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**United States District Court
Central District of California**

Yuri Decyatnik,

Petitioner,

v.

Kristi Noem, et al.

Respondents.

No. 2:25-cv-10027-AH-PD

**Petitioner's Response to
Order to Show Cause Regarding
Potential Mootness &
in Support of Preliminary
Injunction**

This Court granted Decyatnik a temporary restraining order (TRO), ordering his immediate release. Docket 24. The Court has subsequently ordered Decyatnik to show cause why the case is not moot, and the Government argues mootness.¹ Dockets 27, 29.

¹ In response to the Court's other questions: (1) undersigned counsel attempted to resolve this case to no avail; (2) Decyatnik does not agree to dismiss; and (3) given that the Government has belatedly taken the opportunity to respond to the Order to Show Cause, the matter is now fully briefed for the Court.

1 A case only becomes moot when it is “impossible for a court to grant
2 any effectual relief” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)
3 (*citing Knox v. Service Employees*, 567 U.S. 298, 307 (2012)). “As long as
4 the parties have a concrete interest, however small, in the outcome of the
5 litigation, the case is not moot.” *Id.*

6 That concrete interest is clear here: preventing Decyatnik’s re-
7 detention unless the Government has travel documents and a travel plan
8 in hand.

9 Moreover, finding mootness here would confuse temporary with
10 permanent relief. TROs expire. At that point, absent a preliminary
11 injunction, Decyatnik would once again be left without any protection
12 from unconstitutional re-detention. As Judge Hsu held, “[g]iven the
13 TRO’s expiration . . . , the necessity of further injunctive relief
14 maintaining the status quo during the pendency of litigation means the
15 claim is necessarily *not* moot.” *Esmail v. Noem*, No. 2:25-CV-08325, 2025
16 WL 3030589, at *3, n.5 (C.D. Cal. 2025). Or, as Judge Scarsi held, “[a]
17 habeas petition is not moot where preliminary relief is not made
18 permanent.” *Cruz v. Lyons*, No. 5:25-CV-02879, 2025 WL 3443146, at *2
19 (C.D. Cal. 2025) (citing cases). Put simply, *temporary* relief does not moot
20 a request for *permanent* relief.

21 This is particularly true because, after the expiration of the TRO,
22 ICE would be free to return to the unconstitutional situation that existed
23 before this Court intervened. And “defendants who argue that a case has
24 been mooted by their voluntary cessation of allegedly wrongful conduct
25 must meet a very high burden because a mootness-based dismissal would
26 ‘leave the defendant . . . free to return to his old ways.’” *Gator.com Corp.*

1 *v. L.L. Bean, Inc.*, 398 F.3d 1125, 1130 n.3 (9th Cir. 2005) (citations
2 omitted). The Government falls well short of meeting that very high
3 burden. In fact, the Government didn't even voluntarily release
4 Decyatnik once it became clear they had no way to deport him—they
5 have shown they will not comply with the law absent court order. Nor do
6 they contend they won't unconstitutionally re-detain Decyatnik.

7 Courts concur that cases are not moot in this situation. Judge Hsu
8 recently held that the Government's mootness argument to this effect
9 "strains credulity." *Esmail*, 2025 WL 3030589, at *3, n.5. Judge Scarsi
10 held that a TRO release did not moot a preliminary injunction or the
11 § 2241. *Cruz*, 2025 WL 3443146, at *2. And Judge Carter rejected the
12 Government's attempts to raise this argument. *See Tran v. Noem et. al.*,
13 25-cv-02881, Dockets 14, 22 (C.D. Cal. 2025); *Trifonov v. Noem et. al.*, 25-
14 cv-03460, Dockets 6, 11 (C.D. Cal. 2025).

15 Worse yet, finding mootness would also result in absurdities. As
16 Judge Hsu observed, if mootness existed in this situation, "no court would
17 issue a preliminary injunction following the grant of a TRO ordering a
18 habeas petitioner's release, which is plainly not the case." *Esmail*, 2025
19 WL 3030589, at *3, n.5 (citing cases). Indeed, taken to its logical
20 conclusion, no court would ever grant *any* preliminary injunction
21 following a TRO, because a plaintiff will have necessarily already
22 received the requested relief.

23 The Government's arguments do not dictate otherwise. It offers
24 various cites regarding the "in custody" requirement of habeas and its
25 purpose of challenging the legality or duration of confinement. Docket 29,
26 p. 2-3 (citing 28 U.S.C. § 2241(c) and various cases). But this argument

1 seems to conflate the “in custody” requirement with mootness. The “in
2 custody” requirement only requires that the petitioner be in custody at
3 the time of filing the petition, subsequent release doesn’t change that.
4 *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Mootness, on the other hand, is
5 different. But even deportation doesn’t necessarily moot an immigration
6 habeas petition. *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007) (“a
7 petitioner’s deportation does not automatically render his claim moot.”).
8 The question, as always, is whether the case presents some remaining
9 collateral consequence that may be redressed by success on the petition.
10 *Id.* For the above reasons, that is preventing Decyatnik’s re-detention.

11 That just leaves the Government’s core argument that Decyatnik’s
12 re-detention is too speculative to constitute a concrete injury. See Docket
13 29, p. 3. But this is wrong; both legally and factually. Legally, the
14 Supreme Court has rejected a finding of mootness in immigration matters
15 where “release had been granted following a preliminary injunction,”
16 observing that “[u]nless that preliminary injunction was made permanent
17 and was not disturbed on appeal, these individuals faced the threat of re-
18 arrest and mandatory detention.” *Nielsen v. Preap*, 586 U.S. 392, 403
19 (2019) (plurality opinion). And factually, the Government has re-detained
20 Decyatnik—repeatedly:

- 21 • 2001: ICE arrests Decyatnik. He files a § 2241 petition, and obtains
22 a favorable report and recommendation, recommending his release.
23 In response, ICE releases him. *Decyatnik v INS*, 2:02-cv-00979,
24 Dockets 16, 18 (W.D. Wash 2002).
- 25 • 2003: ICE arrests Decyatnik again. And after he files another
26 petition, they release him again. *Decyatnik v. Ashcroft*, 03-cv-03970

1 (W.D. Wash 2003).

- 2 • 2025: For a third time, ICE arrests Decyatnik. ICE attempts to
3 remove him, and promises the Court it was doing so, then fails.
4 Despite that failure, the Government won't release Decyatnik; it
5 needs a Court order to do so. See Docket 22, ¶ 6.

6 Through these decades of detaining and releasing Decyatnik, the
7 Government has shown that they have little interest in complying with
8 the law, absent a court order or the threat of one. Thus, that court order
9 is necessary to compel their compliance with *Zadvydas v. Davis*, 533 U.S.
10 678 (2001).

11 In fact, all the Government did here was release Decyatnik
12 pursuant to this Court's order—they did not do so voluntarily.

13 Undersigned counsel then attempted to settle this case via guarantees
14 that the Government won't detain Decyatnik without travel documents
15 and a travel plan, but they won't agree to that. See Ogden Decl., *infra*, ¶
16 2. The fact that the Government cannot even agree to what the law
17 already requires shows this legal issue is not resolved—it requires a
18 permanent court order.

19 Finally, even if the case was moot, an exception exists for claims
20 “capable of repetition, yet evading review.” *So. Pac. Terminal Co. v.*
21 *Interstate Commerce Comm’n*, 219 U.S. 498, 513 (1911). The fact that the
22 Government has operated on a “repeatedly catch Decyatnik, and release
23 him only once he files a habeas petition” plan shows how this issue
24 repeats yet would evade review.

1 At bottom, this case is not moot. Therefore, for the foregoing
2 reasons, and those in the prior briefing and the Court's prior order, this
3 Court should issue the preliminary injunction.

4 Respectfully submitted,
5 Cuauhtemoc Ortega
6 Federal Public Defender

7 Dated: January 9, 2026

By: /s/ Dale F. Ogden
8 Dale F. Ogden
Deputy Federal Public Defender

9 Attorneys for Petitioner
Yuri Decyatnik
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Certificate of Compliance

The undersigned certifies that this filing contains 1,181 words,
which complies with the word limit of L.R. 11-6.1.

Dated: January 9, 2026 /s/ Dale F. Ogden
Dale F. Ogden

Declaration of Dale F. Ogden

I, Dale F. Ogden, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Office of the Federal Public Defender in the Central District of California. I am counsel for Petitioner Decyatnik.
2. I proposed to Supervisory Assistant United States Attorney Daniel Beck a resolution to this case where we would “agree to settle via preventing re-detention unless there are travel docs and a travel plan[.]” Mr. Beck did not agree to this, and takes the position that “we already effectively compromised on this one by not opposing” the temporary restraining order.
3. My understanding of the current Government policy is that they are unable, or unwilling, to settle these cases.

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

Executed on January 9, 2026, at Los Angeles, California.

/s/ Dale F. Ogden
Dale F. Ogden
Deputy Federal Public Defender