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HOA DUC NGUYEN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOA DUC NGUYEN,

Petitioner,

vs.

MARCOS CHARLES, ET AL.,

Respondents.

Case No. 1:25-cv-01592-TLN-CSK

**PETITIONER'S OPPOSITION TO MOTION
TO DISMISS PETITION AS MOOT**

Judge: Hon. Chi Soo Kim

On December 29, 2025, Respondent's filed a motion to dismiss Mr. Nguyen's petition on the ground that his claims are now moot. ECF 21. Respondents claim that because Mr. Nguyen was released from custody and placed under an Order of Supervision pursuant to the preliminary injunction issued by Chief District Judge Nunley on December 4, 2025, his claims are now moot. *Id.*

As many courts have held, a grant of a preliminary injunction does not make a habeas petition moot. *See, e.g., N.Y.V.D. v. Ernesto Santracruz et al*, No. 5:25-CV-03404-WLH-SP, 2026 WL 45268, at *2 (C.D. Cal. Jan. 6, 2026).¹ Where a petitioner is released pursuant to a preliminary injunction or a temporary restraining order, release "is just that—temporary," it does not "adjudicate Petitioner's 28 U.S.C. § 2241 petition on the merits." *Cruz v. Lyons*, No. 5:25-

¹ *See also Min v. Santacruz*, No. 2:25-CV-10971-MEMF-AS, 2025 WL 3764071, at *3 (C.D. Cal. Dec. 23, 2025); *Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *3 (W.D. Wash. Oct. 10, 2025).

CV-02879-MCS-MBK, 2025 WL 3443146, at *2 (C.D. Cal. Dec. 1, 2025). *See also Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (rejecting suggestion of mootness where “release had been granted following a preliminary injunction,” observing that “[u]nless that preliminary injunction was made permanent and was not disturbed on appeal, these individuals faced the threat of re-arrest and mandatory detention”); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1195 n.2 (9th Cir. 2022) (holding that the government’s compliance with a district court order that a noncitizen petitioner be released on bond “does not moot its appeal”).²

Even if Respondents had voluntarily released Mr. Nguyen from ICE detention rather than doing it in compliance with a court order, a respondent cannot render a case moot “by the simple expedient of suspending its challenged conduct after it is sued. Instead, our precedents hold, a defendant’s voluntary cessation of a challenged practice will moot a case only if the defendant can show that the practice cannot reasonably be expected to recur.” *Fed. Bureau of Investigation v. Fikre*, 241 (2024) (internal quotations and citations omitted). The reason a respondent must meet this “formidable” burden is that “[w]ere the rule more forgiving, a defendant might suspend its challenged conduct after being sued, win dismissal, and later pick up where it left off; it might even repeat ‘this cycle’ as necessary until it achieves all of its allegedly ‘unlawful ends.’” *Id.* (internal citations omitted). Applying *Fikre*, the Ninth Circuit held that where the Attorney General of Idaho initially wrote a letter stating that doctors could be criminally prosecuted for a certain course of action, the Attorney General’s subsequent withdrawal of that letter while a

² The cases cited by Respondents are inapposite. In *Abdala v. I.N.S.*, 488 F.3d 1061, 1064-65 (9th Cir. 2007), the Ninth Circuit held that where a habeas petition challenged only the length of a detainee’s detention, his deportation rendered the case moot because his deportation fully resolved his sole claim: that his prolonged detention was unlawful. Where, as here, a petitioner brings a habeas petition challenging both the legality of his detention and his future re-detention, as well as his potential removal to a third country, *Abdala* is distinguishable. *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *3 (E.D. Cal. Oct. 24, 2025).

Ogunbanke v. Nielsen, No. 118CV00796NONEJDP, 2020 WL 730570, at *1 (E.D. Cal. Feb. 13, 2020), *report and recommendation adopted*, No. 118CV00796NONEJDP, 2020 WL 1640028 (E.D. Cal. Apr. 2, 2020), also cited by Respondents, similarly involved a person who was removed from the United States while his petition was pending and the district court could no longer grant him any of the relief he originally sought.

1 motion for a preliminary injunction was pending did not render a lawsuit challenging the
 2 Attorney General's legal position moot. *Planned Parenthood Great Nw., Hawaii, Alaska,*
 3 *Indiana, Kentucky v. Labrador*, 122 F.4th 825, 841 (9th Cir. 2024). The Ninth Circuit concluded
 4 the case was not moot because the Attorney General neither repudiated the legal position he took
 5 in the letter, nor provided an alternative legal analysis that would ease the plaintiffs' fear of
 6 enforcement, nor did anything else to "change the fact that absent an injunction the Attorney
 7 General remains free to return to his old ways . . ." *Id.* (internal quotations and citations
 8 omitted).

9 Respondents have not pledged that, absent the preliminary injunction in this case, they
 10 will never re-detain Mr. Nguyen in violation of *Zadvydas v. Davis*, 533 U.S. 678 (2001). They
 11 have not promised that, absent the preliminary injunction, they will never re-detain Mr. Nguyen
 12 without following 8 C.F.R. §§ 241.4 and 241.13. Furthermore, they have not promised that,
 13 absent the preliminary injunction, they will never try to remove Mr. Nguyen to a third country
 14 without first allowing him a meaningful opportunity to be heard on his fear-based claim before
 15 an immigration judge in compliance with due process. Indeed, during 2025 the United States
 16 removed several Vietnamese nationals to Eswatini, a small country bordering South Africa that
 17 is one of the world's last absolute monarchies, where the Vietnamese nationals and other
 18 deportees have been held in a maximum security prison.³ As observed by Judge Sherriff in a
 19 similar case, when ICE lacks a travel document allowing it to remove a person to the country
 20 identified in their removal order,
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22
 23 Petitioner's fear that ICE will seek to remove him to a third country and will
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25 ³ Associated Press, *Judge fails to appear for court hearing in Eswatini over 4 men deported from*
 26 *the U.S. by Trump administration*, PBS NEWS (September 25, 2025), available at
 27 [https://www.pbs.org/newshour/world/judge-fails-to-appear-for-court-hearing-in-eswatini-over-4-](https://www.pbs.org/newshour/world/judge-fails-to-appear-for-court-hearing-in-eswatini-over-4-men-deported-from-the-u-s-by-trump-administration)
 28 [men-deported-from-the-u-s-by-trump-administration](https://www.pbs.org/newshour/world/judge-fails-to-appear-for-court-hearing-in-eswatini-over-4-men-deported-from-the-u-s-by-trump-administration) (last accessed January 9, 2026); Gibson,
 Brittany, *10 more migrants sent to Eswatini as part of U.S.' third-country deportation*
agreement, Axios (October 6, 2025), available at [https://www.axios.com/2025/10/06/us-](https://www.axios.com/2025/10/06/us-deportation-eswatini)
[deportation-eswatini](https://www.axios.com/2025/10/06/us-deportation-eswatini) (last accessed January 9, 2026).

1 follow its new policy is therefore not mooted by petitioner's current release from
2 custody, because ICE may seek to remove petitioner to a third country pursuant to
its new policy regardless of petitioner's custody status.

3 *Viengkhone S. v. Albarran*, No. 1:25-CV-01505-KES-HBK (HC), 2025 WL 3521302, at *5
4 (E.D. Cal. Dec. 8, 2025).

5
6 Finally, Respondents have not repudiated any of the legal positions they took in their
7 Opposition to Mr. Nguyen's motion for a temporary restraining order (ECF 12).

8 Mr. Nguyen's petition is not moot and this Court should deny the government's motion
9 to dismiss his petition.

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11 Respectfully submitted,

12 HEATHER E. WILLIAMS
13 Federal Defender

14 Date: January 9, 2026

15 /s/ Carolyn M. Wiggin
16 CAROLYN M. WIGGIN
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Attorney for Petitioner
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