IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DR. ORLY TAITZ, *Plaintiff*,	§	
v.	§	CIVIL ACTION NO. 1:14-cv-119
JEH JOHNSON, *et al.*, *Defendants*.	§	

MEMORANDUM OPINION AND ORDER

In this case, Dr. Orly Taitz (hereinafter referred to as "Dr. Taitz" or "Plaintiff") has made certain claims and raised certain issues that she maintains are or should be issues of regional, if not national, importance. Most of the claims raised in this case concern alleged acts or omissions on the part of the Federal Government which place or could place certain segments of the United States population at risk. She accurately maintains that American citizens, for the most part, depend upon our federal and state governments to act in their best interest; thus, Dr. Taitz argues that it is actionable, or at least a matter of great concern, when the Government's actions, instead of protecting the public from potential harm, allegedly put Americans in harm's way.

That being said, and assuming hypothetically that the acts or omissions alleged in this case actually imperil Americans, the fact that a certain policy is or should be of national significance, or the fact that the Government is allegedly acting less than responsibly, does not automatically give each and every American the right to bring an action to enjoin the Government from so acting. This is especially true in federal courts, which are courts of limited jurisdiction.

As a general proposition, a litigant must allege a personal stake in the outcome of the controversy in order to have standing to pursue a claim. *See Warth v. Seldin*, 422 U.S. 490, 498-

99 (1975). Mere worry or concern about being exposed to a government-created danger is not sufficient to confer standing; instead, the litigant must allege that she is under imminent threat of suffering a direct, concrete injury that is particularized to her and likely to be redressed by a favorable decision from the Court and, further, that there is a causal connection between the alleged injury and the complained of conduct. *See Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008). With these propositions in mind, the Court will address each of Dr. Taitz's complaints.

I. PROCEDURAL HISTORY

Plaintiff—a dentist practicing in Rancho Santa Margarita, California—brings this suit against Jeh Johnson (Secretary of the Department of Homeland Security ("DHS")); Sylvia Burwell (Secretary of the Department of Health and Human Services ("HHS")); United States President Barack Obama; the United States Border Patrol, Rio Grande Valley Sector, Brownsville Station; as well as John Does and Jane Does 1-100. Specifically, she has filed an Emergency Application for Stay/Injunction, seeking (1) to stay implementation of "Deferred Action for Childhood Arrivals" ("DACA"); (2) to stay any transportation of undocumented immigrants from the Southern District of Texas to elsewhere in the country due to alleged health, national security, crime, and economic threats; (3) either an immediate deportation of all detained undocumented immigrants or their two months quarantine to prevent the spread of alleged infectious diseases; and (4) an emergency stay of the release of undocumented immigrants who do not meet certain medical, criminal, and judicial/immigration screening requirements (laid out by Plaintiff). [*See* Doc. No. 1].[1]

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[1] Plaintiff's Application is entitled "Emergency Application For Stay of Transportation Of Illegal Aliens From The Southern District Of Texas To California And Other Areas Around The Country Due To Serious Threat To Public Health, Spread Of Infectious Diseases, National Security Threat, Crime Threat And Economic Damages; Application For An Emergency Stay/Injunction, Seeking Either An Emergency Immediate Turnaround And

Plaintiff additionally filed: (1) a "Motion To Expedite Due To Exigent Circumstances Of Deadly Ebola Epidemic", (2) a "Motion To Expand Stay/Injunction To Include Stay/Suspension Of All Arrivals From The Areas Affected By Deadly Ebola Epidemic, Quarantine All Individuals Who Visited Countries With Ebola Epidemic In The Past Twenty One (21) Days", (3) a "Motion For This Court To Retain Jurisdiction To Assure Compliance", and (4) a motion for Orly Taitz to appear *pro hac vice* and for class certification. [Doc. Nos. 14, 15, 16, 17, & 18]. This Court ordered Defendants to show cause for why the emergency relief requested should not be granted, an order with which Defendants complied. [*See* Doc. No. 20]. Plaintiff thereafter responded to Defendants' Answer. [Doc. No. 22].

A hearing was held before this Court on all pending matters. The Court denied Plaintiff's requests for a temporary restraining order and other emergency relief, but allowed Plaintiff to amend her complaint. Now before this Court is Plaintiff's First Amended Complaint, [hereinafter the "Complaint"] [Doc. Nos. 40—40-1], Defendants' Motion to Dismiss, [Doc. No. 42], Plaintiff's Opposition to Defendants' Motion to Dismiss, [Doc. No. 43], and Plaintiff's Supplemental Application for Stay, [Doc. No. 44]. A second hearing was held, this time on the preliminary injunction motion, and the parties subsequently filed supplemental briefings. [Doc. Nos. 50 & 51].

Most recently, Dr. Taitz has filed: (1) a "Supplemental Motion for Declaratory Relief, Stay, Injunctive Relief Due to New Relevant Facts", [Doc. No. 52], which attacks more recent immigration policies of the Government; (2) a "Notice of New Facts", [Doc. No. 62], claiming

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Deportation Of Illegal Aliens Or Their Two Months Quarantine In An Enclosed Temporary Or Permanent FEMA Facility Due To Epidemic/Outbreak/Spread Of Infectious Diseases; Application For An Emergency Stay Of A Release Into Communities, Into General Public, Of Illegal Aliens Who Did Not Complete Two Months Quarantine, Who Did Not Undergo Proper Medical Screening, Who Do Not Have A Written Medical Release, Who Do Not Have A Clean A Criminal Record From The Country Of Origin And Who Do Not Have A Signed Order From The Federal Judge Stating That This Alien Is Legally Entitled To Live In The United States." [Doc. No. 1].

that Defendants are intentionally releasing individuals with drug-resistant tuberculosis ("TB") from DHS custody; and (3) a Motion for Sanctions, [Doc. No. 63], which seeks sanctions against Defendants for allegedly falsely claiming during hearings before this Court that it checks undocumented aliens before releasing them from custody to ensure they do not carry infectious diseases. The first of these motions, the Supplemental Motion, [Doc. No. 52], is denied without prejudice because it was filed without leave of Court.[2] This Court has repeatedly warned Dr. Taitz that she must comply with the rules of procedure, including all local rules of this District and of this Court. Despite this, Plaintiff persists in non-compliance. The Court, having failed to achieve compliance by asking Plaintiff to comply with the rules, must now resort to the more punitive step of denying any and all non-complying motions.

The Court additionally denies without prejudice any relief requested in above-referenced latter two filings, [Doc. Nos. 62 & 63]. This Court has no means, given the lack of record before it, to judge the veracity of any such allegations. Certainly, if the Government is purposefully exposing the population of the United States to a drug-resistant strain of TB, any civil sanctions likely to be issued by this Court would be the least of the Government's problems.

II. PLAINTIFF'S FACTUAL ALLEGATIONS

Plaintiff, in several causes of action, complains that Defendants unlawfully transported undocumented immigrants with infectious diseases and/or criminal records in their countries of origin from the Texas-Mexico border to other parts of the United States, including her town of residence.[3] According to Dr. Taitz, some of these infected individuals sought dental treatment

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[2] This Supplemental Motion, while styled a motion, is, in effect, an attempt to amend the active complaint without leave.

[3] Dr. Taitz's causes of action include: (1) negligence per se (related to alleged violations of the Immigration and Nationality Act and the California Health and Safety Code), (2) common law negligence, (3) fraud, (4) civil RICO, (5) defamation, and (6) violations of the United States Constitution (including a violation of the Taxing and Spending Clause in Article I, a violation of separation of powers principles by infringing upon Congress' plenary

from her and proximately caused her to contract an illness. She also claims that actions and policies by the DHS and HHS in handling undocumented immigrants apprehended at the border are in contravention to various immigration laws and the 1997 *Flores v. Reno* settlement agreement,[4] and, further, that the Government's actions are a misappropriation of taxpayer funds. Plaintiff challenges the implementation of "Deferred Action for Childhood Arrivals" ("DACA") as causing the "flood" of undocumented immigrants (from whom she allegedly contracted the cough and/or infection for which she also seeks relief). Lastly, she questions the Government's refusal to ban travel from Ebola-affected regions.

Plaintiff asserts jurisdiction pursuant to 28 U.S.C. § 1331 because she brings her suit under the following federal laws: the Immigration and Nationality Act ("INA"), the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and the Administrative Procedure Act ("APA"). Plaintiff alleges that she has standing under the APA, which provides a court with the means to set aside and find unlawful certain agency actions, findings, and conclusions.

Dr. Taitz alleges that Defendants' actions and/or policies have caused her to suffer the following injuries: (1) an upper respiratory infection allegedly contracted from exposure to undocumented immigrant patients carrying infectious diseases; (2) the imminent threat of re-exposure and future infection from treating immigrant patients with scabies, tuberculosis, lice, rabies, H1NI, dengue fever, and/or other infectious diseases; (3) the threat of crime and terrorism perpetuated by undocumented immigrants whose criminal records in their countries of origin are allegedly not checked before they are released from DHS custody; (4) the negative effect on communities where undocumented immigrants are released due to loss of resources, jobs, benefits and wages, as well as local school and hospital funds; and (5) "economic injuries"

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power and the jurisdiction of Article III courts, and an unconstitutional taking without due process in violation of the Fifth and Fourteenth Amendments).

[4] *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997).

resulting from Defendants' alleged misappropriation of taxpayer funds to transport undocumented immigrants, to advertise and solicit immigrants to cross the border, and to pay for their foster care, health care, education, and other social services. From this, the Court understands Plaintiff's alleged injuries to fall into three main categories: (1) past and/or ongoing health-related injuries for which she incurred—and will continue to incur—medical costs, (2) threatened future health-related injuries, and (3) general injuries as a taxpayer.

In her Complaint, Plaintiff requests various forms of equitable and monetary relief, including: (1) a stay of transportation of undocumented immigrants apprehended at the border until each immigrant undergoes two months quarantine, a licensed medical doctor signs a medical release stating the immigrant does not carry infectious diseases, there is verification of each individual's identity and criminal history from his or her country of origin, and a federal or immigration judge determines that he or she is entitled to legally reside in the United States; (2) current and future damages for Plaintiff's health-related injuries; (3) current and future damages as a taxpayer; (4) a declaration that DACA is unconstitutional and an injunction enjoining any and all actions and policies stemming from DACA; (5) a writ of mandamus ordering Defendants to publish the *Flores v. Reno* compliance policies as allegedly required by the amended stipulation in *Flores*;[5] (6) an order imposing a twenty-one day quarantine for all individuals who

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[5] The Court finds it unnecessary to further discuss Plaintiff's request for a mandamus as it is clearly without jurisdiction to grant one in the nature she requests. Section 1361 of Title 28, United States Code, confers on district courts "jurisdiction of any action in the nature of mandamus to compel" a federal officer, employee, or agency "to perform a duty owed to the plaintiff." Jurisdiction is conferred only if the plaintiff has a clear right to relief, the duty breached by the defendant is "a clear nondiscretionary duty," and the plaintiff has exhausted all other avenues of relief. *See Heckler v. Ringer*, 466 U.S. 602, 616-17 (1984) (citations omitted). The mandamus statute does not create a cause of action and does not apply if an alternative remedy exists. Its purpose is to grant federal courts jurisdiction to issue writs when it appears that the claim made is clear and certain, and the duty of the federal officer is ministerial and so plainly prescribed as to be free from doubt. Here, Plaintiff has not identified how or why Defendants owe her a duty personally to publish the *Flores* agreement or policies. While still an active case, *Flores* involves a settlement reached between parties not before this Court. The *Flores* agreement was amended in 2001 to stipulate that the terms of the agreement would terminate 45 days following the publication of final regulations implementing the agreement by the governmental defendants in that case. The stipulation also provided that the parties in that case should work together toward resolving any disputes regarding compliance with the agreement.

are legally or illegally arriving in the United States from an Ebola-affected country or, alternatively, a writ of mandamus ordering Defendants to suspend all flights to countries with known Ebola cases; and (7) actual and punitive damages.[6] In light of the recent Ebola outbreak, Plaintiff filed a Supplemental Application for Stay in which she requests a narrower "stay/injunction/writ of mandamus." That amended application asks this Court to extend the government-imposed, partial travel ban (prohibiting travel from Liberia, Sierra Leon, and Guinea except through five designated ports of entry) to a full ban, thereby prohibiting individuals coming from Ebola-affected countries from entering the United States through *any* port of entry.

Defendants have moved to dismiss Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim upon which relief can be granted under Rule 12(b)(6). As to the first basis for dismissal, Defendants assert that Plaintiff's causes of action present nonjusticiable, political questions and that Dr. Taitz lacks constitutional, prudential, and APA standing. In an alternative basis for dismissal, Defendants assert that no private right of action exists in this case and that Plaintiff has failed to actually plead a cause of action under the APA. Defendants further argue that Plaintiff has failed to meet her burden to show preliminary relief is warranted.

Not only does this fail to impose any "nondiscretionary duty" upon the Defendants in the present case, but there is nothing providing Dr. Taitz with any "clear right to relief" regarding this agreement. Finally, the *Flores* case, to this Court's knowledge, is still an ongoing case. If Plaintiff is entitled to any relief pursuant to any *Flores* order, she should seek such relief in the court in which the *Flores* case is pending.

[6] In her First Amended Complaint, Plaintiff further requests to be admitted *pro hac vice* and for class certification. Dr. Taitz, while a practicing dentist, is a member of the California Bar. This Court has given Dr. Taitz wide latitude, no doubt with resulting frustration to defense counsel, in the manner in which she files pleadings given that her primary profession is that of a dentist and not a litigator. Nevertheless, even *pro se* parties must comply with the basic rules of court. The Court denies *pro hac vice* status because of Dr. Taitz's repeated refusal to abide by the long-standing rules of procedure. This ruling does not preclude Dr. Taitz from representing herself *pro se*; regardless, the Court urges all counsel, including Dr. Taitz, to follow the Federal Rules of Civil Procedure, the local rules of the Southern District, and local rules of this Court in any and all remaining portions of this lawsuit. The Court denies without prejudice the motion to certify a class until it can assess the validity of any remaining claim(s) Dr. Taitz has; stated another way, the Court will entertain a class action request once it has determined, among many other things, whether Dr. Taitz has a valid claim and is a representative class plaintiff.

III. APPLICABLE STANDARD

Motions filed under Rule 12(b)(1) of the Federal Rules of Civil Procedure allow a party to challenge the subject matter jurisdiction of the district court to hear a case.[7] The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Accordingly, Dr. Taitz "constantly bears the burden of proof that jurisdiction does in fact exist." *Id.* (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)).

In applying Rule 12(b)(1), a court "has the power to dismiss for lack of subject matter jurisdiction on any one of three separate bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *St. Tammany Parish, ex rel. Davis v. FEMA*, 556 F.3d 307, 315 (5th Cir. 2009). If a party merely files a motion to dismiss under Rule 12(b)(1), with no supporting evidence, it is considered a facial attack, and the Court considers only the sufficiency of the pleading's allegations, assuming them to be true. *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). On the other hand, when a party submits evidence with its motion, such as affidavits or testimony, it is considered a factual challenge on subject matter jurisdiction, and the plaintiff must provide evidence and prove by a preponderance of the evidence that the Court has jurisdiction. *Id.* When the attack is factual, the court "is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (citation and internal quotation marks omitted). Therefore, "no presumptive truthfulness attaches to [the] plaintiff's allegations, and the existence

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[7] The Court considers Defendants' Rule 12(b)(1) motion prior to their Rule 12(b)(6) motion. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) ("When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits. This requirement prevents a court without jurisdiction from prematurely dismissing a case with prejudice.").

of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.* Here, given the requests for a temporary restraining order and preliminary injunction, the Court has heard evidence from both parties at two different hearings on many of the issues, and the parties have supplemented their pleadings with multiple exhibits. Defendants' motion is thus a mixture of a facial and factual challenge.

Defendants additionally move to dismiss most, if not all, of Dr. Taitz's claims under Rule 12(b)(6). In deciding a motion to dismiss under Rule 12(b)(6), the district court accepts as true those well-pleaded factual allegations in the complaint. *C.C. Port, Ltd. v. Davis-Penn Mortgage Co.*, 61 F.3d 288, 289 (5th Cir. 1995). "Taking the facts alleged in the complaint as true, if it appears certain that the plaintiff cannot prove any set of facts that would entitle it to the relief it seeks," dismissal is proper. *Id.* It must appear beyond doubt that the plaintiff "can prove no set of facts in support of his claim which would entitle him to relief." *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) (alterations and citations omitted). The plaintiff cannot, however, simply state conclusory legal or factual allegations; rather the plaintiff must "allege 'enough facts to state a claim to relief that is plausible on its face.'" *Landavazo v. Toro Co.*, 301 Fed. App'x 333, 336 (5th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (quoting *Twombly*, 550 U.S. at 555).

IV. DISCUSSION

Defendants move to dismiss Plaintiff's lawsuit primarily on standing and immunity grounds. According to Defendants, Plaintiff lacks both constitutional and prudential standing in this case. Defendants identify as her only arguable injury the "persistent cough" Dr. Taitz has

allegedly developed from treating patients who she asserts lack legal immigration status, were afflicted with a communicable disease, and were transported by the Government from Texas to California. [*See* Doc. No. 42 at 9]. This alleged injury, Defendants argue, is not legally cognizable, redressable, or within the jurisdiction of the Court. Further, according to Defendants, Plaintiff fails to demonstrate any causative link between the Government's actions and her injury. To the extent that Dr. Taitz brings a claim under the APA, Defendants argue that, even were the Court to find that she has constitutional and prudential standing, she lacks standing to seek review under the APA. Specifically, Defendants assert that Dr. Taitz falls outside the statutory "zone of interests" for APA standing because the "immigration context suggests the comparative improbability of any congressional intent to embrace as suitable challengers in court all who successfully identify themselves as likely to suffer from the generic negative features of immigration." [*See* Doc. No. 42 at 19 (citing *Federation for Am. Immigration Reform v. Reno*, 93 F.3d 897, 902 (D.C. Cir. 1996)].

Under Article III of the United States Constitution, this Court's jurisdiction is limited to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 2. As such, Article III restricts judicial power to the "traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of the law." *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). As the Supreme Court has recently emphasized, "[e]xcept when necessary in the execution of that [traditional] function, courts have no charter to review and revise legislative and executive action." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992); *City of Los Angeles v. Lyons*, 461 U.S. 95, 111-12 (1983)). Among the doctrines that reflect this "fundamental limitation" is the doctrine of standing, which requires courts to satisfy themselves that "the plaintiff has 'alleged such a

personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction." *See Summers*, 555 U.S. at 493 (quoting *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975)).

Beyond the constitutional requirements for standing, federal courts also adhere to certain "prudential" limitations on standing. The Supreme Court has held that "the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499. Additionally, even when the plaintiff has alleged a redressable injury sufficient to meet constitutional requirements, courts refrain from adjudicating "'abstract questions of wide public significance, which amount to 'generalized grievances,' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 475 (1982) (quoting *Warth*, 422 U.S. at 499-500). The third prudential limitation on standing is that the plaintiff's complaint must "fall within 'the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Id.* (quoting *Ass'n of Data Processing Serv. Org. v. Camp*, 397 U.S. 150, 153 (1970)). Prudential standing is a separate inquiry from Article III standing, and satisfaction of prudential concerns "cannot substitute for a demonstration of 'distinct and palpable injury' that is likely to be redressed if the requested relief is granted." *Id.* (quoting *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979) (internal citations omitted) (emphasizing that Article III requirements "state a limitation on judicial power," and are not merely factors to be balanced in the weighing of prudential considerations).

The issue of standing implicates the Court's subject matter jurisdiction. When a defendant moves under Rule 12(b)(1) to dismiss the case for lack of subject matter jurisdiction,

the plaintiff bears the burden of demonstrating that the requirements for standing are satisfied for *each* type of relief she seeks. *See Lujan*, 504 U.S. at 560-61; *Summers*, 555 U.S. at 493; *Pluet v. Frazier*, 355 F.3d 381, 385 (5th Cir. 2004). The relief requested in the present case includes monetary damages for past and/or ongoing injuries, various forms of injunctive relief, and declaratory relief. Thus, this Court must determine her standing to sue for each form of relief.

Plaintiff brings her lawsuit against federal agencies and officials in their official capacities (except to the extent that she sues John and Jane Does and the Defendants in their individual capacities for defamation). The United States and its agencies are generally entitled to sovereign immunity from suit unless there is an express waiver of such immunity. Additionally, because Plaintiff sues the three officials in their official capacities as acting within the scope of their employment, her claims are treated as effectively running against the sovereign United States itself. In other words, the relief Plaintiff seeks is directed against the federal government (that is, it implicates governmental rights and duties and will directly affect government operations), and thus must be recognized as an action against the sovereign itself, even though nominally framed against individual officials. (The Court is further satisfied that Plaintiff intends to sue the defendant-officers in their official capacities by her statement at the beginning of her Complaint that "defendants are sued in their official capacity [sic] as executives of Federal agencies, and the premise of the legal action involves actions of Federal agencies.")[8] Two forms of waiver are relevant to the present case: those found in the Administrative Procedure Act

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[8] In so finding, the Court acknowledges the authority which postulates that courts cannot resolve whether an action against an official is against the official individually (i.e. personally) or in the official's official capacity (i.e. against the United States) by simply looking to the plaintiff's denomination of the party-defendant. Here, in addition to Plaintiff's denomination of the defendant-officials as being sued in their official capacities, the Plaintiff's pleadings and the substance therein satisfy to the Court that the action is essentially one against the United States (and its agencies).

("APA") when non-monetary relief is sought and those in the Federal Tort Claims Act ("FTCA") when monetary relief is sought.

A. DEFENDANTS ARE IMMUNE FROM MONETARY DAMAGES FROM PLAINTIFF'S TORT CAUSES OF ACTION

Plaintiff sues Defendants in their official capacities for negligence per se, common law negligence, fraud, defamation, and civil RICO.[9] According to Plaintiff, by failing to properly screen and quarantine apprehended immigrants who are ill at the Texas-Mexico border before transporting them to other states, Defendants have caused her to develop an upper respiratory infection from exposure to immigrant patients carrying infectious diseases. She requests "current and future damages due to exposure to infectious diseases," as well as "current and future damages as a taxpayer," and other actual and punitive damages. [Doc. No. 40-1 at 19].

i. Standing

To establish standing for her health-related injuries, Plaintiff must first show that she suffered an "injury in fact"—an invasion of a legally protected interest that is "concrete and particularized" and affects the Plaintiff in a "personal and individual way." Second, the injury must be "fairly traceable" to the challenged actions of Defendants and not the result of some independent action of a third party. In other words, Plaintiff must establish a causal connection between her alleged injuries and the challenged conduct. Third, it must be likely—as opposed to merely speculative—that "a favorable judicial decision will prevent or redress the injury." *Id.*

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[9] For instance, Plaintiff alleges in what appears to be the first count of her complaint that Defendants are guilty of at least 290,000 counts of negligence per se by admitting to the United States undocumented immigrants who had communicable diseases, immigrants without vaccination records, those with mental disorders, drug abusers, immigrants who were known gang and cartel members, and/or undocumented immigrants who admitted that they committed crimes in their countries of origin. According to Plaintiff, the alleged admissions of such individuals into the United States caused her to be exposed to contagious diseases, crime, and terrorism, and she is "in immediate danger of re-infection with contagious diseases." Plaintiff claims that these alleged actions by Defendants were in violation of the following statutory provisions: 8 U.S.C. § 1225(b)(1)(A)(i), 8 U.S.C. § 1182, and § 2554 of the California Health and Safety Code.

(citing *Friends of Earth, Inc. v. Laidlaw Envtl. Services (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)); *Lujan*, 504 U.S. at 560-61. This test for standing assures that "'there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party.'" *Id.* (quoting *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 221 (1974)). "Where that need does not exist, allowing courts to oversee legislative or executive action would significantly alter the allocation of power . . . away from a democratic form of government." *Id.* (internal quotations and citations omitted).

Plaintiff alleges that she developed an upper respiratory infection for which she sought medical care, antibiotics, lab tests, and lung X-rays, and must use a positive pressure oxygen machine for the rest of her life. According to Plaintiff, she contracted this infection and a persistent cough from illegal alien patients who were allegedly transported (at some undefined time) to California from the Southern District of Texas without proper screening for infectious diseases or quarantine. Plaintiff offers a report/memorandum addressed to the Secretary of the DHS from the Inspector General of the DHS who performed unannounced site visits to DHS detention centers to evaluate the conditions for unaccompanied alien children ("UAC") in DHS custody. [*See* Doc. No. 40-3]. The report covers inspections conducted from July 1, 2014, to July 16, 2014. The Inspector General observes that "[m]any UAC and family units require treatment for communicable diseases, including respiratory illnesses, tuberculosis, chicken pox, and scabies." [*Id.* at 3]. He further observes that "DHS employees reported exposure to communicable diseases and becoming sick on duty." The report cites examples of children of Customs and Border Patrol officers contracting scabies, lice, and chicken pox within days of officers' contact with infected UAC, and other personnel reporting that they were potentially exposed to tuberculosis. [*Id.*].

Plaintiff also provides two affidavits of an epidemiologist, Vera Dolan, who opines that Dr. Taitz's infection originated from close contact with infected patients sent to her office for dental treatment, "in particular immigrants who were detained by the DHS without quarantine or medical treatment for existing communicable diseases and then transported to California." [Doc. No. 40-2 at 3 (Sept. 3, 2014, Aff. of Vera F. Dolan, MSPH)].[10] Before opining on the cause of Dr. Tatiz's infection, Ms. Dolan states that she relied on Plaintiff's statements regarding her internal medical doctor's diagnosis of her, and Plaintiff's comparison of the timing of patients coming in with a persistent cough and her own development of a cough. Ms. Dolan also reviewed (1) the aforementioned July 30, 2014 report by the Inspector General of DHS; (2) attachments to that report which observe that out of 69 sites visited where UAC were detained, there were four sites where detainees did not have access to prescription medication and 33 sites where information was not available as to whether or not detainees had access to prescription medication; and (3) a July 4, 2014 letter addressed to the Chief Patrol Agent of Chula Vista, California from Ronald Zermeno, Health and Safety Director for the National Border Patrol Council ("NBPC") Local 1613, revealing that detainees with infectious diseases were transferred from Texas to California by the DHS. [*Id.* at 2-3].

In his letter, Mr. Zermeno states that a border patrol agent who was exposed to scabies had been asked to do medical screenings during the processing of detainees from Texas, prior to releasing the detainees to ICE. [Doc. No. 40-4 at 1]. He notes that the agent was "not a trained medical professional" and "completed the questionnaire on all detainees," documenting what he saw, including "several people with open sores." [*Id.*]. Although Mr. Zermeno states that he is unaware which detainees caused the agent to contract scabies, he "suspect[s] that they could have been already transferred to ICE custody and may have already been released in the

[10] Ms. Dolan also testified before this Court.

surrounding communities." [*Id.*]. Mr. Zermeno complains that agents are not properly trained to identify infectious diseases and to properly respond when suspecting a disease. He further notes that despite the Chief's assurance that all detainees "underwent health screening by FEMA personnel and were declared medically sound for transportation to California," upon an initial medical screening of detainees by EMT agents in California, "several [detainees] with active scabies and other illnesses" were identified. [*Id.*]. Mr. Zermeno requests that the Chief "not down play this incident and call it an isolated incident," asking "again" that "all detainees be medically screened by doctors and decontaminated prior to transportation to California." [*Id.* at 2]. He concludes by stating that "Border Patrol management is aware of the scabies outbreak but continue to ignore recommendations." [*Id.* at 3].

The Court finds Plaintiff's allegations of health-related injuries to be sufficiently concrete and individualized to meet the injury-in-fact requirement under Article III. An "actual controversy" clearly exists when misconduct by one party physically harms another. To the extent that Dr. Taitz seeks redress for her general, nonconcrete interest in the proper administration of this country's immigration laws, however, she is without standing. *See, e.g.*, *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring in part and concurring in the judgment) (explaining the inability of federal courts to "entertain citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws").

Defendants argue that, even if Plaintiff's health-related injuries are cognizable, she has failed to allege sufficient facts to trace Defendants' conduct to her alleged injury. The Court agrees that, without additional evidence, it may be speculative whether Plaintiff's cough and/or upper respiratory infection "fairly can be traced" to undocumented immigrants, and even more speculative whether her injury is traceable to undocumented immigrants from the Texas-Mexico

border who were transported and released by Defendants to Rancho Santa Margarita, California (versus, for example, citizen patients, legal immigrant patients, or illegal immigrant patients who arrived in California by other means). While the Court finds Plaintiff's assertion of causation teetering on the line of attenuated, on a motion to dismiss, it cannot conclude that Plaintiff does not have standing based upon her own alleged past and current injuries. This is especially true given that Dr. Taitz requested records of infections diagnosed in areas where undocumented immigrants were detained and information as to where these immigrants were transferred, presumably in an attempt to connect the dots between her injury and Defendants' alleged conduct. Defendants refused to supply this information. This issue will be addressed in a different order.

ii. Immunity

While Plaintiff may have standing based upon her own, personally-suffered alleged health-related injuries, the Court finds that she is nonetheless barred from seeking monetary damages for her injuries because she has failed to properly present her claim to the applicable agency, and she has not pleaded any viable waiver of sovereign immunity. Although it is unclear for which cause of action(s) Plaintiff seeks the money damages she requests of this Court, as explained below, she is barred from doing so under any theory currently before the Court.

A party may not bring suit against the United States absent an express waiver of sovereign immunity by Congress. *See Drake v. Panama Canal Comm'n*, 907 F.2d 532, 534 (5th Cir. 1990); *St. Tammany Parish*, 556 F.3d at 316. "This immunity extends to the federal government's officers and agencies." *Drake*, 907 F.2d at 534. A waiver of the Federal Government's sovereign immunity must be "unequivocally expressed in statutory text," and any waiver will be strictly construed in favor of the sovereign. *Lane v. Pena*, 518 U.S. 187, 192

(1996). Thus, "to sustain a claim that the Government is liable for awards of monetary damages, the waiver of sovereign immunity must extend unambiguously to such monetary claims." *Id.*

As is relevant here, the federal government is immune from actions for monetary damages unless the action is brought under the Federal Tort Claims Act ("FTCA"). Put another way, a plaintiff suing the federal government (or its agencies or officials acting in their official capacities) for negligent acts may only seek money damages through the waiver of sovereign immunity provided by the FTCA. *In re Supreme Beef Processors, Inc.*, 468 F.3d 248, 252 (5th Cir. 2006) (acknowledging that the FTCA waives sovereign immunity and permits suits against the United States sounding in state tort for money damages). "As long as state tort law creates the relevant duty, the FTCA permits suit . . . ." *St. Tammany Parish*, 556 F.3d at 317 (citations omitted). The United States is the proper and sole defendant to a suit under the FTCA, not a federal agency or officer. *See* 28 U.S.C. § 1346(b)(1). When a plaintiff sues federal agencies or officials acting within the scope of their office or employment for alleged tortious conduct, as is the case here, they are extended absolute immunity by the Federal Employees Liability Reform and Tort Compensation Act of 1988 ("FELRTCA"). 29 U.S.C. § 2679. The United States is substituted for the employee, and the action proceeds as one against the United States. *See id.* § 2679(d)(2); *Osborn v. Haley*, 549 U.S. 225 (2007).

The FTCA contains several exceptions limiting its waiver of immunity and, where an exception to the waiver applies, sovereign immunity remains a jurisdictional bar to suit. Specifically, the FTCA exempts from its coverage most intentional torts. Under 28 U.S.C. § 2680(h), the FTCA's waiver of sovereign immunity does not apply to "[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights." Claims for defamation

and fraud would fall under this category.[11] Accordingly, the Court finds that Dr. Taitz's claims for fraud and defamation against the Defendants in their official capacities are exempt from FTCA coverage. Defendants' immunity from those two causes of action is not waived.

Additionally, in order for an individual to bring an action in federal court against the United States for money damages, she must first present the claim to the appropriate federal agency. *See* 28 U.S.C. § 2675(a) ("An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail."). Absent compliance with the Act's exhaustion requirements, an action is barred by sovereign immunity and the Court does not have subject matter jurisdiction.

Here, Dr. Taitz failed in her pleadings to bring her monetary tort claims under the auspices of the FTCA. Further, to the extent that she mentions the FTCA in her response to Defendants' Motion to Dismiss, her claims are still barred because she has failed to exhaust the administrative remedies required under 28 U.S.C. § 2675. There is no evidence, indication, or

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[11] Plaintiff alleges that Defendants committed fraud by (1) "advising the public that illegal aliens transported to California and other locations are healthy," when they were not; (2) stealing taxpayer funds to provide free medical care to illegal aliens (when the care was intended for U.S. citizens only); and (3) claiming to comply with the *Flores* agreement. The Court finds that Plaintiff's fraud cause of action constitutes "misrepresentation" for purposes of the intentional tort exception to the FTCA. *See United States v. Croft-Mullins Elec. Co.*, 333 F.2d 772, 780 (5th Cir. 1964) ("[L]iability under the Tort Claims Act shall not extend to any claim *arising out* of misrepresentation."); *Gaudet v. United States*, 517 F.2d 1034 (5th Cir. 1975) (noting that it is the substance of the claim and not the language used in stating it which controls the determination of whether the complaint alleges intentional torts or negligence); *Bor-Son Bldg. Corp. v. Heller*, 572 F.2d 174 (8th Cir. 1978) (holding that even if a claim against the U.S. purports to be grounded in theories other than misrepresentation, the action is barred if deceit or misrepresentation is a factor relied upon to maintain the action); *Lipkin v. United States SEC*, 468 F. Supp. 2d 614 (S.D.N.Y. 2006) (finding that plaintiff's claim of fraud was barred by the FTCA exception).

While it is not clear what specific type of defamation Plaintiff alleges (written or spoken or a combination of the two), it is clear that the FTCA's inclusion of both libel and slander in its intentional tort exception covers any defamation claim. *See Mack v. Alexander*, 575 F.2d 488 (5th Cir. 1978) (finding no jurisdiction under the FTCA for case alleging violations of plaintiff's constitutional rights and damages to her reputation by an IRS attempt to levy on her bank account since plaintiff failed to file proper administrative claim and any possible tort theory she might have was exempted); *Jimenez-Nieves v. United States*, 682 F.2d 1 (1st Cir. 1982) (holding that claims involving injury to reputation and consequent harm suffered when SSA's actions in dishonoring checks implicitly communicated defamatory statements were barred by the FTCA exception for libel and slander claims).

even an allegation that Dr. Taitz has made any effort to pursue the mandatory procedures required of her under the FTCA to bring her negligence causes of action. [*See, e.g.*, Doc. No. 42 (Dec. of J. Christopher Ide) (swearing that neither the DHS nor the HHS Claims Office has received an administrative tort claim relating to this matter)].

To the extent that Plaintiff seeks other, non-monetary relief under the FTCA, the Court lacks jurisdiction. The FTCA was specifically enacted to provide a means for redress against the federal government for actions sounding in tort asking for an award of *money damages*. The statute is explicit in that regard. *See* 28 U.S.C. § 2679 ("The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive."); *Talbert v. United States*, 932 F.2d 1064, 1065-66 (4th Cir. 1991) ("The only relief provided for in the [FTCA] is 'money damages.'") (citing *Birnbaum v. United States*, 588 F.2d 319, 335 (2d Cir. 1978) and Wright, Miller & Cooper, *Federal Practice and Procedure: Jurisdiction* 2d § 3658 at 325-26 (1985 & Supp. 1991)); *United States v. Smith*, 499 U.S. 160, 166 (1991) (holding that the FTCA provides "the exclusive mode of recovery for the tort of a Government employee even when the FTCA itself precludes Government liability"). The FTCA does not provide a plaintiff with the ability to sue the federal government for non-monetary relief.

B. DEFENDANTS ARE IMMUNE FROM THE CIVIL RICO CLAIM

In what appears to be her Fourth Cause of Action, Plaintiff sues Defendants for civil RICO. [*See* Doc. No. 40-1 at 2-3]. Specifically, Dr. Taitz accuses Defendants of engaging in the following predicate RICO acts: (1) fraud by having sham immigration enforcement, deportation, and removal proceedings; (2) fraud by not disclosing to the public epidemics of infectious

diseases among the illegal immigrant population detained and released/trafficked by Defendants; (3) fraud by falsely claiming criminal records of apprehended undocumented immigrants were checked, thereby exposing Plaintiff and others to threats of crime and terrorism; (4) failing in Defendants' alleged obligation to quarantine apprehended individuals who had infectious diseases and trafficking these individuals around the country, creating outbreaks and epidemics of infectious diseases; and (5) misappropriating taxpayer funds by trafficking illegal immigrant minors from Texas to other areas of the country, placing illegal immigrant minors in the foster care system, and providing them with education and health care.[12]

The Court finds that Plaintiff's RICO claim must be dismissed on two bases. First, the Fifth Circuit has held that an agency or department of the federal government "cannot be sued under the RICO statute because . . . a federal agency is not chargeable, indictable, or punishable for violations of state and federal criminal provisions." *Brown v. Nationsbank Corp.*, 188 F.3d 579, 587 (5th Cir. 1999). Therefore, Plaintiff cannot meet the requirement of showing a "racketeering activity," which is a predicate for a civil RICO action. *See McNeily v. United States*, 6 F.3d 343, 350 (5th Cir. 1993) (rejecting plaintiff's claim that the FDIC could be sued under the RICO statute).

Second, Defendants are entitled to sovereign immunity on Plaintiff's RICO claim. Plaintiff asserts no authority waiving Defendants' immunity nor is this Court aware of any.[13] As

[12] Also in furtherance of the RICO scheme, Dr. Taitz claims that Defendants retaliated against a whistleblower Border Patrol officer, Ron Zermeno, who she alleges intended to testify before this Court and produce evidence of the alleged trafficking by Defendants. According to Plaintiff, the officer was placed under duress to sign a declaration claiming to be unfamiliar with Dr. Taitz and an unwillingness to testify, after being placed on a cease and desist gag order preventing him from talking, was given a written reprimand, and was threatened with termination from employment. Dr. Taitz alleges that Defendants intimidated that officer into not testifying before this Court with the goal of obstructing justice and defaming Plaintiff in the eyes of the Court. This allegation is considered with Plaintiff's defamation claim below.

[13] The Court notes that, because Plaintiff sues the three federal-official-defendants in their official capacities (as representatives of the agency over which they each preside and acting within the scope of their delegated statutory authority), her RICO claim is treated as effectively running against the sovereign United States itself. *See Kentucky*

emphasized already, it is a well-settled principle that only Congress can waive the right to assert the defense of sovereign immunity, and it must do so explicitly. *See U.S. Marine, Inc. v. United States*, 478 Fed. App'x 106, 108 (5th Cir. 2012) (citing *Davis v. United States*, 961 F.2d 53, 56 (5th Cir. 1991)). Absent an express waiver of sovereign immunity, an action cannot be maintained against the United States (or its agencies). *See St. Tammany Parish*, 556 F.3d at 316 ("Because sovereign immunity is jurisdictional in nature, Congress's waiver of it must be unequivocally expressed in statutory text and will not be implied.") (internal citations and quotations omitted); *Petterway v. Veterans Admin. Hosp., Houston, Tex.*, 495 F.2d 1223, 1225 n.3 (5th Cir. 1974) ("It is well settled . . . that a waiver of sovereign immunity must be specific and explicit and cannot be implied by construction of an ambiguous statute."). This necessarily includes an action for alleged RICO violations. *See McNeily*, 6 F.3d at 350; *Andrade v. Chojnacki*, 934 F. Supp. 817, 831 (S.D. Tex. 1996) (citing *United States v. Bonanno Organized Crime Family of La Cosa Nostra*, 879 F.2d 20, 23 (2d Cir. 1989) (finding that the relevant sources of congressional intent on the meaning of 18 U.S.C. § 1964(c), the civil RICO provision, do not evince an unequivocal expression of congressional intent to expose the government to RICO liability); *Smith v. Babbitt*, 875 F. Supp. 1353, 1365 (D. Minn. 1995) ("[a]bsent a congressional or tribal waiver, the [Indian] Community, like other sovereigns, is immune from suit for alleged RICO violations."). The Plaintiff's RICO claim is therefore dismissed.

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v. Graham, 473 U.S. 159, 165-66 (1985). While individual governmental officials may be sued for RICO violations, the government may not be. The Fifth Circuit has found that federal agencies cannot be sued for civil RICO violations. *See Brown*, 188 F.3d at 587. The Court in *Brown* rejected the district court's holding that the FBI-agent-defendants were not liable for RICO violations in the performance of their duties because there can be no RICO claim against federal officials on account of their alleged official misconduct. It distinguished a prior case, which involved a RICO suit against an agency, from a RICO suit against an individual official, finding that a RICO claim *could* be maintained against the latter, but not the former. Thus, it found that the defendants in *Brown* were not automatically entitled to qualified immunity on the RICO claim against them (but subsequently determined that they were entitled to qualified immunity on alternative grounds). This case differs from *Brown* in that the officials here are sued in their official capacities (making them immune because the suit is considered one against the government itself), whereas the officials in *Brown* were sued in their individual capacities. *See id.*

C. PLAINTIFF'S DEFAMATION CLAIM AGAINST DEFENDANTS IN THEIR INDIVIDUAL CAPACITIES IS DISMISSED

Plaintiff's defamation claim, unlike her other causes of action, is unrelated to her complaints about Defendants' immigration policies and actions. Plaintiff appears to sue Defendants in their individual capacities for defamation of character. She joins as defendants in her First Amended Complaint Johns and Janes Does, who she alleges aided and abetted Defendants in defaming her. As the Court understands her pleadings, Plaintiff points specifically to unknown court personnel who allegedly manipulated the docket in this case by sealing without her permission various electronically-filed pleadings and omitting pages of her motion for subpoenas. According to Plaintiff, these individuals may have been placed in the courthouse by the NSA and FBI to gather information and tamper with records. [*See* Doc. No. 40-1 at 11].

As part of an apparent scheme to defame her, Plaintiff further claims that unknown defendants applied pressure and duress on a prospective witness, the Border Patrol whistleblower, Ronald Zermeno, with the goal of covering up wrongdoing by Defendants (and defaming Plaintiff).[14] Dr. Taitz had allegedly acquired Mr. Zermeno's agreement in writing to appear before this Court for the purpose of testifying that Defendants are "trafficking sick children from Texas to California." Under "duress of termination of employment and duress of threatened civil and criminal sanctions," Dr. Taitz alleges that the agent signed a declaration claiming to not know Dr. Taitz and retracting any consent to appear in court. Plaintiff alleges that Defendants' commission of fraud, falsification of records, and duress upon a witness were all done in order to "derail her cases, specifically due to the fact that she is a political activist

[14] Prior to the August 27 hearing, Plaintiff moved for the Court to sign subpoenas for four Border Patrol officers. The Court granted Plaintiff's motion and issued subpoenas for Officers Ronald Zermeno, Gabriel Pacheco, James Harlan, and Chris Harris to appear at the hearing. Defendants moved to quash the subpoena issued to Ronald Zermeno. None of the officers testified at the hearing, and the Court subsequently denied the motion to quash as moot and required the parties to thereafter agree on items subject to subpoenas duces tecum. [Doc. No. 33].

leader," defame her in the eyes of the Court, lower her standing in the community, and make her appear untrustworthy. Plaintiff seeks money damages for two counts of defamation per se and an order from the Court requiring that the Clerk of the Court correct the motion for subpoenas and unseal all exhibits attached therein.

To the extent that Plaintiff's defamation cause of action is against Defendants in their official capacities for money damages, Plaintiff's claim is barred by the doctrine of sovereign immunity. As discussed above, the FTCA does not waive immunity in—and specifically exempts from its coverage—defamation suits.[15] Even if Defendants were not entitled to sovereign immunity on Plaintiff's defamation claim (and to the extent that Plaintiff requests non-monetary relief based upon her defamation cause of action),[16] the Court finds that her claim must be dismissed under Federal Rule of Civil Procedure 12(b)(6) because she fails to state a claim for relief.[17]

To maintain a defamation cause of action, a plaintiff must allege, and ultimately prove, that: (1) the defendant published a statement; (2) the statement was defamatory concerning the plaintiff; and (3) the defendant acted with either actual malice if the plaintiff was a public official or public figure, or negligence if the plaintiff was a private individual, regarding the truth of the statement. *WFAA–TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998) (citing *Carr v. Brasher*, 776 S.W.2d 567, 568 (Tex. 1989)). "Publication of defamatory words means to communicate the words, either orally, in writing, or in print, to a third person capable of understanding their defamatory import and in such a way that the third person would

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[15] The Federal Employees Liability Reform and Tort Compensation Act (commonly known as the Westfall Act) grants personal immunity from tort liability to government employees when acting within the scope of employment. *See* 28 U.S.C. 2679(b)(1).

[16] As stated above, Plaintiff appears to also be seeking non-monetary relief in the form of an order by the Court requiring that the Clerk of the Court correct the motion for subpoenas and unseal all exhibits attached therein.

[17] To the extent that Plaintiff requests non-monetary relief for her defamation claim, she has not pleaded a basis for waiver of immunity.

understand." *Double Diamond, Inc. v. Van Tyne*, 109 S.W.3d 848, 854 (Tex. App.-Dallas 2003, no pet.) (citing *Ramos v. Henry C. Beck Co.*, 711 S.W.2d 331, 335 (Tex. App.-Dallas 1986, no writ). Dr. Taitz alleges none of the required elements for defamation. *See Rio Grande Valley Gas Co. v. Caskey*, 33 S.W.2d 848, 850 (Tex. Civ. App.—San Antonio 1930, no writ) (noting in a libel action that despite liberal pleading requirements, a clear and logical statement of the cause of action and the facts constituting it is an indispensable pleading requirement) (citing *Bradstreet Co. v. Gill*, 9 S.W. 753, 754-55 (Tex. 1888)). Plaintiff does not even allege that Defendants made a statement—whether written or oral—at all; rather, she claims that their actions (namely, pressuring and intimidating a witness not to testify and removing and/or sealing pages from her pleadings) resulted in her being "presented in false light in the eyes of the court," [Doc. Nos. 40 & 43]. *See Caskey*, 33 S.W.2d at 849 ("It clearly appears from the allegations of the petition . . . that the language of the letter is not copied and the allegations as to accusations of crime are mere conclusions of the pleader. That is not sufficient in a petition, at least in one charging libel. It is always necessary to set out in the petition the portions of a writing upon which a libel is based, not only where the libel arises by innuendo but where the language claimed to accuse the libeled party of a crime is direct and positive."). Even if not specifically quoted in the complaint, a plaintiff at least must allege specific facts so as to inform the Court and the Defendants as to the statements about which she complains. That was not done here.

D. PLAINTIFF LACKS STANDING FOR HER ALLEGED INJURY AS A TAXPAYER

Plaintiff further claims injury as a taxpayer due to the "negative effect on the community" allegedly caused by the Government's immigration-related policies. Dr. Taitz seeks redress of the "demographic, economic, and environmental effects" of Defendants' actions and policies that

allegedly "cause the flood of illegal aliens, place plaintiff and others similarly situated in danger of infectious diseases, crime and terrorism, and rob affected communities of resources, jobs, benefits, and wages, as well as deprive local schools and hospitals of funding." [*See, e.g.*, Doc. No. 40 at 18-19]. She claims taxpayer standing under the precedent of *Flast v. Cohen*, 392 U.S. 83 (1968), for the Defendants' "unlawful and unconstitutional taking in the form of an expenditure for trafficking illegal aliens around the country at taxpayer [sic] expense, for advertising and soliciting illegal aliens from other countries to cross the border and allege eligibility under DACA, payment of $7,000 per month/$84,000 per year per foster family for fostering of illegal aliens, for health care, education and social services for illegal aliens, all at taxpayer expense without any constitutional basis to do so . . . ." [*Id.* at 21]. According to Plaintiff, Defendants' policies and actions violate due process rights guaranteed under the Fifth and Fourteenth Amendments.

Based upon well-established precedent, this Court finds that Plaintiff is without standing to sue Defendants for her alleged injuries as a taxpayer. The Supreme Court in *Flast* developed specific guidance (in the form of a two-part test) for courts to determine whether taxpayer plaintiffs have standing to sue. First, the Court held that "a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8 of the Constitution." *Flast*, 392 U.S. at 102. Second, the taxpayer is required to "show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8." *Id.* at 102-03. The Court in *Flast* distinguished the case before it from the earlier case of *Frothingham v. Mellon*, 262 U.S. 447 (1923), where the Court denied standing to a taxpayer. In the latter case, the plaintiff had relied

on a "more general claim based on the Due Process Clause," rather than a specific limitation on *Congress'* power to tax and spend.

Here, Plaintiff's claims fail the first prong of *Flast*'s test for taxpayer standing because "the source of her complaint is not a congressional action," but, rather, decisions and policies implemented by Executive agencies and officials. *See Valley Forge*, 454 U.S. at 479 ("*Flast* limited taxpayer standing to challenges directed 'only [at] exercises of congressional power.'" (internal citations omitted)) (citing *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 228 (1974), which denied standing because the taxpayer plaintiffs "did not challenge an enactment under Art. I, § 8, but rather the action of the Executive Branch")). Dr. Taitz is plainly without standing to sue as a taxpayer for alleged violations of her rights under the Fifth and Fourteenth Amendments.

E. EQUITABLE RELIEF

Plaintiff further sues for injunctive and declaratory relief. In her request for various forms of injunctive relief, Plaintiff alleges that, without an injunction preventing Defendants from continuing to transport to California immigrants infected with diseases, she faces the imminent and continuing risk of being exposed to infectious diseases. Plaintiff also claims that by allegedly failing to check undocumented immigrants' criminal backgrounds in their countries of origin before releasing them from custody, Defendants put her at a greater risk of being exposed to crime and terrorism committed by illegally-present immigrants. Lastly, Plaintiff, in various supplemental pleadings, asserts a threatened-injury of contracting Ebola, which she claims would be redressed by this Court imposing travel bans and/or quarantines.

As for declaratory relief, Plaintiff asks that this Court declare "Deferred Action for Childhood Arrivals" ("DACA")—a 2012 Directive issued by the former Secretary of DHS, Janet

Napolitano—an "unconstitutional waiver of immigration and deportation laws for millions of people" and contrary to the provisions of the INA. [Doc. No. 40 at 14]. She further requests that the Court "stay all waivers of deportation under DACA." [*Id.* at 15]. Dr. Taitz argues that DACA is the "clear reason for the flood of illegal aliens," and the source of "injuries and imminent further injuries for the plaintiff and similarly situated individuals." [*Id.* at 13-14]. According to Plaintiff, DACA is a violation of 8 USC § 1226(b), which prohibits the attorney general from providing an alien with "work authorization . . . unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization." [*Id.* at 14 (quoting 8 U.S.C. § 1226(b)].

To establish standing for injunctive relief, Plaintiff must first show that she is under threat of suffering "injury in fact"—an invasion of a legally protected interest that is "concrete and particularized" and affects the Plaintiff in a "personal and individual way." The threat must be "actual and imminent, not conjectural or hypothetical." Thus, while the injury need not be actualized, a plaintiff facing prospective injury has standing only if the threatened injury is "real, immediate, and direct." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008). The Court considers the following four factors to determine whether Dr. Taitz has standing to sue for the various forms of injunctive relief she requests: (1) an injury-in-fact; (2) a "causal connection between the injury-in-fact and a complained-against defendant's conduct;" (3) it is "likely, not merely speculative, that a favorable decision will redress the injury-in-fact;" and (4) either continuing harm or a real and immediate threat of repeated injury in the future. *Funeral Consumers Alliance, Inc. v. Serv. Corp. Int'l*, 695 F.3d 330, 342 (5th Cir. 2012) (internal quotations and citations omitted).

A plaintiff seeking declaratory relief must also meet the constitutional requirement of an "actual controversy" under the dictates of Article III.[18] Like standing for injunctive relief, standing for declaratory relief requires a showing of a likelihood of future injury. Dr. Taitz must have suffered "an invasion of a legally protected interest" that is "traditionally thought to be capable of resolution through the judicial process," and is currently fit for review. *See Lujan*, 504 U.S. at 560.

As stated above, Plaintiff alleges that she has been exposed to infectious diseases (with resulting illness) and that she faces the further, imminent risk of being exposed to other infectious diseases (and contracting additional infections) from immigrant patients detained and released by DHS without appropriate medical treatment for existing communicable diseases. She offers the same evidence as provided for her previously discussed health-related injuries, in addition to Ms. Dolan's opinion that "Dr. Taitz is in further imminent danger of similar additional infections from immigrant patients detained by the DHS without quarantine or medical treatment for existing communicable diseases." [Doc. No. 40-2 at 3]. As to the threat of infection, Ms. Dolan expresses her belief that:

> [Q]uarantine and isolation of these detainees by the DHS to the most stringent current standard of the Centers of [sic] Disease Control (CDC) for foreign nationals, examination of each detainee by a trained medical professional to the highest current standard of the CDC for foreign nationals, and a signed medical release prior to the transportation and release of each of these detainees into the general public, would solve the problem of the imminent risk of contracting

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[18] The Court notes that the Declaratory Judgment Act does not provide an independent ground for subject matter jurisdiction. It permits relief only when there is another jurisdictional basis present. *See TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir. 1991).

communicable diseases from such detainees by Dr. Taitz and other health care providers who are participating in these programs.

[*Id.*].

The fact that Plaintiff has already allegedly suffered an injury as the result of Defendants' actions does not automatically establish a "real and immediate threat" that she will again suffer an injury in order to confer standing for injunctive relief. While past acts may be "evidence bearing on 'whether there is a real and immediate threat of repeated injury,'" past wrongs by themselves do not amount to a real and immediate threat of injury necessary to make out a case or controversy. *See Lyons*, 461 U.S. at 102 ("Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . .") (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

For the same reasons the Court refuses to deny Plaintiff standing on her past and present health-related injuries, the Court cannot now conclude Plaintiff lacks standing to seek injunctive relief for the alleged threat of further injury. If what she alleges is true, she is needlessly being put at risk by the Government. Defendants have argued that Dr. Taitz cannot show any causative link. This may prove to be true.[19] Yet, without records regarding undocumented immigrants apprehended at the Texas-Mexico border who were allegedly subsequently treated by Dr. Taitz (records that Plaintiff apparently requested, but which Defendants refused to produce), Plaintiff has not even had the opportunity to present proof of any causal connection between the Government's actions and her alleged health-related injury or of the immediacy or realness of a threat of future health-related injuries. Put differently, the Court cannot yet determine whether the threat to Plaintiff is sufficiently real and immediate (or, alternatively, "purely speculative")

[19] This Court's ruling should not be taken as an indication that the evidence cited by Plaintiff would necessarily withstand a Rule 56 motion or some other substantive attack. This ruling is solely confined to the well-established Rule 12(b) standard, which requires the Court to accept the allegations as being true.

for standing purposes unless the Plaintiff has the opportunity to at least attempt to connect the dots. Further, unlike the defendants in *Lyons* whose illegal conduct was unaccompanied by any "continuing, present adverse effects" to confer the plaintiff standing to seek an injunction, the Defendants here, according to what the parties told this Court, have not discontinued the immigration policies or actions that Plaintiff claims injured her. *See Lyons*, 461 U.S. at 102.

Nevertheless, while Dr. Taitz's own injuries as alleged may confer standing, there is no evidence currently in the record that convinces this Court that she has a likelihood of success on the merits (as required for a preliminary injunction to issue). Thus, as discussed below, the Court is denying any form of relief at this stage of the case. It will consider the merits of any complaints about Plaintiff's own injuries as the case proceeds.

The Court's finding is narrow. To the extent that she is able, Plaintiff may only seek redress in this Court in connection with her personal, direct, health-related injuries. Plaintiff does not have standing, however, to pursue her claim that she faces the threat of exposure to increased crime or terrorism because Defendants failed to check undocumented immigrants' criminal records before releasing them or because the Government's policies are serving to entice aliens to come across the border illegally (whether due to DACA or some other governmental policy). These are allegations of attenuated, non-concrete, generalized future injuries which fail any well-established test for standing. Plaintiff has failed to show, or even allege, that she has come into contact or witnessed any perceivable effect of criminal behavior on the part of anyone, let alone because Defendants allegedly transported undocumented immigrants to California without checking their criminal records. She does not allege a distinct, specific, or palpable injury; instead, she alleges a potential threat to any and all citizens. *See Reno*, 93 F.3d at 901 ("The injury (if any) to a citizen qua citizen from admission of an alien is an injury common to the

entire population, and for that reason seems particularly well-suited for redress in the political rather than the judicial sphere."); *Lyons*, 461 U.S. at 111 ("Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional.").

Plaintiff also lacks standing for her allegations seeking an injunction, quarantine, and/or travel ban to prevent the threat of exposure to Ebola. Similar to her claim that she faces a threat of crime and terrorism, her claim that Defendants' failure to impose a travel ban or quarantine for individuals traveling from Ebola-affected regions threatens to exposure her to Ebola lacks concreteness, particularity, and is speculative. *See Lyons*, 461 U.S. at 111; *Lujan*, 504 U.S. at 564 (finding plaintiffs' desire to return "some day" to the areas they had previously visited where defendants were allegedly destroying endangered species insufficient to confer standing "without any description of concrete plans or indeed any specification of when the some day will be").

F. PRELIMINARY INJUNCTION

The Court finds that, even if Plaintiff has standing to pursue a limited injunction based upon her allegations of being personally injured, she is not entitled to the "extraordinary equitable remedy" of a preliminary injunction/emergency stay based upon the record before the Court. *See Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014).

The most that can be said for Plaintiff's claims to succeed is that *if* Defendants continue to detain undocumented immigrants with infectious diseases, *if* Defendants do not properly screen and/or treat infected immigrants, *if* Defendants then transport those improperly-screened or treated immigrants to California, and specifically, Plaintiff's town, where they then seek dental care and seek such care from Plaintiff, *if* the infected immigrant displays communicable

symptoms, and *if* Plaintiff comes in close enough contact with the immigrant who has a communicable disease, Plaintiff will be subjected to infectious diseases for which Defendants are charged with failing to take specific measures that Plaintiff believes would prevent the spread. While this scenario is not impossible and, based upon Plaintiff's allegations, may have already occurred, it is not supported by the record currently before this Court.

IV. CONCLUSION

The substance underlying Dr. Taitz's concerns about the health of the nation and the risk to which other individuals are being or may have been exposed by certain governmental policies is not addressed by this opinion except to the extent that this Court must rule that, for the most part, Dr. Taitz has sought to express those concerns in the wrong forum. The establishment of public policy, including public health policy, is not within the bailiwick of the judicial branch. Public policy is debated and decided in the halls of the Capitol and the offices of the White House. As long as that policy is legal, not contrary to existing law, and has otherwise been legally enacted, courts do not have the power to alter it. The Supreme Court has on more than one occasion found it necessary to make just this point. *See, e.g.*, *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 209 (2008) ("I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: 'The Constitution does not prohibit legislatures from enacting stupid laws.'") (Stevens, J., concurring). While the Court finds that honest and respectful civil discourse and civic involvement to be the

backbone of a democracy, these attributes, albeit praiseworthy, are not the basis for standing in federal court.

For the foregoing reasons, the Court hereby grants Defendants' Motion under Federal Rule of Civil Procedure 12(b)(1) to the extent that it moves to dismiss Plaintiff's claims for negligence per se, common law negligence, fraud, the civil RICO claim, any claim seeking monetary damages, Plaintiff's claims alleging injuries as a taxpayer, and her claims relating to the increased threat of exposure to the Ebola virus and to crime. Plaintiff's defamation claims are dismissed pursuant to Rule 12(b)(1) and Rule 12(b)(6). To the extent that Defendants move to dismiss Plaintiff's request for equitable relief preventing Defendants from harming her directly and personally, Defendants' motion at this juncture is denied.[20] Until Plaintiff has a fair opportunity to show a causal link between her alleged injuries and the Government's acts or omissions, the Court will not dismiss her claim for injunctive relief on the narrow basis set out above. Nevertheless, on the record currently before the Court, Plaintiff's motion for a preliminary injunction and/or other emergency relief is denied.

This ruling, however, should not be construed as the Court's finding that Dr. Taitz has standing to seek the specific injunctive relief she requests in the form of dictating what procedures the government must take in processing undocumented immigrants. Further, the Court finds that, however well-intentioned, Dr. Taitz does not have standing to pursue the myriad of generalized grievances she brings, including her complaints regarding the economic impact of immigration, the threat of exposure to crime and terrorism, and the health threat traceable to the Ebola virus.[21] Rather, this Court's ruling that Plaintiff may have standing is

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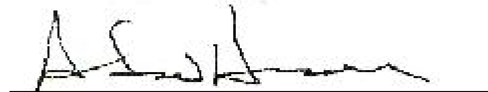
[20] Indeed counsel for the Government conceded that Dr. Taitz would have standing if she suffered a "concrete and particularized" injury that resulted from conduct "traceable to the Defendants." [Hr'g Tr. Aug. 27, 2014, at 7].

[21] The motivations underlying Dr. Taitz's claims have not been a bone of contention. For example, even Dr. Miguel Escobedo, the quarantine medical officer for the Center for Disease Control and Prevention Field Office in

limited to the relief being sought against Defendants insofar as their conduct specifically has caused and may continue to cause an imminent threat of personal and direct harm to Dr. Taitz. This is consistent with the general principle that injunctive relief should be no more burdensome than necessary to provide complete relief to Plaintiff. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *Lion Health Services. Inc. v. Sebelius*, 635 F.3d 693, 703 (5th Cir. 2011). The Court will enter a companion order outlining the procedures to be followed to proceed to a final resolution of this case.

Signed this 7th day of July, 2015.



Andrew S. Hanen
United States District Judge

El Paso, Texas, and the Government's expert concerning Ebola agreed with Dr. Taitz's position that a travel ban, as opposed to quarantine restrictions, would be a safer alternative. [Hr'g Tr. Oct. 29, 2014 at 132]. Good intentions, however, do not give rise to standing.