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

Eugene Trifonov,

Petitioner,

v.

Kristi Noem, et. al.

Respondents.

No. 25-cv-03460

**Brief and Reply in Support of
Preliminary Injunction**

This Court previously issued a well-reasoned decision granting Petitioner Eugene Trifonov a temporary restraining order (TRO) and ordering his release. *See Docket 4*. Given the Government didn't respond in opposition to the TRO, the Court afforded them an opportunity: "If the government wishes to rebut Petitioner's claims they will have opportunity to do so at the time of the order to show cause whether a preliminary injunction should issue." *Docket 4, p. 7*.

They didn't. Instead, in opposition, the Government does not grapple with any of the Court's reasoning on the merits. The Government

1 does not grapple with the fact that Trifonov is stateless and non-
2 deportable, because Ukrainian citizenship largely rests on physical
3 presence in the country as of their declaration of independence in 1991,
4 and Trifonov arrived in the United States before that in 1987. Docket 1,
5 p. 3; see Law of Ukraine, *On Citizenship of Ukraine*, Article 3 (as
6 amended), available here and archived here. And the Government omits
7 that they recently had a failed attempt to deport USSR citizens to
8 Ukraine—thus proving they can’t remove individuals in Trifonov’s
9 situation. See *Decyatnik v. Noem*, 2:25-cv-10027, Docket 12 (C.D. Cal.
10 2025); see also *id.* at Docket 24 (grating subsequent TRO).

11 Put simply, the Court was correct, and there is no reasonable
12 foreseeability of any removal. And, because the standards for TROs and
13 preliminary injunctions are identical, that same ruling justifies granting
14 a preliminary injunction. See *O.M. v. Nat’l Women’s Soccer League, LLC*,
15 541 F. Supp. 3d 1171, 1177 (D. Or. 2021).

16 Instead of addressing any of those issues, the Government makes
17 one argument: the preliminary injunction request is moot in light of the
18 Court granting the TRO. That argument fails on numerous levels.

19 First, this Court recently rejected the Government’s attempts to
20 raise this argument. See *Tran v. Noem*, 25-cv-02881, Dockets 14, 22 (C.D.
21 Cal. 2025).

22 Second, the TRO expires after January 5, 2026. Docket 4, p. 7. At
23 that point, absent a preliminary injunction, Trifonov will once again be
24 left without any protection from unconstitutional re-detention. Therefore,
25 “[g]iven the TRO’s expiration . . . , the necessity of further injunctive relief
26 maintaining the status quo during the pendency of litigation means the

1 claim is necessarily *not* moot.” *Esmail v. Noem*, No. 2:25-CV-08325, 2025
2 WL 3030589, at *3, n.5 (C.D. Cal. 2025).

3 Third, Judge Hsu recently held this argument “strains credulity.”
4 *Id.* Indeed, if the Government were correct, “no court would issue a
5 preliminary injunction following the grant of a TRO ordering a habeas
6 petitioner's release, which is plainly not the case.” *Id.* (citing cases).

7 Fourth, all that is required to avoid mootness is something that
8 could be addressed by success on the petition. *See Abdala v. INS*, 488
9 F.3d 1061, 1064 (9th Cir. 2007). Here, that something is obvious:
10 preventing Trifonov’s re-detention unless the Government has travel
11 documents and a travel plan in hand.

12 This is particularly true because, after the expiration of the TRO,
13 without an injunction, Respondents would be free to return to the
14 unconstitutional situation that existed before this Court intervened. And
15 “defendants who argue that a case has been mooted by their voluntary
16 cessation of allegedly wrongful conduct must meet a very high burden
17 because a mootness-based dismissal would ‘leave the defendant . . . free
18 to return to his old ways.’” *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d
19 1125, 1130 n.3 (9th Cir. 2005) (citations omitted). Their brief falls well
20 short of meeting that very high burden.

21 Fifth, the Government’s mootness citations involved the deprivation
22 of an immigration bond hearing and the petitioner subsequently being
23 afforded one. Docket 6, p. 2. In other words, petitioners requested bond
24 hearings and got them—the entire requested relief. But here, the
25 Government doesn’t even claim it complied with due process, nor does it
26

1 offer assurances that it will follow due process or its own regulations. It
2 doesn't even promise it won't re-detain Trifonov after Monday.

3 Finally, even if the case was moot, an exception exists for claims
4 "capable of repetition, yet evading review." *So. Pac. Terminal Co. v.*
5 *Interstate Commerce Comm'n*, 219 U.S. 498, 513 (1911). The sheer volume
6 of these cases only prove this exception would apply here: ICE is likely to
7 arrest individuals without any travel documents or plans to effectuate
8 their deportation.

9 All told, the Court was correct on the merits, and the case is not
10 moot. Therefore, the Court should grant the preliminary injunction. To
11 the extent the Government's concerns are really about judicial
12 efficiency—although their argument is misplaced—the concern is more
13 understandable. In that situation, the Government could simply not
14 oppose the Court summarily granting the habeas petition for the reasons
15 in its prior order.

16 Respectfully submitted,
17 Cuauhtemoc Ortega
18 Federal Public Defender

19 Dated: December 31, 2025 By: /s/ Dale F. Ogden
20 Dale F. Ogden
21 Deputy Federal Public Defender

22 Attorneys for Petitioner¹
23 Eugene Trifonov

24 ¹ In the Court's order, the Court directed the Federal Public Defenders
25 to also verify that Trifonov is eligible for representation. Docket 4, p. 8.
26 Counsel has inquired into this and believes that Trifonov's low income from
his ranch qualifies him for Criminal Justice Act representation. Should the
Court request further information on this, counsel would be happy to
provide it.

Certificate of Compliance

The undersigned certifies that this filing contains 837 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 31, 2025 /s/ Dale F. Ogden
Dale F. Ogden

United States District Court
Central District of California

Eugene Trifonov,

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Respondents.

No. 25-cv-03460

**[Proposed] Order Granting
Preliminary Injunction**

This Court has considered the motion for a preliminary injunction, the opposition, the reply, the oral argument of the parties, and all the records and evidence in this case. Given the standards governing preliminary injunctions are the same as temporary restraining orders, *O.M. v. Nat'l Women's Soccer League, LLC*, 541 F. Supp. 3d 1171, 1177 (D. Or. 2021), the Court sees no reason to depart from its prior analysis.

The Court therefore **GRANTS** a preliminary injunction and **ORDERS** as follows:

- 1 1. Respondents are **ENJOINED** from re-detaining Petitioner
2 unless and until Respondents have obtained valid travel
3 documents and travel plans for Petitioner's removal.
- 4 2. Respondents are **further ENJOINED** from re-detaining
5 Petitioner unless and until they follow the procedural
6 safeguards set forth in 8 C.F.R. §§ 241.4, 241.14, and other
7 applicable statutory and regulatory procedures.

8 So ordered.

9
10 Dated:

David O. Carter
United States District Judge