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

10
11 Yuri Decyatnik,

12 Petitioner,

13 v.

14 Kristi Noem, et al.

15 Respondents.
16

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

**Petitioner's Supplemental
Brief in Support of
Preliminary Injunction**

17
18 This Court granted Decyatnik a temporary restraining order (TRO),
19 ordering his immediate release. Docket 24. The Government has once
20 again not disputed the merits and only argued mootness.

21 Although slightly redundant with prior briefing, Decyatnik replies
22 to clarify why a preliminary injunction is warranted, and to provide a
23 more-complete explanation of why Decyatnik's release pursuant to that
24 TRO does not moot the case.
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1 **A. The Government doesn’t dispute the merits, and therefore,**
2 **for the same reasons previously held, a preliminary**
3 **injunction should issue.**

4 The analysis that courts must perform for temporary restraining
5 orders and preliminary injunctions is “substantially identical.” *Stuhlbarg*
6 *Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 (9th Cir. 2001).

7 Here, the Court has already conducted that analysis and found the
8 four factor test favored Decyatnik. Docket 24. The Government, for their
9 part, doesn’t dispute the Court’s prior analysis and offers no argument to
10 the contrary. By failing to do so, they have conceded the merits of the
11 preliminary injunction. *Pham v. Kristi Noem et al.*, 25-cv-03373, Docket
12 17 (C.D. Cal. 2026) (finding that, by only disputing mootness, the
13 Government conceded the merits of the preliminary injunction and
14 granting one).

15 Therefore, for the reasons in the Court’s TRO order, and
16 Decyatnik’s prior briefing, a preliminary injunction should issue.

17 **B. The case is not moot.**

18 Instead of disputing the merits, the Government solely argues
19 mootness. But a case only becomes moot when it is “impossible for a court
20 to grant any effectual relief” *Chafin v. Chafin*, 568 U.S. 165, 172
21 (2013) (citing *Knox v. Service Employees*, 567 U.S. 298, 307 (2012)). “As
22 long as the parties have a concrete interest, however small, in the
23 outcome of the litigation, the case is not moot.” *Id.*

24 That concrete interest is clear here: preventing Decyatnik’s re-
25 detention unless the Government has travel documents and a travel plan.
26 *See Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973) (“habeas corpus relief

1 is not limited to immediate release from illegal custody,” it is also
2 available “to attack future confinement and obtain future releases.”).
3 Given that concrete interest, finding mootness here would incorrectly
4 conflate *temporary* with *permanent* relief, and incorrectly find the claim
5 speculative. The Supreme Court has already spoken on this.

6 **1. The Supreme Court’s decision in *Nielsen* dictates that**
7 **this case is not moot.**

8 In *Nielsen*, the Supreme Court confronted the question of
9 mandatory immigration detention. *Nielsen v. Preap*, 586 U.S. 392, 396
10 (2019) (plurality opinion). The possibility of mootness then arose, because
11 at least one plaintiff had obtained bond following a preliminary
12 injunction. But bond following a preliminary injunction did not moot the
13 case, because “[u]nless that preliminary injunction was made permanent
14 and was not disturbed on appeal, these individuals faced the threat of re-
15 arrest and mandatory detention.” *Id.* at 403.

16 So too here. Decyatnik obtained release from a temporary
17 restraining order (TRO). But that does not moot the case until the
18 injunction is made *permanent* and not disturbed on appeal.

19 Likewise, under *Nielsen*, the threat of re-arrest and detention is not
20 too speculative to cause mootness concerns. After all, the Government has
21 detained Decyatnik multiple times now without travel documents and a
22 travel plan:

- 23 • 2001: ICE arrests Decyatnik. He files a § 2241 petition, and obtains
24 a favorable report and recommendation, recommending his release.
25 In response, ICE releases him. *Decyatnik v INS*, 2:02-cv-00979,
26 Dockets 16, 18 (W.D. Wash 2002).

- 1 • 2003: ICE arrests Decyatnik again. And after he files another
2 petition, they release him again. *Decyatnik v. Ashcroft*, 03-cv-03970
3 (W.D. Wash 2003).
- 4 • 2025: For a third time, ICE arrests Decyatnik. ICE attempts to
5 remove him, and promises the Court it was doing so, then fails.
6 Despite that failure, the Government won't release Decyatnik; it
7 needs a Court order to do so. See Docket 22, ¶ 6.

8 The re-detentions are particularly telling. Through those re-detentions,
9 the Government has demonstrated that, without a court order or the
10 threat of one, they'll just keep re-detaining Decyatnik.

11 Therefore, under *Nielsen*, the threat of re-detention is not
12 speculative, and consequently, the case is not moot. Indeed, there's
13 something disingenuous about the Government contending otherwise—
14 given they've repeatedly re-detained Decyatnik, even after recommended
15 habeas relief.

16 **2. Finding mootness confuses *temporary* with *permanent***
17 **relief.**

18 TROs expire. At that point, absent a preliminary injunction,
19 Decyatnik would once again be left without any protection from
20 unconstitutional re-detention. As Judge Hsu held, “[g]iven the TRO’s
21 expiration . . . , the necessity of further injunctive relief maintaining the
22 status quo during the pendency of litigation means the claim is
23 necessarily *not* moot.” *Esmail v. Noem*, No. 2:25-CV-08325, 2025 WL
24 3030589, at *3, n.5 (C.D. Cal. 2025). Or, as Judge Scarsi held, “[a] habeas
25 petition is not moot where preliminary relief is not made permanent.”
26 *Cruz v. Lyons*, No. 5:25-CV-02879, 2025 WL 3443146, at *2 (C.D. Cal.

1 2025) (citing cases). Put simply, *temporary* relief does not moot a request
2 for *permanent* relief.

3 This is particularly true because, after the expiration of the TRO,
4 ICE would be free to return to the unconstitutional situation that existed
5 before this Court intervened. And “defendants who argue that a case has
6 been mooted by their voluntary cessation of allegedly wrongful conduct
7 must meet a very high burden because a mootness-based dismissal would
8 ‘leave the defendant . . . free to return to his old ways.’” *Gator.com Corp.*
9 *v. L.L. Bean, Inc.*, 398 F.3d 1125, 1130 n.3 (9th Cir. 2005) (citations
10 omitted). The Government falls well short of meeting that very high
11 burden. In fact, the Government didn’t even voluntarily release
12 Decyatnik once it became clear they had no way to deport him. Nor do
13 they contend they won’t unconstitutionally re-detain Decyatnik.

14 **3. The reasoned decisions in the Central District of**
15 **California find no mootness in this situation.**

16 There are at least four well-reasoned rulings finding a lack of
17 mootness in these circumstances, from Judges Hsu, Scarsi, Frimpong,
18 and Carter.

19 In Judge Hsu’s case, the Government argued mootness for the same
20 reasons here—release on a TRO. *Esmail v. Noem*, 2:25-CV-08325, 2025
21 WL 3030589, at *3, n.5 (C.D. Cal. 2025). Judge Hsu, however, commented
22 that this argument “strains credulity.” He went on to describe the
23 absurdity that would result: “Were [the Government correct], no court
24 would issue a preliminary injunction following the grant of a TRO
25 ordering a habeas petitioner’s release, which is plainly not the case.”
26 Finally, he pointed out the distinction between temporary and permanent

1 relief: “Given the TRO’s expiration . . . , the necessity of further injunctive
2 relief maintaining the status quo during the pendency of litigation means
3 the claim is necessarily *not* moot.” *Id.*

4 Judge Scarsi came to the same conclusion. In *Cruz*, Judge Scarsi
5 explained the distinction between temporary and permanent relief and
6 held that a “habeas petition is not moot where preliminary relief is not
7 made permanent.” *Cruz v. Lyons*, 5:25-CV-02879, [2025 WL 3443146](#), at
8 *2 (C.D. Cal. 2025) (*citing Nielsen v. Preap*, [586 U.S. 392, 403](#) (2019)).

9 Judge Scarsi added that the Government’s inability to assure they won’t
10 re-detain further cuts against mootness: “Respondents offer no indicia
11 that Petitioner would not be subject to detention without a hearing while
12 her petition is pending in this Court but for preliminary injunctive relief.”
13 Thus, the “case has not been mooted by Petitioner’s release.” *Id.*

14 Judge Frimpong recently held the same. *Pham v. Kristi Noem et al.*,
15 25-cv-03373, [Docket 17](#) (C.D. Cal. 2026). In *Pham*, Judge Frimpong
16 explained the temporary nature of TROs cutting against mootness,
17 because they are non-permanent. *Id.* at 3. Moreover, challenging re-
18 detention was sufficient to avoid mootness, particularly because
19 “Respondents have not disavowed their practices, have not adjusted their
20 policies, and have not assured Petitioner that he is not subject to
21 redetention.” *Id.* at 4. Judge Frimpong concurred with Judge Hsu’s
22 reasoning, and noted numerous other district court cases holding the
23 same. *Id.* at 5. Finally, Judge Frimpong concluded with the distinction
24 between a “likelihood” of success on the merits, as in a TRO, and the
25 ultimate merits determination, as occurs at the conclusion of the case. *Id.*
26 at 5-6. For all those reasons, the TRO did not moot the case. *Id.*

1 Finally, in another one of undersigned counsel's cases, Judge Carter
2 recently ordered supplemental briefing on the mootness question. Judge
3 Carter then agreed with the above analysis and found the case not moot
4 for the same reasons. *Pogosian v. Bowen et. al.*, 25-cv-03380, Docket 18
5 (2026).

6 Thus, the weight of the authority supports an absence of mootness
7 in these situations.

8 **4. The Government's position results in absurdities.**

9 Finding mootness would also result in absurdities. As Judge Hsu
10 observed, if mootness existed in this situation, "no court would issue a
11 preliminary injunction following the grant of a TRO ordering a habeas
12 petitioner's release, which is plainly not the case." *Esmail*, 2025 WL
13 3030589, at *3, n.5 (citing cases). Indeed, taken to its logical conclusion,
14 no court would ever grant *any* preliminary injunction following a TRO,
15 because a plaintiff will have necessarily already received the requested
16 relief.

17 To avoid such an absurd result, no mootness exists here.

18 **5. Even if mootness existed, this claim is capable of**
19 **repetition but evades review.**

20 Finally, even if the case was moot, an exception exists for claims
21 "capable of repetition, yet evading review." *So. Pac. Terminal Co. v.*
22 *Interstate Commerce Comm'n*, 219 U.S. 498, 513 (1911). The fact that the
23 Government has operated on a "repeatedly catch Decyatnik, and release
24 him only once he files a habeas petition" plan shows how this issue
25 repeats yet would evade review.
26

1 **C. Conclusion**

2 The Supreme Court's decision in *Nielsen* governs here, as should the
3 well-reasoned decisions of Judges Hsu, Scarsi, Frimpong, and Carter.
4 Anything less results in absurdities. Therefore, the case is neither moot
5 nor speculative.

6 After all, the Government has now detained Decyatnik multiple
7 times—without any travel documents or travel plans—and even after
8 obtaining a favorable habeas report and recommendation. Until they
9 obtain those documents and plans, they should not be given a fourth
10 opportunity to violate *Zadvydas* and their own regulations.

11 Respectfully submitted,

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14 Dated: January 27, 2026

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Certificate of Compliance

The undersigned certifies that this filing contains 1,663 words,
which complies with the word limit of L.R. 11-6.1.

Dated: January 27, 2026 /s/ Dale F. Ogden
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