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8 Counsel for Petitioner

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 Thoth SUN,

13 Petitioners,

14 v.

15 Kristi NOEM, Secretary, Department
16 of Homeland Security; Pam BONDI,
17 Attorney General; Todd LYONS,
18 Executive Associate Director of ICE
19 Enforcement and Removal
20 Operations (ERO); Gregory J.
21 ARCHAMBEAULT, Director, San
22 Diego Filed Office, Immigration and
23 Customs Enforcement; Christopher J.
24 LAROSE, Warden, Otay Mesa
25 Detention Center.

26 Respondents.
27
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No. 3:25-cv-02433-CAB-MMP

PETITIONER'S REPLY TO
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION

1
2 **I. INTRODUCTION**

3 Petitioner Thoth Sun replies to Respondent's Opposition to his Motion for
4 Preliminary Injunction. Dkt # 18. Essentially, Respondents argue that the Motion
5 for Preliminary Injunction should be denied because Petitioner is not detained and
6 Respondents have agreed not to detain him absent a violation of the conditions of
7 release or the receipt of travel documents for his removal. These conditions do not
8 warrant a denial of the Motion for Preliminary Injunction.

9 **II. ARGUMENT**

10 A. PETITIONER DEMONSTRATES IRREPERABLE HARM AND
11 THE PETITION IS NOT MOOT

12 Respondents already violated the permanent injunction in Chhoeun v.
13 Marin, 8:17-cv-01898-CJC (GJSx) (C.D. Cal. Apr. 27, 2020), when they detained
14 Petitioner without notice on September 12, 2025. Petitioner was only released
15 because of the petition for writ of habeas corpus that was filed in this Court on
16 September 17, 2025. Respondents now claim that there is no basis for a
17 preliminary injunction because they do not intent to detain Petitioner unless
18 removal becomes reasonable foreseeable "with a valid travel document and an
19 available flight itinerary" or "he violates one more terms of the conditions of his
20 release, or another lawful basis for his detention arises." Dkt # 18 at 4. A
21 preliminary injunction is required so that Petitioner is not detained in violation of
22 law.

23 First, the conditions of release issued by Respondents are so restrictive, it
24 appears that Respondents are priming Petitioner for a violation of the order of
25 supervision in order to take Petitioner into custody. Petitioner was previously on an
26 order of supervision that required reporting first within four months, then every six
27 months, and then annually. Tolchin Dec. Exh. B. The new requirements issued
28

1 after the September 17, 2025 release include an ankle bracelet, home visits, and
2 office visits, requiring Petitioner to take off work at least two days a month.
3 Tolchin Dec. Exhs. G, H. He also is required to wear a restrictive ankle monitor,
4 which is very difficult for him because his work is manual in nature. Tolchin Dec.
5 Exh. G. Petitioner is concerned that he will lose his job and he is the primary
6 breadwinner for the family. Tolchin Dec. Exh. G. He is also concerned that the
7 conditions are so restrictive that he will be re-detained. Id. A court order is
8 required to prevent Respondents from abusing the order of supervision to create
9 restrictions that trigger re-detention and prevent Petitioner from being able to
10 work.

11 Second, Petitioner is still in custody for habeas purposes and the claim is not
12 moot. A petition for writ of habeas corpus is moot when a detainee is released
13 from custody. Munoz v. Rowland, 104 F.3d 1096, 1098 (9th Cir. 1997); Sila v.
14 Warden, No. EDCV 22-1632 RSWL (AS), 2023 WL 2504476, at *2-3 (C.D. Cal.
15 Feb 13, 2023). “Although the word ‘custody’ is elastic, all definitions of it
16 incorporate some concept of ongoing control, restraint, or responsibility by the
17 custodian.” See Samirah v. O’Connell, 335 F.3d 545, 549 (7th Cir. 2003) citing
18 Black’s Law Dictionary 384 (6th ed.1990). Federal courts have interpreted
19 “custody” for habeas purposes broadly and have found a petitioner to be in
20 “custody” where he is “subject both to ‘significant restraints on liberty ... which
21 are not shared by the public generally,’ along with ‘some type of continuing
22 governmental supervision.’ ” Obado v. New Jersey, 328 F.3d 716, 717 (3d Cir.
23 2003). “Restraints short of incarceration may satisfy the ‘in custody’ requirement
24 for habeas relief, but the restraint must significantly compromise the individual’s
25 ‘liberty to do those things which in this country free men are entitled to
26 do.’ ” Lopez Lopez v. Charles, No. 12-cv-101445, 2020 WL 419598, at *3 (D.
27 Mass. Jan. 26, 2020) citing Jones v. Cunningham, 371 U.S. 236, 243, 83 S.Ct. 373,
28

1 9 L.Ed.2d 285 (1963).

2 Petitioner is subject to intensive monitoring and an ankle bracelet that must
3 be worn at all times, and lives in fear that he will lose his job or be subject to a
4 violation that allows Respondents to take him back into custody. He is clearly still
5 in custody and the habeas is not moot. Orellana Juarez v. Moniz, No. 25-CV-
6 11266-MJJ, 2025 WL 1698600, at *4 (D. Mass. June 11, 2025) (“Mr. Orellana
7 Juarez lives in reasonable fear that a violation may result in physical detention, and
8 ultimately trigger removal proceedings against him.”)

9 Third, the case is not moot under the doctrine of voluntary cessation. A case
10 becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of
11 Article III—‘when the issues presented are no longer live or the parties lack a
12 legally cognizable interest in the outcome.’ ” Already, LLC v. Nike, Inc., 568 U.S.
13 85, 91, 133 S.Ct. 721, 184 L.Ed.2d 553 (2013) citing Murphy v. Hunt, 455 U.S.
14 478, 481, 102 S.Ct. 1181, 71 L.Ed.2d 353 (1982). A voluntary change to the
15 challenged conduct does not ordinarily render a case moot because a dismissal for
16 mootness would permit a resumption of the challenged conduct as soon as the case
17 is dismissed.” Rosebrock v. Mathis, 745 F.3d 963, 971 (9th Cir. 2014) citing Knox
18 v. Serv. Emps. Int’l Union, Local 1000, 567 U.S. 298, 307, 132 S.Ct. 2277, 2287,
19 183 L.Ed.2d 281 (2012); see also Friends of the Earth, Inc. v. Laidlaw Envtl.
20 Servs. (TOC), Inc., 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (“It
21 is well settled that a defendant's voluntary cessation of a challenged practice does
22 not deprive a federal court of its power to determine the legality of the practice.”
23 (internal quotation marks omitted)). Voluntary cessation can yield mootness if a
24 “stringent” standard is met: “A case might become moot if subsequent events
25 made it absolutely clear that the allegedly wrongful behavior could not reasonably
26 be expected to recur.” Friends of the Earth, 528 U.S. at 189, 120 S.Ct. 693. The
27 party asserting mootness bears a “heavy burden” in meeting this standard. Id.
28

1 Respondents cannot meet this heavy burden. Respondents' assurances that it
2 will not detain Petitioner absent a violation of the terms of release or travel
3 documents ring hollow when Petitioner was detained un violation of the Chhoeun
4 v. Marin injunction, Respondents were aware of the violation, and the only reason
5 that Petitioner was released was due to an action pending in this Court. Tolchin
6 Dec. ¶¶ 3-7. A statement to this Court that Respondents will not re-detain
7 Petitioner is not sufficient to meet this heavy burden when the restrictions placed
8 on Petitioner are so restrictive that they invite a violation to warrant re-detention.
9 Fed. Bureau of Investigation v. Fikre, 601 U.S. 234, 241 (2024)(“Were the rule
10 more forgiving, a defendant might suspend its challenged conduct after being sued,
11 win dismissal, and later pick up where it left off; it might even repeat ‘this cycle’
12 as necessary until it achieves all of its allegedly ‘unlawful ends.’”); Pro Publica,
13 Inc. v. Bligh, No. 22-CV-1455-BTM-KSC, 2025 WL 2638530, at *4 (S.D. Cal.
14 Sept. 12, 2025) (“The voluntary cessation doctrine's heavy burden would hardly be
15 a burden at all if the Government could overcome it simply by changing course
16 and then invoking the doctrine.”). A case is only moot where there is no
17 “reasonable expectation” that Respondents' conduct will return to its own ways.
18 Fed. Bureau of Investigation v. Fikre, 601 U.S. 234, 241 (2024). Respondents have
19 not met this heavy burden, and the preliminary injunction should be granted.
20

21 **III. CONCLUSION**

22 For the foregoing reasons, the Court should grant Petitioner's Motion for
23 Preliminary Injunction.
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1 Dated: October 7, 2025

Respectfully Submitted,

2 S/Stacy Tolchin

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#217431)

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No. 3:25-cv-02433-CAB-MMP

SUPPLEMENTAL
DECLARATION OF STACY
TOLCHIN IN SUPPORT OF
PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION

1 I, Stacy Tolchin, hereby declare and state the following:

2 1. My business address is Law Offices of Stacy Tolchin, 776 E. Green St.
3 Suite 210, Pasadena, CA 91101.

4 2. I have personal knowledge of the events described below and represent
5 Petitioners before the immigration court.

6 3. This declaration supplements my prior declarations of September 23, 2025
7 and September 29, 2025.

8 4. Attached as **Exhibit G** is a supplemental declaration of Petitioner dated
9 October 6, 2025.

10 5. Attached as **Exhibit H** are the documents received by Petitioner for his
11 order of supervision.

12
13 Pursuant to 28 C.F.R. § 24.201(f), I hereby verify that the information
14 provided in the application and all accompanying material is true and correct to the
15 best of my information and belief. Executed this 7th day of October 2025 at
16 Pasadena, CA.

17
18 S/Stacy Tolchin

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EXHIBIT G

DECLARATION OF THOTH SUN


I, Thoth Sun, declare as follows:

1. I am a citizen of Cambodia. I reside at [REDACTED] San Diego CA 92104.
I am married to Vilayvanh Vongsyla, and we have a daughter together.
2. I On October 1, 2025, after this Court's entry of a temporary restraining order, I went to the ICE office in downtown San Diego and my work permit and driver's license was returned to me. I was then sent to another office where I was enrolled into a monitoring program that includes ankle bracelet monitoring, home verification visits, and home visits.
3. They have scheduled for me to stay home this Monday October 6, 2025 and Tuesday October 7, 2025 for a home verification visit and then next Wednesday October 15, 2025 to stay home again. On the following day, Thursday October 16, 2025 I have to go make an office visit at their location.
4. This will require for me to miss a lot of time from work. It seems as if they are trying to make it very difficult for me to provide for my family and I am worried that they made the conditions restrictive so that they will take me back into custody.
5. I am working as a material handler lead, this requires a lot of physical movement, hard labor using the whole body. Having the ankle monitor will impede the required high-top steel toed boots and limit movement according to company policy.
6. I have exhausted my paid time off, vacation time, etc. due to the detention. On the new order of supervision I am required to take off four days this month and two

days each month to be missed from work. With no paid time off to use for my absence from work, my company can choose to terminate my employment.

7. Throughout the 21 years of release under the Order of Supervision from ICE, I have made every appointment scheduled. I have never broken the law and have done everything asked of me. I understand the situation I am in and have been fully cooperative. I am the breadwinner for my family with no intentions of abandonment. It has been proven that I am not a flight risk.

I declare under penalty of perjury that the above information is true and correct to the best of my knowledge. Executed this 6 of October 2025 at San Diego, California.



Thoth Sun

EXHIBIT H

Mon	Tue	Wed	Thu	Fri
29	30	1	2	3
6	7	8	9	10
07:00 - 18:00 Reside	07:00 - 18:00 Reside	14 Stay home 15	Isap 16	17
13	20	21	23	24
27	28	29	30	31
3	4	5	6	7

Mon	Tue	Wed	Thu	Fri
27	28	29	30	31
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
1	2	3	4	5

Office Visit

10:00 - 10:15 QIn P

Home Visit

07:00 - 18:00 QIn P

stay home

Is AP