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10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 Saul PANUELAS GUTIERREZ,

14 Petitioner,

15 v.

16 Kristi NOEM, Secretary, Department of
17 Homeland Security; Todd LYONS, in his
18 official capacity as Acting Director of U.S.
19 Immigration and Customs Enforcement; Pam
20 BONDI, Attorney General of the United
21 States; and David GOMEZ, Field Office
22 Director, San Bernardino ICE Field Office.
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Respondents.

No. 5:25-cv-02668-DOC-RAO

PETITIONER'S REPLY TO
ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS

Honorable Rozella A. Oliver
United States Magistrate Judge

Petitioner Saul Panuelas Gutierrez hereby replies to Respondents' December 15, 2025 Answer to his Petition for Writ of Habeas Corpus. Dkt # 23. As noted, this Court has already granted Petitioner's Application for Temporary Restraining Order, ordering his release from detention, and his Motion for Preliminary Injunction. Dkts # 16, 21. As discussed below, this case is not moot and the Court should grant Petitioner's petition for writ of habeas corpus.

A. THE PETITION FOR WRIT OF HABEAS CORPUS IS NOT MOOT

First, Petitioner's release pursuant to this Court's October 31, 2025 temporary restraining order does not moot the petition for writ of habeas corpus. Dkt # 16. A petition for writ of habeas corpus is moot when a detainee is released from custody. *Munoz v. Rowland*, 104 F.3d 1096, 1098 (9th Cir. 1997); *Sila v. Warden*, No. EDCV 22-1632 RSWL (AS), 2023 WL 2504476, at *2-3 (C.D. Cal. Feb 13, 2023). "Although the word 'custody' is elastic, all definitions of it incorporate some concept of ongoing control, restraint, or responsibility by the custodian." See *Samirah v. O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003) citing Black's Law Dictionary 384 (6th ed.1990). Federal courts have interpreted "custody" for habeas purposes broadly and have found a petitioner to be in "custody" where he is "subject both to 'significant restraints on liberty ... which are not shared by the public generally,' along with 'some type of continuing governmental supervision.'" *Obado v. New Jersey*, 328 F.3d 716, 717 (3d Cir. 2003). "Restraints short of incarceration may satisfy the 'in custody' requirement for habeas relief, but the restraint must significantly compromise the individual's 'liberty to do those things which in this country free men are entitled to do.'" *Lopez Lopez v. Charles*, No. 12-cv-101445, 2020 WL 419598, at *3 (D. Mass. Jan. 26, 2020) citing *Jones v. Cunningham*, 371 U.S. 236, 243, 83 S.Ct. 373, 9 L.Ed.2d 285 (1963).

1 This is not a case where Petitioner sought a bond hearing before an
2 immigration judge, and therefore there is no other relief to provide. Petitioner
3 is still *in custody* based on the Order of Supervision (Exh. A, Dkt # 18),
4 which demonstrates that Petitioner is “subject both to ‘significant restraints
5 on liberty ... which are not shared by the public generally,’ along with ‘some
6 type of continuing governmental supervision.’ ” *Obado v. New Jersey*, 328
7 F.3d 716, 717 (3d Cir. 2003). The Order of Supervision, dated November 5,
8 2025, requires regular appearances before ICE, restricts travel to 75 miles
9 outside of the area and to trips of less than 48 hours. Exh. A, Dkt # 18. He
10 also is required to enroll in the Alternatives to Detention program for
11 electronic monitoring. *Id.* He is clearly still in custody and his liberty is
12 restricted, and this case is not moot. *Rodriguez v. Hayes*, 591 F.3d 1105,
13 1118 (9th Cir. 2010) reversed on other grounds by *Jennings v. Rodriguez*,
14 583 U.S. 281, 314, 138 S. Ct. 830, 852, 200 L. Ed. 2d 122 (2018) (“The strict
15 limitations on Petitioner’s freedom, therefore, provide an additional reason
16 why his case presents a live controversy.”); *Orellana Juarez v. Moniz*, No.
17 25-CV-11266-MJJ, 2025 WL 1698600, at *4 (D. Mass. June 11, 2025) (“Mr.
18 Orellana Juarez lives in reasonable fear that a violation may result in physical
19 detention, and ultimately trigger removal proceedings against him.”); *Flores*
20 *Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516, at *5 (D.
21 Mass. June 11, 2025) (“Plainly, these conditions substantially limit Flores
22 Salazar’s liberty and vastly exceed restraints experienced “by the public
23 generally.” ... The record establishes that Flores Salazar remains in “custody”
24 for purposes of § 2241. His petition is not moot.”)

25 Last, the case is not moot under the doctrine of voluntary cessation. The only
26 reason that Petitioner is out of custody is because this Court issued a Temporary
27 Restraining Order, and if this case is dismissed, then nothing prevents Respondents
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1 from re-detaining Petitioner again without any evidence that a third country will
2 accept him for removal. A case becomes moot—and therefore no longer a ‘Case’ or
3 ‘Controversy’ for purposes of Article III—‘when the issues presented are no longer
4 live or the parties lack a legally cognizable interest in the outcome.’ ” *Already, LLC*
5 *v. Nike, Inc.*, 568 U.S. 85, 91, 133 S.Ct. 721, 184 L.Ed.2d 553 (2013) *citing* *Murphy*
6 *v. Hunt*, 455 U.S. 478, 481, 102 S.Ct. 1181, 71 L.Ed.2d 353 (1982). A voluntary
7 change to the challenged conduct does not ordinarily render a case moot because a
8 dismissal for mootness would permit a resumption of the challenged conduct as
9 soon as the case is dismissed.” *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir.
10 2014) *citing* *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307, 132
11 S.Ct. 2277, 2287, 183 L.Ed.2d 281 (2012); *see also* *Friends of the Earth, Inc. v.*
12 *Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 189, 120 S.Ct. 693, 145 L.Ed.2d
13 610 (2000) (“It is well settled that a defendant’s voluntary cessation of a challenged
14 practice does not deprive a federal court of its power to determine the legality of the
15 practice.” (internal quotation marks omitted)). Voluntary cessation can yield
16 mootness if a “stringent” standard is met: “A case might become moot if subsequent
17 events made it absolutely clear that the allegedly wrongful behavior could not
18 reasonably be expected to recur.” *Friends of the Earth*, 528 U.S. at 189, 120 S.Ct.
19 693. The party asserting mootness bears a “heavy burden” in meeting this standard.
20 *Id.*

21 Contrary to Respondent’s arguments, the burden to show mootness is on
22 Respondents and not Petitioner. Dkt # 23 at 2. Respondents cannot meet this heavy
23 burden. Respondents do not even assure the Court that they will not detain Petitioner
24 if the case is dismissed. Dkt # 23 at 2-3. Rather, there was no voluntary change in
25 Respondents’ position because it took this Court’s grant of the temporary restraining
26 order to release Petitioner from detention, and Respondents make no representation
27 that they will not detain Petitioner if there is no such order from the Court. Hence, if
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1 the case is dismissed as moot, it appears that Petitioner is once again subject to
2 detention by Respondents. The only way to assure that unlawful detention will not
3 happen is by ordering that the petition be granted. *See Fed. Bureau of Investigation*
4 *v. Fikre*, 601 U.S. 234, 241 (2024) (“Were the rule more forgiving, a defendant
5 might suspend its challenged conduct after being sued, win dismissal, and later pick
6 up where it left off; it might even repeat ‘this cycle’ as necessary until it achieves all
7 of its allegedly ‘unlawful ends.’”); *Pro Publica, Inc. v. Bligh*, No. 22-CV-1455-
8 BTM-KSC, 2025 WL 2638530, at *4 (S.D. Cal. Sept. 12, 2025) (“The voluntary
9 cessation doctrine’s heavy burden would hardly be a burden at all if the Government
10 could overcome it simply by changing course and then invoking the doctrine.”). A
11 case is only moot where there is no “reasonable expectation” that Respondents’
12 conduct will return to its own ways. *Fed. Bureau of Investigation v. Fikre*, 601 U.S.
13 234, 241 (2024). Respondents have not met this heavy burden, and the petition
14 should be granted.

15 B. PETITIONER AGREES THAT THE CLAIM TO HALT TRANSFER
16 IS NO LONGER BEFORE THIS COURT

17 Next, Respondents argue that Petitioner’s claim regarding transfer is moot.
18 Dkt # 23 at 3. Petitioner agrees the claim is not properly before the Court because
19 while he is in custody for purposes of habeas jurisdiction, he no longer is detained at
20 the immigration detention center.

21 C. THE COURT SHOULD REQUIRE RESPONDENTS TO PROVIDE
22 NOTICE BEFORE THEY DETAIN HIM FOR REMOVAL TO ANY
23 THIRD COUNTRY

24 Last, Petitioner’s claim that notice of third country removal is required is
25 properly before this Court. Respondents state that “[t]he government is continuing
26 to take steps to remove Petitioner to a third country.” Dkt # 23 at 5. However,
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1 Respondents do not state that they will provide notice to Petitioner once, and if,
2 they have third country approval so that he may seek protection, if necessary,
3 before the immigration judge. They do not lay out what the government's
4 procedures are when third country approval is received. As Respondents admit that
5 they are seeking third country approval, then an order to ensure that Petitioner is
6 properly given notice of any third country acceptance before he is removed is
7 necessary. *Azzo v. Noem*, No. 3:25-CV-03122-RBM-BJW, 2025 WL 3535208, at
8 *7 (S.D. Cal. Dec. 10, 2025); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC),
9 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025); *Nguyen v. Scott*, No. 2:25-CV-
10 01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21, 2025); *Ortega v. Kaiser*,
11 No. 25-CV-05259-JST, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025); *Nguyen*
12 *v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *19 (W.D. Wash. Aug. 21,
13 2025); *Van Tran v. Noem*, No. 25-CV-2334-JES-MSB, 2025 WL 2770623, at *3
14 (S.D. Cal. Sept. 29, 2025); *Garcia-Ayala v. Andrews*, No. 2:25-CV-02070-DJC-
15 JDP, 2025 WL 2597508, at *3 (E.D. Cal. Aug. 8, 2025). *See also D.V.D. v. U.S.*
16 *Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 389 (D. Mass.), *opinion clarified*,
17 No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion*
18 *clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025),
19 *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F.
20 Supp. 3d 223 (D. Mass. 2025); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009 (W.D.
21 Wash. 2019).

22 As such, the Court should grant Petitioner's petition for writ of habeas corpus.
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24 Dated: December 15, 2025

Respectfully Submitted,

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains
1580 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
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Counsel for Petitioner