

1 CUAUHTEMOC ORTEGA (Bar No. 257443)  
Federal Public Defender  
2 DANIEL LEMER (Bar No. 358266)  
(E-Mail: Daniel.Lemer@fd.org)  
3 Deputy Federal Public Defender  
321 East 2nd Street  
4 Los Angeles, California 90012-4202  
Telephone: (213) 894-2922  
5 Facsimile: (213) 894-0081

6 *Attorneys for Petitioner*

7 TODD BLANCHE  
Deputy Attorney General  
8 BILAL A. ESSAYLI  
First Assistant United States Attorney  
9 DAVID M. HARRIS  
Assistant United States Attorney  
10 Chief, Civil Division  
DANIEL A. BECK  
Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section  
12 ERIKA S. ROJAS (NM Bar No. 146312)  
Special Assistant United States Attorney  
13 Federal Building, Suite 7516  
300 North Los Angeles Street  
14 Los Angeles, California 90012  
Telephone: (213) 894-8974  
15 E-mail: Erika.Rojas@usdoj.gov

16 *Attorneys for Federal Respondents*

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION-RIVERSIDE**

HEN KY TON,  
  
Petitioner,  
  
v.  
  
KRISTI NOEM, et. al.,  
  
Respondents.

Case No.: 5:25-cv-03348-DMG-DSR  
  
**JOINT STATUS REPORT**  
  
Honorable Dolly M. Gee

1 Petitioner Hen Ky Ton and Respondents Kristi Noem, in her official capacity as  
2 Secretary of Homeland Security, Pamela J. Bondi, in her official capacity as Attorney  
3 General of the United States, Thomas Giles, in his official capacity as Los Angeles  
4 Field Office Director, Bureau of Immigration and Customs Enforcement, James  
5 Pilkington, in his official capacity as Assistant Field Office Director, Adelanto  
6 Detention Facility, and “Warden, Geo Group, Inc., Adelanto Detention Facility”  
7 (collectively “Respondents”), through their counsels of record, jointly submit this status  
8 report in response to the Court’s Order re: Motion for Preliminary Injunction dated  
9 December 22, 2025, (Dkt. 12).

10 Petitioner was released on December 22, 2025, as per this Court’s order of the  
11 same day. He has not been redetained. He was initially fitted with an ankle monitor, but  
12 on December 29, 2025, the monitor was removed and his prior order of supervision was  
13 restored. The parties agree that Respondents are in full compliance with this Court’s  
14 preliminary injunction.

15 The parties state their respective positions on mootness below:

16 **A. Petitioner’s Position on Mootness**

17 Petitioner’s release does not render his habeas petition moot. If the case were  
18 dismissed as moot, this Court’s preliminary injunction would no longer be in force,  
19 leaving nothing to restrain the Government from once again unconstitutionally  
20 detaining Petitioner. In *Nielsen v. Preap*, the Supreme Court found the case was not  
21 moot where the plaintiffs challenging their immigration detention were released  
22 pursuant to a preliminary injunction because “[u]nless that preliminary injunction was  
23 made permanent and was not disturbed on appeal, these individuals faced the threat of  
24 re-arrest and mandatory detention.” 586 U.S. 392, 403 (2019). The same is true here.  
25 Similarly, the Ninth Circuit has made clear that a petitioner’s release from custody, or  
26 even deportation, does not automatically render a case moot. *Abdala v. I.N.S.*, 488 F.3d  
27 1061, 1064 (9th Cir. 2007). Because Petitioner could be redetained absent the Court’s  
28

1 injunction, he still has “a legally cognizable interest” in the outcome of his petition.  
2 *Porter v. Jones*, 319 F.3d 483, 489 (9th Cir. 2003).

3 Even if the issuance of a preliminary injunction could be enough to moot the  
4 case, that would not be the end of the analysis. Instead, courts then consider whether  
5 the claims in the petition meet one of the exceptions to the mootness doctrine. One  
6 exception to the mootness doctrine exists where an action is “capable of repetition, yet  
7 evading review.”<sup>1</sup> *So. Pac. Terminal Co. v. Interstate Commerce Comm’n*, 219 U.S.  
8 498, 515 (1911). In *United States v. Bandau*, for example, the Ninth Circuit remanded  
9 a case to determine whether this exception applied to the litigants’ challenge to a  
10 shackling policy—even though the policy had been officially rescinded. 578 F.3d 1064,  
11 1068 (9th Cir. 2009). Remand was necessary, because “anecdotal information strongly  
12 suggest[ed]” that the policy was, in fact, ongoing. *Id.*

13 Here, the facts suggest that dismissal on mootness grounds would set up a cycle  
14 in which Petitioner could be repeatedly detained in an unconstitutional manner,  
15 released pursuant to a new preliminary injunction, then redetained once the preliminary  
16 injunction again rendered his claims moot. Respondents opposed the issuance of a  
17 preliminary injunction, arguing that Petitioner’s detention was constitutional, (Dkt. 8),  
18 and have not indicated that position has changed or provided assurances that Petitioner  
19 will not be redetained. *See Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991)  
20 (finding petition to be moot where petitioner had been released from custody and where  
21 the director of an immigration office signed a declaration under oath assuring that the  
22 petitioner would remain released from custody and on parole absent a change in  
23 circumstances). There is also no indication that ICE has changed its policies or  
24 practices to comply with constitutional requirements as interpreted by this Court and  
25

---

26 <sup>1</sup> Another exception, the voluntary cessation exception, is inapposite here. The  
27 Government did not voluntarily release Petitioner—it did so only after this Court  
28 ordered it to. Even if Petitioner had been voluntarily released, Respondent would still  
bear “[t]he heavy burden of persuading the court that the challenged conduct cannot  
reasonably be expected to start up again.” *Friends of the Earth, Inc. v. Laidlaw  
Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000).

1 many others in this district. *See, e.g., Luu v. Bowen*, No. 5:25-cv-03145, 2025 WL  
2 3552298 (C.D. Cal. Dec. 11, 2025); *Esmail v. Noem*, No. 2:25-cv-08325-WLH-RAO,  
3 2025 WL 3030590 (C.D. Cal., Sept. 12, 2025). If Petitioner’s claims are dismissed as  
4 moot, there is a grave risk that the same violations would occur again and evade  
5 judicial review.

6 Finally, a preliminary injunction is by nature a temporary remedy, intended “to  
7 preserve the relative positions of the parties until a trial on the merits can be held.”  
8 *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). This Court found Petitioner  
9 was likely to succeed on the merits of his case, but noted that significant issues of fact  
10 remained in dispute. (Dkt. 12 at 11-12.) To now find the case moot when Respondents  
11 have not conceded the unconstitutionality of Petitioner’s detention and significant  
12 factual disputes remain unresolved would render the Court’s order more akin to a final  
13 judgment on the merits, which is generally inappropriate at the preliminary injunction  
14 stage. *Camenisch*, 451 U.S. at 395.

15 **B. Respondents’ Position on Mootness**

16 Respondents’ position is that Petitioner’s habeas petition now moot, as Petitioner  
17 has been released under the terms of his prior order of supervision. Accordingly, this  
18 moots the requested preliminary injunction and this habeas petition more generally.  
19 *See, e.g., Munoz v. Rowland*, 104 F.3d 1096, 1097-98 (9th Cir. 1997) (“Because [the  
20 petitioner] has been released..., we can no longer provide him the primary relief sought  
21 in his habeas corpus petition.”); *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)  
22 (“Each of these cases demonstrates what we have said many times before and reiterate  
23 today: Allegations of possible future injury do not satisfy the requirements of Art. III. A  
24 threatened injury must be ‘certainly impending’ to constitute injury in fact.”); *Moises*  
25 *Salomon Zaragoza Mosqueda v. Kristi Noem et al.*, 5:25-cv-002304-CAS-BFM, Dkt.  
26 no. 15 (September 17, 2025 minute order by Hon. Judge Snyder, denying preliminary  
27 injunction and issuing OSC re dismissal for mootness given the petitioners’ receipt of  
28 immigration bond hearings); *Coc Tut v. Kristi Noem*, 5:25-cv-02701-DOC (October 30,

1 2025 order denying preliminary injunction as moot and issuing OSC re: dismissal  
2 where bond hearings were provided to detainees pursuant to TRO); *J.P. v. Santacruz*,  
3 No. 8:25-CV-01640-FWS-JC, 2025 WL 2998305, at \*4 (C.D. Cal. Oct. 24, 2025)  
4 (petitioner “fail[ed] to sufficiently allege an injury or threat of injury because the event  
5 giving rise to the Petition has passed and Petitioner’s alleged threat of future injury is  
6 too speculative and unripe”).

7 While Petitioner argues that anybody released by a court order could still  
8 potentially be redetained in the future, Petitioner ignores the fact that hundreds of  
9 individuals have been released in this district over the past months pursuant to myriad  
10 such orders across various contexts, with their habeas cases thereafter being dismissed  
11 as moot (as noted above)—and yet there has been no corresponding surge of  
12 redetentions of those individuals. Speculating that the Respondents, having been  
13 ordered to release Petitioner and having so released them, would then promptly redetain  
14 the person without lawful basis is not supported by evidence. Furthermore, the  
15 speculative nature of such a redetention scenario makes it particularly unsuited to a  
16 habeas petition, which is directed at *present* custodial constraints. It would enmesh the  
17 District Court in permanent speculative supervision of immigration enforcement.

18 Indeed, if travel documents to Vietnam are secured for this Petitioner in the  
19 future—for example—then there would then be no barrier to the immediate  
20 enforcement of the final removal order. And a District Court cannot delay the  
21 enforcement of a final remove order when it is executable and travel documents to the  
22 home country have been obtained. *See* 8 U.S.C. § 1252(g), which applies “to three  
23 discrete actions[:] . . . [the] ‘decision or action’ to ‘commence proceedings, adjudicate  
24 cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination*  
25 *Comm.* (“AADC”), 525 U.S. 471, 482 (1999) (emphasis in original); *see also Rauda v.*  
26 *Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (§ 1252(g) precludes judicial review of  
27 execution of removal order, including preliminary injunctive relief that delays that  
28 execution pending efforts to overturn the removal order). Particularly for cases

1 involving final removal orders—where the public interest in removal is at its height—  
2 turning immigration habeas petitions into all-purpose speculative supervision of any  
3 immigration enforcement in the future would threaten to consistently run afoul of these  
4 jurisdictional limitations.

5  
6 Respectfully submitted,  
7 CUAUHTEMOC ORTEGA  
8 Federal Public Defender

9 DATED: December 29, 2025

By /s/ Daniel Lemer

10 DANIEL LEMER  
11 Deputy Federal Public Defender  
12 *Attorneys for Petitioner*

13 Respectfully submitted,

14 TODD BLANCHE  
15 Deputy Attorney General  
16 BILAL A. ESSAYLI  
17 First Assistant United States Attorney  
18 DAVID M. HARRIS  
19 Assistant United States Attorney  
20 Chief, Civil Division  
21 DANIEL A. BECK  
22 Assistant United States Attorney  
23 Chief, Complex and Defensive Litigation  
24 Section  
25 ERIKA S. ROJAS  
26 Special Assistant United States Attorney

27 DATED: December 29, 2025

By /s/ Erika S. Rojas

28 ERIKA S. ROJAS  
Special Assistant United States Attorney  
*Attorneys for Federal Respondents*