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

Phu Van Ta
Petitioner,
v.
Kristi Noem, et al.
Respondents.

No. 5:25-cv-02902

**Reply to
Respondents' Response to OSC
re: Preliminary Injunction**

**Hon. Maame Ewusi-Mensah
Frimpong**

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DISCUSSION

A preliminary injunction should issue

The government disputes neither Ta's allegations nor his likelihood of success on the merits. The government instead argues that his claims are now moot because the government has complied with the Court's temporary order restraining order, and that considerations of irreparable harm and the balance of equities consequently now favor the government.¹

These arguments are meritless, and work no change to the substantive analysis the Court provided when it issued the TRO. A preliminary injunction should therefore issue.

A. The government's compliance with the temporary restraining order does not moot Ta's petition.

The government argues that Ta's habeas petition is moot because he has been released under the Court's TRO, which, according to the government, means that "there is no further relief this Court can provide." (ECF No. 16, Gov't Resp., at 4.)

"This argument strains credulity." *Esmail v. Noem*, ___ F. Supp. 3d ___, No. 2:25-CV-08325-WLH-RAO, 2025 WL 3030589, at *3 n.5 (C.D. Cal. Sept. 26, 2025). "Were [it correct], no court would issue a preliminary

¹ Ta does not here press an objection to ankle monitoring (*cf.* Gov't Resp. at 8–10 (addressing that anticipated objection)), as his ankle bracelet was removed shortly after the parties filed their joint status report. Nor does he address the government's argument about his pending BIA appeal, since he does not invoke that appeal as a "basis for granting" relief here. (*Cf. Id.* at 6–8.)

1 injunction following the grant of a TRO ordering a habeas petitioner's
2 release, which is plainly not the case.” *Id.* (citing, *e.g.*, *Sequen v. Kaiser*,
3 No. 25-cv-06487-PCP, [2025 WL 2650637](#), at *10 (N.D. Cal. Sept. 16,
4 2025)).

5 To appreciate the oddity in the government’s position, consider the
6 doctrine of *voluntary* cessation. It is “well-established” that even
7 “voluntary cessation of allegedly illegal conduct” will not moot a petition
8 unless a court can say “with assurance” that “there is no reasonable
9 expectation” that (1) “the alleged violation will recur” and (2) “interim
10 relief or events have completely and irrevocably eradicated the effects of
11 the alleged violation.” *Fikre v. Fed. Bureau of Investigation*, [904 F.3d](#)
12 [1033, 1037](#) (9th Cir. 2018). The “heavy burden” of showing mootness
13 under this doctrine would be on the government. *Id.* And in meeting it,
14 the government “must ... demonstrate[] that the change in its behavior is
15 ‘entrenched’ or ‘permanent.’” *Id.* (quoting *McCormack v. Herzog*, [788 F.3d](#)
16 [1017, 1025](#) (9th Cir. 2015)).

17 Here, of course, the government has made no attempt to meet that
18 burden—and rightly so, since the government ceased its illegal conduct
19 not on its own but by court order. But it would be absurd to think that
20 the government’s burden should be lower because a court intervened to
21 check its illegal conduct. Yet that would be the logical end point of the
22 position the government takes here.

23 No surprise, then, that not a single decision cited in the
24 government’s response holds that a habeas claim is moot by dint of the
25 government’s compliance with a TRO. Indeed, the only decision cited in
26 the government’s mootness analysis for anything other than general

1 principles—*Abdala v. I.N.S.*, 488 F.3d 1061 (9th Cir. 2007) (Gov’t Resp. at
2 4)—is plainly inapposite: The petition there was mooted not because the
3 petitioner had been granted temporary relief, but because he had been
4 permanently removed. *Id.* at 1062.

5 Since the government has failed to show mootness, little need be
6 said about its argument that the case falls outside the exception to
7 mootness for conduct “capable of repetition yet evading review.” (Gov’t
8 Resp. at 4.) Though the government asserts that any risk it will again
9 engage in the challenged activity is “purely *speculative*” (*id.*), the
10 government never even disputes that it in fact violated the constitution
11 and laws of the United States when it detained Ta. Nor does it try to
12 square its risk analysis with the welter of court decisions, in cases like
13 Ta’s, holding the government to account for the same violations. (See ECF
14 No. 14, Order, at 11 (noting consistent rulings made by other district
15 courts).)² Nor could it. As another judge in this district recently observed,
16 “[t]he risk of erroneous deprivation of [the private] interest [in remaining
17 out of immigration custody] interest is high,” as “ICE takes the position
18 that it may revoke a release determination at any time without either a
19 hearing before or additional oversight from a neutral adjudicator.” *Sun v.*

21 ² The risk of repetition evading review was *not* at issue in *J.P. v.*
22 *Santacruz*, ___ F. Supp. 3d ___, No. 8:25-cv-01640-FWS-JC, 2025 WL
23 2998305 (C.D. Cal. Oct. 24, 2025) (*cf.* Gov’t Resp. at 5), where the petitioner
24 sought habeas relief not because the government had detained him at a
25 check in, but because he *anticipated* they might do so in the future. *Id.* at
26 *4. Still, the risk of the deprivation even in that situation is substantial
enough that at least one other court has granted just that sort of
anticipatory relief. See *Sun*, *supra*.

1 *Santacruz*, ___ F. Supp. 3d ___, No. 5:25-CV-02198-JLS-JC, 2025 WL
2 2730235, at *6 (C.D. Cal. Aug. 26, 2025). Far from speculative, the risk of
3 repetition is distressingly concrete.

4 At all events, the government’s compliance with the TRO does not
5 moot Ta’s petition.

6 **B. Because the government neither disputes the merits of Ta’s**
7 **claims nor cites any relevant changed circumstances, the**
8 **Court’s analysis on its TRO remains undisturbed.**

9 Since the government’s analysis of irreparable harm and the
10 balance of equities (Gov’t Resp. at 10–11) turns on conclusions drawn
11 from its analysis of mootness, it fails for essentially the same reasons.
12 The reason that Ta is “not in custody and has not been re-detained” (*Id.*
13 at 10) is that the Court has issued a TRO to that effect. The TRO will
14 formally expire, if it hasn’t already. *See Fed. R. Civ. Proc. 65(b)(2)*
15 (providing that TROs expire within 14 days of entry unless extended).
16 And the risk of erroneous deprivation remains “high.” *Sun, supra*.
17 Further injunctive relief is thus needed to maintain the status quo.
18 *Esmail, supra*.

19 Though the government otherwise invokes circumstances that have
20 changed “since [Ta]’s placement on supervised release in 2011” (Gov’t
21 Resp. at 11), it cites none that have changed since the Court issued its
22 TRO. Because the Court’s substantive rulings on the TRO thus remain
23 undisturbed, the Court should grant the preliminary injunction for the
24 same reasons. *See Stuhlbarg In’l Sales Co. v. John D. Brush & Co.*, 240
25 F.3d 832, 839 n.7 (9th Cir. 2001) (explaining that standards for TROs and
26 preliminary injunctions are “substantially identical”).

CONCLUSION

For all these reasons, the Court should issue a preliminary injunction ordering that the government, having released Ta pursuant to the TRO, shall not re-detain him without timely following the procedures in 8 U.S.C. §§ 241.4(d)(1) and 241.13(i), and that it shall neither remove him from the country nor take him from the Central District of California until the resolution of this case.

Respectfully submitted,
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DATED: December 1, 2025

s/ Michael T. Drake

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief contains 1,153 words,
which complies with the word limit of L.R. 11-6.1.

Dated: December 1, 2025

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