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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Francisco COC TUT, *et al.*,

Petitioners,

v.

Kristi NOEM, Secretary, Department of
Homeland Security, *et al.*,

Respondents.

Case No. 5:25-cv-02701-DOC-AGR

**PETITIONERS' REPLY IN
SUPPORT OF ISSUANCE OF
PRELIMINARY INJUNCTION**

Hearing

Date: Oct. 28, 2025

Time: 9:00 a.m.

Courtroom: 10A

Judge: Hon. David O. Carter

1 **I. INTRODUCTION**

2 Petitioners submit this Reply to the Respondents' Opposition to OSC re:
3 Preliminary Injunction. Dkt. 9. Respondents assert that this case is moot because
4 Petitioners have been provided with bond hearings and most have been granted bond
5 by immigration judges. Dkt. 9 at 2.

6 It is well settled law that a case continues to present a live controversy where
7 the plaintiffs obtained only temporary relief from the court and where defendants
8 have not overcome the high bar for voluntary cessation.

9 The Supreme Court has explained that cases involving this very situation do
10 not become moot simply because a person is released from immigration detention
11 pursuant to a bond based on a court order providing temporary relief. *See Nielsen v.*
12 *Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (claims of plaintiffs released on
13 bond not moot "[u]nless preliminary [relief] was made permanent" because they still
14 "faced the threat of re-arrest and mandatory detention").

15 **II. ARGUMENT – Petitioners' Claims Are Not Moot**

16 While Petitioners have been afforded bond hearings and, with one exception
17 pertaining to Petitioner Juan Marcial Cruz, immigration judges have set bond in their
18 cases, their claims are not moot because Respondents have not disavowed their
19 unlawful interpretation of the detention statutes. Petitioners seek permanent habeas
20 relief and declaratory relief. Such relief will ensure that they will not be redetained
21 during their removal proceedings pursuant to Respondents' policy that all
22 noncitizens who entered the country without inspection or admission are subject to
23 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This is no empty threat.

1 Indeed, Respondents continue to redetain persons like Petitioners and subject them
2 to mandatory detention under § 1225(b)(2)(A), instead of lawfully applying the
3 detention provision at § 1226(a), which allows for their release on bond. *See, e.g.,*
4 Pet. for Writ of Habeas Corpus, *Ortiz Martinez v. Wamsley*, No. 2:25-cv-1822-TMC
5 (W.D. Wash. Sept. 19, 2025), Dkt. 1 ¶¶ 50-55, 62-68 (two petitioners previously
6 released on bond who were rearrested and subjected to Respondents' policy); *see*
7 *also infra* n.1.

8 As the Supreme Court explained in *Preap*, it is precisely because Petitioners
9 remain vulnerable to being redetained under Respondents' interpretation of the
10 detention statutes that the Petitioners' cases are not moot, even after being provided
11 a bond hearing or after being released on bond. *See 586 U.S. at 403* (explaining that
12 "there was at least one named plaintiff with a live claim" where "at least one plaintiff
13 ... had obtained release on bond ... and that release had been granted following a
14 preliminary [court order]").

15 Respondents' actions underscore that a live controversy remains. Rather than
16 backing away from their policy, they continue to apply it in immigration courts
17 throughout the country. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (Sept.
18 5, 2025). By issuing this precedential decision, Respondents have ensured this
19 policy is "binding on all officers and employees of [DHS] or immigration judges in
20 the administration of the immigration laws of the United States. 8 C.F.R. §
21 103.10(b)."

22 As the undisputed facts of this case reflect, at the time that Petitioners filed
23 this case, they were detained pursuant to the unlawful government policy they sought

1 to challenge, which subjected them to mandatory detention without bond. After
2 filing this case and obtaining the TRO, Petitioners were provided with bond hearings
3 and, as noted above, with one exception, have been granted bonds by immigration
4 judges. Petitioners only obtained this relief because this Court ordered temporary
5 relief. *See generally*, Dkt. 8. Respondents however, continue to implement their
6 policy with respect to thousands of individuals who are being arrested nationally.
7 Respondents have defended their policy before this Court. *See e.g.*, Dkt. 6. There is
8 nothing to impede Respondents from redetaining individual Petitioners. *See Preap*,
9 586 U.S. at 403.

10 Courts have repeatedly held that where – as here – the government complies
11 with a district court order that results in release, that does not render a case moot.
12 Instead, the government is free to appeal that order, and a party who received only
13 temporary relief may continue to seek final relief. The Supreme Court has spoken
14 directly to this point. *See id.*; *see also Carafas v. LaVallee*, 391 U.S. 234, 238 (1968)
15 (explaining that, under the federal habeas statute, “once ... federal jurisdiction has
16 attached in the District Court, it is not defeated by the release of the petitioner prior
17 to the completion of proceedings on such application”). Similarly, in *Rodriguez*
18 *Diaz v. Garland*, the Ninth Circuit affirmed that the case was not moot where the
19 government held a bond hearing ordered by the district court. 53 F.4th 1189, 1195
20 n.2 (9th Cir. 2022) (“The government’s compliance with the district court’s order
21 does not moot its appeal.” (citing *United States v. Golden Valley Elec. Ass’n*, 689
22 F.3d 1108, 1112-13 (9th Cir. 2012))).) Thus, “[t]he law is clear that release does not
23 necessarily moot a petition, and because Petitioners could foreseeably be redetained

1 and later face the same [detention] practices that they contest today, they continue
2 to have a legally cognizable interest in the outcome of th[e] suit.” *Moran v. U.S.*
3 *Dep’t of Homeland Sec.*, 2020 WL 6083445, at *7 (C.D. Cal. Aug. 21, 2020).¹

4 At no point have Respondents claimed otherwise. If they did so, they would
5 face a very heavy burden of demonstrating that any such claim of “voluntary
6 cessation” is sufficient to moot out the case. “It is well settled that a ‘defendant’s
7 voluntary cessation of a challenged practice does not deprive a federal court of its
8 power to determine the legality of that practice.’” *Friends of the Earth, Inc. v.*
9 *Laidlaw Envtl. Servs.*, 528 U.S. 167, 189 (2000) (citation omitted). This principle
10 ensures that “a resumption of the challenged conduct” does not recur “as soon as the
11 case is dismissed.” *Knox v. Serv. Emps. Int’l Union*, 567 U.S. 298, 307 (2012).
12 Accordingly, when a party claims mootness because they voluntarily stopped
13 engaging in unlawful behavior, they “bear[] a heavy burden” to demonstrate
14 dismissal is appropriate. *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014)
15 (internal quotation marks omitted); *see also Friends of the Earth*, 567 U.S. at 190

18 ¹ As discussed above, redetention is not speculative. Habeas petitions filed around
19 the country reflect that Respondents are redetaining – and subjecting to their new
20 mandatory detention policy – people previously released. *See, e.g., Hinestroza v.*
21 *Kaiser*, 2025 WL 2606983, at * 1 (N.D. Cal. Sept. 9, 2025) (three petitioners
22 originally released on their own recognizance before being subject to Respondents’
23 mandatory detention policy); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110, at *
1 (N.D. Cal. Sept. 3, 2025) (same for one petitioner); *Ramirez Clavijo v. Kaiser*,
2025 WL 2419263, at * 2 (N.D. Cal. Aug. 21, 2025) (same); *Guzman v. Andrews*,
2025 WL 2617256, at * 2 (E.D. Cal. Sept. 9, 2025) (bond revoked for petitioner
who was later subjected to Respondents’ mandatory detention policy).

1 (defendant “bears the formidable burden of showing that it is absolutely clear the
2 alleged wrongful behavior could not reasonably be expected to recur.”).

3 The Ninth Circuit has identified several factors that determine whether a claim
4 of voluntary cessation moots a case, but none of them support Respondents. *See*
5 *Rosebrock*, 745 F.3d at 972. First, while a claim may be moot if there is a “policy
6 change [that] is evidenced by language that is ... ‘unequivocal in tone,’” *id.* (citation
7 omitted), here, to the contrary, Respondents continue to apply the unlawful practice
8 to noncitizens similarly situated to Petitioners and continue to defend their unlawful
9 practice. “It has long been recognized that the likelihood of recurrence of challenged
10 activity is more substantial when the cessation is not based upon the recognition of
11 the initial illegality of that conduct.” *Armster v. U.S. Dist. Court for the Cent. Dist.*
12 *of Cal.*, 806 F.2d 1347, 1359 (9th Cir. 1986). Indeed, where “a controversy between
13 the parties over the legality of [a practice] still remains,” a case is not moot.” *Walling*
14 *v. Helmerich & Payne Inc.*, 323 U.S. 37, 43 (1944).

15 Likewise, the second and third *Rosebrock* factors weigh against Respondents.
16 There is no “policy change [that] fully addresses all of the objectionable measures
17 that the Government officials took against the plaintiffs in this case.” 745 F.3d at
18 972 (citation modified). Rather than disavowing their policy, Respondents continue
19 to apply it to similarly situated noncitizens, leaving Petitioners’ requests for
20 permanent habeas relief and declaratory relief unaddressed. Moreover, the only
21 reason for Respondents’ cessation is the Court’s TRO. Where defendants act in
22 response to a court order, a case is not moot unless “it is absolutely clear that
23 [defendants’] wrongful activities are not reasonably likely to recur.” *FTC v.*

1 *Affordable Media, LLC*, 179 F.3d 1228, 1238 (9th Cir. 1999) (citation modified)
2 (voluntary cessation pursuant to a preliminary injunction did not render the case
3 moot). But Respondents have “allege[d] nothing that would suggest that it is
4 ‘absolutely clear’” they will not continue to apply their policy, including if and when
5 Petitioners were to be redetained. *Id.*

6 Fourth, the time that has passed since the lawsuit allegedly became moot
7 similarly favors Petitioners: it has only been a matter of days since they were
8 provided with bond hearings before immigration judges, and of course, the unlawful
9 policy they challenge remains agency policy. *See Rosebrock*, 745 F.3d at 972.
10 Finally, Respondents plainly fail the last *Rosebrock* prong, which asks whether the
11 “agency’s officials have not engaged in conduct similar to that challenged by the
12 plaintiff.” *Id.* (citation modified). Respondents do not (and cannot) contest that,
13 both in this District and across the country, they have continued to subject thousands
14 of other similarly situated noncitizens to their policy of considering all noncitizens
15 who entered without admission or parole as subject to detention under §
16 1225(b)(2)(A). *See, e.g., Dkt. 1 at 14*, ¶ 45 (citing cases in this District and across
17 the country).

18 In sum, the law is clear: the Petitioners retain a significant stake in the
19 outcome of this case, and Respondents have made no showing of voluntary cessation
20 that would moot the case.

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III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court issue an order converting the TRO into a preliminary injunction.

Dated: October 24, 2025

Respectfully submitted,
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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains 1,680 words, which complies with the word limit of L.R. 11-6.1.

s/ Niels W. Frenzen

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