could be applied toward prerelease custody or supervised release. In
13 addition to providing how much time could otherwise be permitted in prerelease
14 custody, subsection 3624(c)(4) further provides that "[n]othing in this subsection shall
15 be construed to limit the authority of the Director of the Bureau of Prisons under
16 section 3621." (Emphasis added.) Respondent argues that this language also applies
17 to release under section 3632(d)(4). Not so. The fact that section 3624(g)(10) *limits*
18 application of subsection 3624(c) in no way suggests that a separate provision
19 contained in that section somehow applies to limit application of section 3632(d)(4).
20 Thus, the Court agrees with other district courts in this circuit that the language in
21 section 3632(d)(4)(C) is mandatory.

22 The Court now turns to Petitioner's unresolved immigration detainer as a basis
23 for denying her FSA credit application. Respondents have not identified, and the
24 Court has not found, any place in the relevant sections where it states that individuals
25 with immigration detainers, are prohibited from applying their FSA credits for
26 prerelease. See *Ramirez*, 2023 WL 8878993, at *4 (discussing that BOP likely
27 exceeded its statutory authority to the extent it cancelled petitioner's credits based on
28 a non-disqualifying conviction). Indeed, Congress appears to have considered the

1 issue of whether and to what extent undocumented immigrants should be afforded
2 the opportunity to apply time credits and concluded that prisoners who are the
3 “subject of a final order of removal under any provision of the immigration laws” are
4 ineligible to do so. See 18 U.S.C. § 3632(d)(4)(E)(i). Petitioner has no such final order
5 of removal. If Congress had intended for noncitizens who are subject to an
6 immigration detainer (but not a final order of removal) to be ineligible to apply
7 credits, it presumably would have said so. Perhaps recognizing this, in 2023 the BOP
8 issued Change Notice 5410.01 which struck language from Program Statement
9 5410.01, First Step Act of 2018 – Time Credits: Procedures for Implementation of 18
10 U.S.C. § 3632(d)(4), such that federal prisoners subject to immigration detainers were
11 no longer automatically prohibited from applying earned time credits. *Alatorre v.*
12 *Derr*, No. 1:22-cv-00516 JMS WRP, 2023 WL 2599546, at *5 (D. Haw. Mar. 22, 2023)
13 (explaining the changes made to Program Notice 5410.01 by Change Notice
14 5410.01). While the BOP’s program statements are not binding, see *Reeb*, 636 F.3d at
15 1227, they are nonetheless informative, and in any event more consistent with the
16 statutory language.⁷

17 Respondents next argue that even if section 3632(d)(4)(C) is mandatory, that
18 does not mean that Petitioner is entitled to be released from prison. The argument
19 appears to be that section 3632(d)(4)(C) authorizes the BOP to allocate the credits
20 toward prerelease custody or supervised release, which would allow BOP to shorten
21 the time on supervised release at the end of the term of supervised release. (Martin
22 Opp’n at 15.) In other words, instead of transferring Petitioner to prerelease custody
23 or supervised release now, BOP could shorten the period of supervised release such
24 that when she is ultimately released, she has less supervised release time.

25 As an initial matter, the Court agrees that the BOP has discretion to determine
26 how the earned credits are to be divided between prerelease custody and supervised

27 ⁷ Respondent has cited cases decided before this change, for instance *Hassan v. Hajar*, which the Court
28 does not view as persuasive. No. 3:23-cv-00041-KC, 2023 WL 1769207, at *3 (W.D. Tex. Feb. 3, 2023).

1 release. See 18 U.S.C. § 3632(d)(4)(C). However, to the extent that Respondents are
2 attempting to argue that they are able to backend the supervisory release credits such
3 that an eligible prisoner would be eligible for early release but would remain in BOP
4 custody, the Court finds this to be in violation of the second sentence of section
5 3632(d)(4)(C), which provides that the “Director of the Bureau of Prisons shall transfer
6 eligible prisoners, as determined under section 3624(g), into prerelease custody or
7 supervised release.” An interpretation that BOP may backend the supervisory release
8 ignores the command of section 3632(d)(4)(C) that the Director “transfer” eligible
9 prisoners, since in that situation the Director would not be transferring the prisoner
10 into either prerelease custody or supervised release. 18 U.S.C. § 3632(d)(4)(C). Here,
11 Petitioner was already awarded 700 days of prerelease credits and 365 days of
12 supervisory release credits. While BOP could have divided the time differently
13 between prerelease custody and supervised release, the Director was required to
14 transfer Petitioner into one of the two.

15 For the foregoing reasons, the Court finds that Petitioner has demonstrated a
16 likelihood of success on the merits.

17 **2. Irreparable Harm**

18 A party seeking preliminary relief must also make a “clear showing” of a
19 likelihood of irreparable harm in the absence of the relief requested. *Winter*, 555 U.S.
20 at 22; see *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,1131 (9th Cir. 2011) (“...
21 plaintiffs must establish that irreparable harm is likely, not just possible, in order to
22 obtain a preliminary injunction.”).

23 Petitioner argues that she is irreparably harmed every day she remains in
24 custody rather than serving the final portion of her sentence on prerelease custody.
25 The Court agrees. “Every day [Petitioner] is incarcerated rather than serving the final
26 portion of [her] sentence on prerelease custody or supervised release as mandated by
27 the First Step Act results in irreparable injury; petitioner cannot get back the time [she]
28 spends incarcerated.” *Ramirez*, 2023 WL 8878993, at *5. Respondents contend that

1 no irreparable harm exists to Petitioner because the BOP prerelease programming is
2 discretionary. However, for the reasons discussed above, the Court finds that in the
3 context of the FSA, prerelease custody or supervised release is mandatory where the
4 prisoner is eligible. Thus, Petitioner has satisfied this requirement.

5 **3. Balance of Equities and Public Interest**

6 The final two *Winter* factors merge when the government is the nonmoving
7 party. *Baird*, 81 F.4th at 1040. Here, the Respondents' harm is clearly minimal, as they
8 have no discretion to ignore the Congressional directive issued in section
9 3632(d)(4)(C). On the other hand, the hardship to Petitioner is quite clear: she is
10 harmed every day she is improperly incarcerated rather than on home confinement.
11 Further, the First Step Act was enacted by Congress to provide incarcerated
12 individuals the opportunity to participate in programming that would allow for
13 rehabilitation. See First Step Act of 2018, Pub. L. 115-391, Section 101. It is unclear to
14 the Court how allowing for the discretionary removal of the incentives for following
15 through with such programming benefits the public. Moreover, Petitioner had not
16 violated any of the terms of her home confinement and was living with her daughter
17 prior to her detention. She will be able to continue to reintegrate with her community
18 and continue her rehabilitation while in prerelease custody.

19 **V. Conclusion**

20 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 21 1. Petitioner's Motion for Temporary Restraining Order (ECF No. 6) is
22 GRANTED;
 - 23 A. Respondents are ordered to transfer Ms. Vera Kuzmenko back into
24 prerelease custody. Respondents are further restrained and
25 enjoined from removing Petitioner from prerelease custody based
26 on her immigration status.
 - 27 B. This Temporary Restraining Order granted here shall expire on
28 March 20, 2025, at 5:00 P.M., absent further order of this Court.

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C. No bond shall be required under Federal Rule of Civil Procedure 65(c).

2. The parties are directed to meet and confer as to whether any further evidence or briefing need be presented or whether the Court may adopt this order as a preliminary injunction pending a final adjudication on the merits. The parties shall file a joint response outlining their position(s) by March 10, 2025. If either party requests further briefing on whether a preliminary injunction should be entered, the parties shall propose a schedule for Petitioner to file a motion for preliminary injunction and for briefing on said motion.

IT IS SO ORDERED.

Dated: March 10, 2025


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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