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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 THOTH SUN,

13 Petitioner,

14 v.

15 Kristi NOEM, Secretary, Department of
16 Homeland Security; Pam BONDI, Attorney
General; EXECUTIVE OFFICE FOR
17 IMMIGRATION REVIEW; Todd LYONS,
18 Executive Associate Director of ICE
Enforcement and Removal
19 Operations (ERO); Gregory J.
20 ARCHAMBEAULT, Director, San Diego
21 Filed Office, Immigration and Customs
Enforcement; Christopher J. LAROSE,
22 Warden, Otay Mesa Detention Center,

23 Respondents.
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Case No.: 25-cv-2433-CAB-MMP

**RESPONDENTS' RESPONSE
TO ORDER TO SHOW CAUSE
RE: PRELIMINARY
INJUNCTION**

I. Introduction

Petitioner has filed a habeas petition and seeks preliminary injunctive relief. For the reasons set forth below, the Court should deny Petitioner's request for interim relief and dismiss the petition as moot.

II. Factual and Procedural Background

Petitioner is a citizen and national of Cambodia. Petitioner's status was adjusted to that of a lawful permanent resident retroactive to May 29, 1979. On April 14, 2024, Petitioner was detained in immigration custody. *See* ECF 14-1, Supp. & Amended Declaration of Jason Cole (Supp. Cole Decl.) at ¶ 3. On May 3, 2004, an immigration judge ordered Petitioner removed to Cambodia due to his conviction for the offense of voluntary manslaughter in the San Diego Superior Court. Supp. Cole Decl. at ¶ 4; *see also* ECF No. 1, at ¶¶ 18-20. Petitioner waived appeal on this order of removal, therefore, the order became final on May 3, 2004. Supp. Cole Decl. at ¶ 4. On August 6, 2004, Petitioner was subsequently released from immigration custody on an Order of Supervision. *Id.* at ¶ 5. On June 8, 2007, Immigration and Naturalization Services re-detained Petitioner to effect his removal, but he was subsequently released on June 22, 2007 on an Order of Supervision. *Id.* at ¶ 6. On September 4, 2025, a Warrant for Arrest issued as to Petitioner. Supp. Cole Decl. at ¶ 7; *see* ECF No. 14-2 at Exhibit 3.¹ On September 12, 2025, Immigration and Customs Enforcement (ICE) re-detained Petitioner to effect his removal to Cambodia. Supp. Cole Decl. at ¶ 7. On September 17, 2025, ICE released Petitioner from custody and provided notice that he will be taken into custody for the purpose of removal on October 1, 2025. *See* ECF No. 8-2, Exhibit 2; *see also* ECF No. 8-1 Declaration of Jason Cole (Cole Decl.) at ¶ 7.

Consistent with the Court's September 30, 2025 Order, ECF No. 15, ICE will not re-detain Petitioner unless his removal to Cambodia becomes immediately feasible with a valid travel document and an available flight itinerary, he violates one or more terms

¹ The referenced exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

1 of the conditions of his release, or another lawful basis for his detention arises. *See*
2 Declaration of David Cordero (Cordero Decl.), ¶ 4, filed contemporaneously herewith.
3 Further, consistent with the Court’s Order, on October 1, 2025, ICE returned
4 Petitioner’s employment authorization document and driver’s license to Petitioner. *Id.* at
5 ¶ 5.

6 **III. Argument**

7 **A. Petitioner Cannot Show Irreparable Harm**

8 Apart from mootness of Petitioner’s habeas petition due to his release, Petitioner
9 cannot demonstrate the showing required for preliminary injunctive relief.

10 To prevail on a motion for preliminary injunctive relief, a plaintiff must
11 “establish that he is likely to succeed on the merits, that he is likely to suffer irreparable
12 harm in the absence of preliminary relief, that the balance of equities tips in his favor,
13 and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
14 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiffs must
15 demonstrate a “substantial case for relief on the merits.” *Leiva-Perez v. Holder*, 640
16 F.3d 962, 967–68 (9th Cir. 2011). The final two factors required for preliminary
17 injunctive relief—balancing of the harm to the opposing party and the public interest—
18 merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. The
19 Supreme Court has specifically acknowledged that “[f]ew interests can be more
20 compelling than a nation’s need to ensure its own security.” *Wayte v. United States*, 470
21 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79
22 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977);
23 *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1220-21 (D.C. Cir. 1981).

24 Importantly, Petitioner must demonstrate “immediate threatened injury.”
25 *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)
26 (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634
27 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a “possibility” of irreparable harm is
28 insufficient. *See Winter*, 555 U.S. at 22. “Issuing a preliminary injunction based only

1 on a possibility of irreparable harm is inconsistent with [the Supreme Court's]
2 characterization of injunctive relief as an extraordinary remedy that may only be
3 awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555
4 U.S. at 22. Furthermore, “speculative” injury cannot be the basis for a finding of
5 irreparable harm. *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007);
6 *Goldie’s Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984) (“Speculative
7 injury does not constitute irreparable harm.”).

8 Here, Petitioner has been released from custody, and ICE will not re-detain
9 Petitioner unless his removal to Cambodia becomes immediately feasible with a valid
10 travel document and an available flight itinerary, he violates one or more terms of the
11 conditions of his release, or another lawful basis for his detention arises. *See Cordero*
12 *Decl.*, ¶ 4. Petitioner is now in the same position he was in on June 22, 2007, and before
13 he filed his habeas petition. *See generally*, *Supp. Cole Decl.*, ¶¶ 3-7. Prior to the events
14 that gave rise to this petition, Petitioner was released from immigration custody with a
15 final order of removal in place. *Id.* Accordingly, Petitioner has not shown irreparable
16 harm, nor can he show irreparable harm.

17 **B. Petition is Moot, and No Exception Applies**

18 The habeas petition is moot, and the voluntary cessation exception does not
19 apply.

20 The voluntary cessation principle applies if there is “reasonable expectation that
21 the wrong will be repeated.” *Public Utilities Comm’n of State of Cal. v. FERC*, 100 F.3d
22 1451, 1460 (9th Cir. 1996); *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1117–18 (9th
23 Cir. 2010) (a habeas petitioner’s case is not mooted by his release from immigration
24 custody under an order of supervision when he could be re-detained at the
25 Government’s discretion).

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1 In *Picrin-Peron*, the Ninth Circuit declined to apply the exception for the
2 following reason:

3 The government stated in its dismissal motion that “[a]bsent Picrin’s
4 reinvolverment with the criminal justice system, a change in the Cuban
5 government enabling him to return to Cuba, or the willingness of a third
6 country to accept him, he will be paroled for another year.” . . . [T]he
7 government filed a declaration of the director of the Los Angeles District
8 Office of the INS who reiterated under oath the statement made by the
9 government in its motion. Based on that declaration, we are satisfied that
10 the alleged wrong will not recur.

11 *Picrin Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991).

12 Voluntary cessation does not apply here. ICE has provided assurance that it will
13 not re-detain Petitioner unless his removal to Cambodia becomes imminently feasible,
14 he violates one or more terms of the conditions of his release, or another change in
15 circumstances beyond ICE’s control justifies his re-detention. Cordero Decl., ¶ 4; *see*
16 *also De Gomez v. Baker*, 606 Fed.Appx 409, 410 (9th Cir. 2015) (affirming dismissal
17 of a habeas and finding voluntary cessation did not apply because alleged wrongful
18 behavior could not reasonably be expected to recur when ICE identified three narrow
19 circumstances under which petitioner could be re-detained, specifically “(1) [Petitioner]
20 violates the terms of his release; (2) a final order of removal is issued against him; or
21 (3) ICE is required by law to re-detain him.”).

22 As in *Picrin-Peron*, the specified conditions for re-detention here are all outside
23 of ICE’s control. The likelihood that Petitioner might commit a crime or otherwise
24 violate the conditions of his release from immigration custody is uniquely within his
25 own control and is too tenuous to make his return to custody pending removal a
26 reasonable expectation in this case. *See City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)
27 (the possibility that an alien may commit a crime or otherwise violate the conditions
28 under which he has been released is uniquely within his own control).

For the reasons set forth above, the Court should not apply the voluntary cessation
exception and could alternatively dismiss this Petition as moot.

///

IV. Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny
Petitioner's request for a preliminary injunction order and dismiss this action as moot.

DATED: October 3, 2025

Respectfully submitted,

ADAM GORDON

United States Attorney

s/ Mary Cile Glover-Rogers

MARY CILE GLOVER-ROGERS

Assistant United States Attorney

Attorney for Respondents

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United States Attorney
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**DECLARATION OF DAVID
CORDERO**

1 I, David Cordero, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of
2 perjury that the following statements are true and correct, to the best of my knowledge,
3 information, and belief:

4 1. I am currently employed by the U.S. Department of Homeland Security
5 (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal
6 Operations (ERO), as a Supervisory Detention and Deportation Officer (SDDO)
7 assigned to the ICE ERO San Diego Field Office.

8 2. I have been employed by ICE as a law enforcement officer since April 16,
9 2017, serving as a SDDO since November 10, 2019. As a SDDO, I am responsible for,
10 among other things, supervising the daily operations of ICE ERO deportation officers
11 assigned non-detained cases in the San Diego Field Office, in San Diego, California,
12 and ensuring that those officers comply with all relevant laws, regulations, and policies.
13 The officers assigned non-detained cases are also responsible for managing the cases of
14 individuals released from ICE custody on an Order of Supervision. I have access to
15 government databases and documentation relating to Petitioner, Thoth Sun (Petitioner).
16 This declaration is based upon my personal knowledge and experience as a law
17 enforcement officer and information provided to me in my official capacity as a SDDO
18 in the ICE ERO San Diego Field Office.

19 3. ICE will comply with the Court's Order dated September 30, 2025, ECF
20 No. 15, and will not re-detain Petitioner for a period of 14 days following entry of the
21 Court, i.e., October 14, 2025.

22 4. Consistent with the Court's order dated September 30, 2025, ECF No. 15,
23 ICE will not re-detain Petitioner unless his removal to Cambodia becomes immediately
24 feasible with a valid travel document and an available flight itinerary, he violates one
25 or more terms of the conditions of his release, or another lawful basis for his detention
26 arises.

27 5. On October 1, 2025, ICE returned Petitioner's employment authorization
28 document and driver's license to Petitioner.

1 I declare under penalty of perjury of the laws of the United States of America that
2 the foregoing is true and correct.

3
4 Executed this 2 day of October, 2025.

5 DAVID A
6 CORDERO

Digitally signed by
DAVID A CORDERO
Date: 2025.10.02
14:56:45 -07'00'

7 David Cordero
8 Supervisory Detention &
9 Deportation Officer
10 San Diego Field Office
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