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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

PHU VAN TA, Petitioner, v. KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, et al., Respondents.	No. 5:25-cv-02902-MEMF-JDE **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION [DKT. 14]** *[Declaration of Detention Officer filed concurrently herewith]* Hon. Maame Ewusi-Mensah Frimpong United States District Judge

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I. INTRODUCTION AND SUMMARY

Respondents file this response to the Court's Order to Show Cause (Dkt. 14) as to why a preliminary injunction should not issue in this case. Respondents now have evidence in the record to demonstrate that the Temporary Restraining Order ("TRO") should be dissolved and Plaintiff's request for a preliminary injunction should be denied.

Petitioner's Habeas Petition is moot as a matter of law and fact. Petitioner requested his release from immigration custody, which he received by way of the TRO. And Respondents confirmed that Petitioner has not been re-detained. Because Petitioner has been released and is no longer in immigration custody, there is no further relief this Court can provide.

Moreover, any objection about Petitioner's ankle bracelet monitoring does not create a case and controversy for his habeas petition. This is because ankle monitoring does not violate the Constitution, and he has not administratively exhausted any claim regarding the conditions of his supervision.

Moreover, a vacated conviction does not, by itself, bar enforcing a removal order. More importantly, from the perspective of the preliminary injunction, even if Petitioner had a viable argument for reopening and reversing his removal order, such relief must be sought from the BIA and then the Ninth Circuit; there is no jurisdiction for a separate parallel habeas process to stay the enforcement of final removal orders.

Finally, now that Petitioner has been release released from custody and has not been re-detained, he cannot show irreparable harm and the balance of interests in considering entering a preliminary injunction favor the government.

For the reasons set forth below, Respondent respectfully requests the Court dissolve the TRO, discharge the Order to Show Cause, deny Petitioner's request for a preliminary injunction, and dismiss the Habeas Petition as moot.

II. FACTUAL BACKGROUND

On or about September 16, 2002, Petitioner was convicted of burglary in violation of section 459 of the California Penal Code ("CPC") and sentenced to 150 days in jail. Declaration of Lourdes Palacios ("Palacios Decl.") ¶ 4.

On or about March 7, 2005, Petitioner was convicted of receipt of stolen property in violation of CPC § 496(a) and sentenced to 60 days in jail. *Id.* ¶ 5.

On or about February 10, 2010, Petitioner was convicted of forgery/false check in violation of CPC § 470(d) and sentenced to a fine. *Id.* ¶ 6.

On or about March 22, 2010, Petitioner was convicted of planting/cultivating marijuana in violation of section 11358 of the California Health and Safety Code ("CHSC") and sentenced to 45 days in jail. *Id.* ¶ 7.

On or about November 22, 2010, Petitioner was convicted of CHSC § 11358 and sentenced to two years in jail. *Id.* ¶ 8.

On or about June 6, 2011, an Immigration Judge ordered Petitioner removed to Vietnam. Palacios Decl. ¶ 10. Petitioner waived his right to appeal that order, and the order of removal became final. *Id.* ¶ 10; Ex. A.

On or about January 28, 2020, Petitioner was convicted of the offenses of possession of marijuana for sale in violation of CHSC § 11359(b) and of obstructing a police officer in violation of CPC § 148(a)(l) and sentenced to 1 day in jail. *Id.* ¶ 9.

On or about August 18, 2025, Petitioner filed a motion to reopen his removal proceedings alleging his criminal convictions had been vacated by the Superior Court of California. *Id.* ¶ 11.

On or about October 8, 2025, an Immigration Judge denied Petitioner's motion to reopen. *Id.* ¶ 12; Ex. B.

On the same day, ICE submitted a request for a Petitioner's travel document to Vietnam. *Id.* ¶ 13. As of the date of this filing, the request remains pending. *Id.*

On or about November 6, 2025, Petitioner filed an appeal of the Immigration Judge's order denying his motion to reopen, with the Board of Immigration Appeals. *Id.* ¶ 14. As of the date of this filing, that appeal remains pending. *Id.*

After the issuance of the TRO on November 10, 2025, ICE released Petitioner from custody on an order of supervision on November 11, 2025. *Id.* ¶¶ 15-16; Ex. C. The order of supervision was served on the Petitioner and signed the same day. *See id.* Ex. C at 5. The order of supervision required Petitioner to be fitted with an ankle monitor, a form of supervision that uses no physical restraints or surveillance. *Id.* ¶ 16. ICE has discretion to require a noncitizen to wear an ankle monitor because it is a reasonable restriction that assures that the noncitizen can be accounted for and does not abscond pending removal. *Id.*

Petitioner reported to Alternatives to Detention ("ATD") on November 19, 2025, at the ERO Santa Maria office for a check-in. *Id.* ¶ 17. During the ATD visit, Petitioner was not detained. *Id.*

III. STANDARD OF REVIEW

The standard for issuing a TRO and a preliminary injunction are substantially identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Injunctive relief "is an extraordinary and drastic remedy," *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (internal quotation marks and citation omitted), that is "never awarded as of right," *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation marks and citation omitted). Thus, this relief "should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez*, 680 F.3d at 1072 (internal quotation marks and citation omitted; emphasis in original). This is a "difficult task." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

To prove their entitlement to such injunctive relief, Petitioner must establish that: (1) they are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

IV. ARGUMENT

A. Petitioner's Habeas Petition is Moot

When a lawsuit is brought without Article III standing, no "case or controversy" exists and the court lacks subject matter jurisdiction, as a result. U.S. Const. art. III, § 2, cl. 1. (requiring district courts to adjudicate only actual cases or controversies); *Iron Arrow Honor Society v. Heckler*, 464 U.S. 67, 70 (1983). Federal courts do not have the power to decide a case that does not affect the rights of a litigant in the case before it. *See Mitchell v. Dupnik*, 75 F.3d 517, 527-28 (9th Cir. 1996); *see also Abdala v. I.N.S.*, 488 F.3d 1061, 1062 (9th Cir. 2007) (dismissing petition as moot after petitioner had been removed). A federal court does not have authority "to give opinions upon moot questions." *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Envtl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244 (9th Cir. 1988).

In the context of whether a habeas petition is moot, the "analysis is specifically limited to the sort of equitable relief we may grant in response to a habeas petition." *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). A habeas petition is moot when the petitioner "seeks relief [that] cannot be redressed by a favorable decision of the court issuing a writ of habeas corpus." *Id*. at 1000-01 (citation, quotation marks, and ellipses omitted).

Here, Petitioner requested his release from immigration custody, which he received by way of the TRO. Moreover, Petitioner has not been re-detained. Palacios Decl. ¶ 17. Because Petitioner has been released and is no longer in immigration custody, there is no further relief this Court can provide. *See Picrin-Peron v. Rison*, 930 F.2d 773, 775–76 (9th Cir. 1991). The mootness rule is subject to a "capable of repetition yet evading review" exception. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 546 (1976). The exception is met when: (1) the "duration of the challenged conduct is too brief ever to be fully litigated prior to its cessation"; and (2) there is a reasonable probability that the petitioner will again be subject to the challenged activity. *Mitchell v. Dupnik*, 75 F.3d 517, 527–28 (9th Cir. 1996); *GTE Cal., Inc. v. FCC*, 39 F.3d 940, 945 (9th Cir. 1994).

While Petitioner's confinement is capable of repetition because he already has a June 6, 2011 final removal order, which he waived his right to appeal, a connotational violation amounting to a confinement *without* notice and an opportunity to be heard is purely *speculative*. There is no reason why he could not file a new habeas corpus petition concerning any future alleged violation of his liberty interest. A preliminary injunction order at this stage, when the Petitioner has already been released from custody would constitute a "follow the law" injunction which is prohibited by Ninth Circuit precedent. The Ninth Circuit has "long held that injunctive relief must be tailored to remedy the specific harm alleged." *Melendres v. Arpaio*, 784 F.3d 1254, 1265 (9th Cir. 2015) ("[A]n injunction against state actors must directly address and relate to the constitutional violation itself and must not require more of state officials than is necessary to assure their compliance with the constitution.").

Moreover, this Court cannot determine whether future speculative confinement of Petitioner would violate his constitutional rights. Any fear that ICE *might* act against Petitioner in the future is speculative and that fear does not preserve a case or controversy now because such a case is not ripe for adjudication. *Associated Gen. Contractors v. Coalition for Economic Equity*, 950 F.2d 1401, 1406 (9th Cir. 1991). And further, an analysis of the possibility of his removal to Vietnam in the "reasonably foreseeable future" amounts to an impermissible advisory opinion because he is not in custody.

Petitioner argues in the parties' joint status report (Dkt. 15) that the case is not moot because Petitioner could theoretically be re-detained. The same argument for continuing to litigate a habeas petition after release has been made in other recent habeas petitions and has been rejected. For example, a similar result was reached in *J.P. v. Santacruz*, No. 8:25-cv-01640-FWS-JC, 2025 WL 2998305, at *1 (C.D. Cal. Oct. 24, 2025), a case where the petitioner requested notice and a hearing before a neutral adjudicator prior to his potential future re-detention and/or re-arrest. Judge Slaughter dismissed the case for lack of subject matter jurisdiction, finding, "To the extent Petitioner challenges his future detention and/or arrest at another physical appointment, the court finds Petitioner fails to present sufficient allegations or evidence of the threat of future injury to confer Article III standing." *Id.* at *4. Similarly, here, Petitioner reported to ICE on November 19, 2025, but was not re-detained. *See* Palacios Decl. ¶ 17.

Accordingly, the order to show cause for the issuance of a preliminary injunction should be discharged, and the Petitioner should either voluntarily dismiss the Petition or Court should dismiss the case for mootness due to a lack of case or controversy.

B. Petitioner's Pursuit of Appealing to the BIA Does Not Establish a Basis for Granting a Preliminary Injunction

It is anticipated that Petitioner may also argue that he should not be detained for purposes of enforcing his removal order, even though—his appeal is pending by the BIA—that removal order remains in full effect. The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021).

Without a stay of his operative removal order—a stay that only the BIA and Ninth Circuit would have authority to issue—the government is entitled by law to remove Petitioner to the specific country identified on that removal order, and there is no jurisdiction to challenge that removal. 8 U.S.C. § 1252(g) divests District Courts of jurisdiction to hear claims challenging one of "three discrete actions[:] . . . [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g) precludes judicial review of execution of removal order).

Thus, to the extent Petitioner's claims challenge these decisions, § 1252(g) renders this Court without jurisdiction to hear his habeas claims. *See Eliazar G.C. v. Wolford*, 2025 WL 1124688, at *3 (E.D. Cal. Apr. 16, 2025) (no habeas jurisdiction over habeas petition seeking to stay execution of removal order); *Aransiola v. Warden, FCI Victorville Medium*, 2025 WL 576592, at *6 (C.D. Cal. Jan. 22, 2025) (no habeas jurisdiction to challenge commencement of removal proceedings), *report and recommendation adopted by* 2025 WL 1085125 (C.D. Cal. Apr. 9, 2025).

Petitioner might argue that he now has a valid basis for reopening his removal proceedings, since he very recently obtained a vacated criminal conviction by the Superior Court of California. But as discussed above, that belated effort does not establish a viable basis for reopening his removal proceedings at this juncture. *See Perez-Camacho v. Garland*, 54 F.4th 597 (9th Cir. 2022). And even if it were sufficient, the appropriate channel for seeking relief would be the BIA, not a habeas petition. Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id*. at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is

to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [IIRIRA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9). As such, this is not a basis for granting a preliminary injunction. It is a basis for denying it.

C. Petitioner's Anticipated Objection about Ankle Bracelet Monitoring Does Not Create a Case and Controversy for His Habeas Petition

It is anticipated that Petitioner may object to the ankle bracelet monitoring after he was released from custody. *See* Dkt. 15 (Joint Status Report). After his release, ICE exercised its discretion to order Petitioner to be fitted with an ankle monitor. Palacios Decl. ¶ 16. ICE's reasonable restriction assures that the Petitioner, who is still subject to removal, can be accounted for and does not abscond his pending removal. *Id.* ¶ 16. Petitioner's "objection" does not preserve the court's jurisdiction over this habeas petition for numerous reasons.

In *Ahmed v. Tate*, 2020 WL 3402856 at * 5 (S.D. Tex. June 19, 2020), the court found that a habeas action was moot when the petitioner was released from detention. The court further found that that ICE's use of GPS ankle monitoring did not equate to detention as that term was used by the Supreme Court in *Zadvydas v. Davis* 533 U.S. 678, 695 (2001), which reaffirmed the right of Congress and the Executive Branch to place aliens who are subject to removal under supervision with restrictive conditions. *Ibid.*

Similarly, in *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1114 (D. Or. 2006), the court concluded that placement in an ATD program "is not detention. It is a form of supervision that uses no physical restraints or surveillance, both of which are typical characteristics of detention." *See also Shamim v. Chertoff*, 2008 WL 509355 at * 1 (N.D. Cal. Feb. 22, 2008) (placement of noncitizen, whose removal was stayed by the Ninth Circuit, in ICE custody program mooted habeas action).

As such, this court should find the habeas petition is rendered moot even if Petitioner now seeks to challenge the conditions of supervision.

D. Ankle Bracelet Monitoring Does Not Violate the Constitution

Pursuant to 8 U.S.C. §§ 1226(a)(2)(A), 1231(a)(3) and 8 C.F.R. § 241.5, Respondents may release a noncitizen on orders of supervision. A petitioner is entitled to a writ of habeas corpus under § 2241 only to remedy his or her restraint of liberty in *violation* of the constitution, treaties, or laws of the United States. 28 U.S.C. § 2241(c). In *Diawara v. Sec'y of DHS*, 2010 WL 4225562, at *2 (D. Md. Oct. 25, 2010), the Court found no fundamental right violation, and no liberty interest violation, in the requirement of ankle bracelet monitoring for a noncitizen, citing 8 U.S.C. § 1231 (a)(3)(D). *See also Lopez Lopez v. Charles*, 2020 WL 419598, at *4 (D. Mass. Jan. 26, 2020) (ruling a GPS tracking device placed on noncitizen who has been ordered removed does not state a claim for a violation of due process). Indeed, requiring petitioner to wear an ankle monitor is a reasonable restriction that assures that petitioners can be accounted for and do not abscond pending removal. *See Zavala v. Prendes*, 2010 WL 4454055 at * 2 (N.D. Tex. Oct. 5, 2010).

E. Petitioner Has Not Exhausted His Administrative Remedies for Conditions of Supervision

In addition, Petitioner has administrative remedies to ameliorate the conditions of their supervision, if there is some strong reason why they cannot wear an ankle bracelet. *See* 8 C.F.R. §1236.1(d). As a prudential matter, he should be encouraged to explore those remedies rather than immediately rushing to the court.

F. Petitioner Cannot Show He Will Suffer Irreparable Harm Absent a Preliminary Injunction

Petitioner, again, who is not in custody and has not been re-detained, cannot demonstrated that he will suffer irreparable injury absent his release. To show irreparable harm, he must demonstrate "immediate threatened injury." *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League,* 634 F.2d 1197, 1201 (9th Cir. 1980)). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

The fact remains that Petitioner is *still* subject to a final order of removal, which he declined to challenge. Pursuant to that order, the government has taken steps to effectuate his removal to his country of origin in the foreseeable future. Petitioner's re-detention is "common to all [noncitizens] seeking review of their custody or bond determinations." *See Resendiz v. Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). Petitioner faces the same fear as any habeas corpus petitioner subject to immigration custody, but that does not show extraordinary circumstances warranting the permanent injunctive relief requested. This fear is speculative and should not lead to a Court issued preliminary injunction because Petitioner reported to ICE on November 19, 2025, without incident. *See* Palacios Decl. ¶ 17.

G. The Balance of Interests in Considering a Preliminary Injunction Favors the Government

Lastly, it is well settled that the public interest in enforcement of the United States's immigration laws is significant. *See, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("There is always a public interest in prompt execution of removal orders[.]").

This public interest outweighs Petitioner's private interest here. Petitioner, out of custody, asks the Court to continue to declare his detention unlawful for the pendency of the litigation, despite the government's valid reasons and statutory bases for detaining him to effectuate his removal pursuant to valid final removal order. Further, Vietnamese immigrants such as Petitioner are now routinely removed to Vietnam. *See, e.g.*, *Huynh v. Semaia, et al.*, 2:24-cv-10901-MRA-DFM, Dkt. 12 (detained petitioner was promptly removed to Vietnam, thereby mooting his habeas petition, which was dismissed on April 9, 2025). Simply put, circumstances have changed markedly since Petitioner's placement on supervised release in 2011, and thus this is an addition reason to deny Petitioner's request for a preliminary injunction.

V. CONCLUSION

For all the above reasons, Respondent respectfully requests the Court dissolve the Temporary Restraining Order (Dkt. 14), discharge the Order to Show Cause, deny

Petitioner's request for a preliminary injunction, and dismiss the Habeas Petition as moot.

Dated: November 24, 2025

Respectfully submitted,

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Local Rule 11-6.2 Certificate of Compliance

The undersigned counsel of record certifies that this memorandum contains 3,828 words and 12 pages which complies with the word limit set by L.R. 11-6.1 and the Court's Standing Order.

Dated: November 24, 2025

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