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

TUAN BUI

Petitioner,

v.

KRISTI NOEM, et al.

Respondents.

No. 5:25-cv-03370-RGK-AJR

**REPLY TO RESPONDENTS' RESPONSE  
TO OSC RE: PRELIMINARY  
INJUNCTION**

Hon. R. Gary Klausner  
United States District Judge

1 **I. DISCUSSION**

2 **A PRELIMINARY INJUNCTION SHOULD ISSUE**

3 Respondents do not dispute any of Bui’s factual allegations and provide no  
4 reason why this Court should disturb its previous ruling that Bui “has shown he is  
5 likely to succeed on the merits of his claims under 8 C.F.R. § 241.13(i) and § 241.4(1).”  
6 *See* Dkt. 16. Instead, the Government maintains that its compliance with this Court’s  
7 temporary order to release Bui and refrain from re-detaining him absent compliance  
8 with these regulations moots the petition. Respondents do not otherwise attempt to  
9 show cause why a preliminary injunction should not issue. As set forth below,  
10 Respondents’ mootness argument is unpersuasive, and a preliminary injunction should  
11 issue.

12 **A. This Court rightly found that the *Winter* factors supported granting a**  
13 **TRO, and those same findings support issuing a preliminary injunction.**

14 The Court has already concluded that the *Winter* factors weighed in favor of  
15 granting a TRO (Dkt. 16), and these factors also govern the analysis for whether a  
16 preliminary injunction should issue. *See Stuhlberg Int’l Sales Co. v. John D. Brush &*  
17 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (explaining that standards for TROs and  
18 preliminary injunctions are “substantially identical”). Despite this, Respondents do not  
19 address any of the *Winter* factors the Court must consider here. *See* Dkt. 20 at 1. By  
20 addressing only mootness in their Response, Respondents have effectively conceded  
21 that a preliminary injunction should issue if the petition is not moot. Absent new  
22 evidence or argument from Respondents as to the *Winter* factors, there is no reason  
23 why this Court need alter its analysis of the factors from its previous order granting the  
24 TRO. If anything, Bui’s likelihood of success on the merits of his claim that there are  
25 no changed circumstances within the meaning of 8 C.F.R. § 241.13(i) warranting his  
26 re-detention has only increased given Respondents’ failure to provide any update about  
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1 a travel document request that ICE allegedly submitted for Bui on November 27, 2025.

2 See Dkt. 9-1 at ¶ 22.

3 **B. The Government’s temporary compliance with a temporary court order**  
4 **does not moot Bui’s petition.**

5 A case only becomes moot when it is “impossible for a court to grant any  
6 effectual relief whatever to the prevailing party.” *Chafin v. Chafin*, 568 U.S. 165, 172  
7 (2013) (citing *Knox v. Service Employees*, 567 U.S. 298, 307 (2012)). “As long as the  
8 parties have a concrete interest, however small, in the outcome of the litigation, the  
9 case is not moot.” *Id.*

10 That concrete interest is clear here: preventing Bui from being re-detained by  
11 ICE unless Respondents (1) show a meaningful change in circumstances making Bui’s  
12 removal significantly likely in the reasonably foreseeable future (8 C.F.R. §  
13 241.13(i)(2)) and (2) promptly provide him with an informal interview to contest the  
14 grounds of his detention (8 C.F.R. § 241.4(l)). See *Preiser v. Rodriguez*, 411 U.S. 475,  
15 487 (1973) (“habeas corpus relief is not limited to immediate release from illegal  
16 custody,” it is also available “to attack future confinement and obtain future releases.”).  
17 Given that concrete interest, finding mootness here would incorrectly conflate  
18 *temporary* with *permanent* relief.

19 A number of judges in this District alone have already rejected, in well-reasoned  
20 opinions, Respondents’ argument that release pursuant to a TRO moots a habeas  
21 petition. Hon. Judge Hsu found that “[t]his argument strains credulity.” *Esmail v.*  
22 *Noem*, \_\_\_ F. Supp. 3d \_\_\_, No. 2:25-CV-08325-WLH-RAO, 2025 WL 3030589, at \*3  
23 n.5 (C.D. Cal. Sept. 26, 2025). “Were [it correct], no court would issue a preliminary  
24 injunction following the grant of a TRO ordering a habeas petitioner’s release, which is  
25 plainly not the case.” *Id.* (citing, e.g., *Sequen v. Kaiser*, No. 25-cv-06487-PCP, 2025  
26 WL 2650637, at \*10 (N.D. Cal. Sept. 16, 2025)). Judge Hsu further pointed out the  
27 distinction between temporary and permanent relief: “Given the TRO’s expiration . . . ,  
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1 the necessity of further injunctive relief maintaining the status quo during the pendency  
2 of litigation means the claim is necessarily *not* moot.” *Id.*

3 Hon. Judge Scarsi came to the same conclusion. In *Cruz*, Judge Scarsi explained  
4 the distinction between temporary and permanent relief and held that a “habeas petition  
5 is not moot where preliminary relief is not made permanent.” *Cruz v. Lyons*, 5:25-CV-  
6 02879, 2025 WL 3443146, at \*2 (C.D. Cal. 2025) (citing *Nielsen v. Preap*, 586 U.S.  
7 392, 403 (2019)). Judge Scarsi added that the Government’s inability to assure they  
8 would not re-detain petitioner further cuts against mootness: “Respondents offer no  
9 indicia that Petitioner would not be subject to detention without a hearing while her  
10 petition is pending in this Court but for preliminary injunctive relief.” Thus, the “case  
11 has not been mooted by Petitioner’s release.” *Id.* Respondents here likewise provide no  
12 such assurances.

13 Hon. Judge Frimpong recently held the same in two cases. *See Ta v. Noem*, 5:25-  
14 cv-02902-MEMF-JDE, Dkt. 19 (C.D. Cal. Dec. 22, 2025); *Pham v. Noem*, 25-cv-  
15 03373-MEMF-PD, Dkt. 17 (C.D. Cal. Jan. 12, 2026). In *Pham*, Judge Frimpong  
16 explained that the temporary nature of TROs cut against mootness because they are  
17 non-permanent. *Id.* at 3. Moreover, challenging re-detention was sufficient to avoid  
18 mootness, particularly because “Respondents have not disavowed their practices, have  
19 not adjusted their policies, and have not assured Petitioner that he is not subject to  
20 redetention.” *Id.* at 4. Judge Frimpong further noted numerous other district court  
21 decisions holding the same. *Id.* at 5. Finally, Judge Frimpong concluded with the  
22 distinction between a “likelihood” of success on the merits, as in a TRO, and the  
23 ultimate merits determination, as occurs at the conclusion of the case. *Id.* at 5-6. For all  
24 those reasons, the TRO did not moot the case. *Id.*

25 Hon. Judge Sykes also found the Respondents’ mootness argument unpersuasive  
26 in *Joudi-Haghighi v. Noem*, No. 5:25-cv-03315-SSS-MAA, 2026 U.S. Dist. LEXIS  
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1 3681 (C.D. Cal. Jan. 8, 2026). Notably, Judge Sykes observed that “[i]n issuing the  
2 TRO, the Court found only that Petitioner had a *likelihood* of success on the merits”:

3 Respondents’ proposed reasoning obviates the distinction  
4 between preliminary relief and final judgment, and it conflates  
5 the standards governing both. Put another way, to treat the  
6 TRO as mooting the case would also imply the Court’s  
7 preliminary findings substitute for disposition on the merits.

8 *Id.* at 9.

9 Finally, Hon. Judge Carter rejected Respondents’ mootness argument in a case  
10 where the parties briefed the mootness issue at some length. *See Pogosian v. Bowen*,  
11 No. 5:25-cv-03380-DOC-DTB, Dkt. 18 (C.D. Cal. Jan. 21, 2026). Judge Carter noted  
12 Respondents’ citations generally dealt with “detainees being denied an opportunity for  
13 a bond hearing”, while the case before the court in *Pogosian*, as here, involved  
14 “Petitioner’s re-detention in violation of applicable procedures, which is an entirely  
15 different scenario.” *Id.* at \*1. Judge Carter noted—and Bui agrees—that the mootness  
16 analysis in such cases is governed by the Supreme Court’s decision in *Nielsen v. Preap*.  
17 *Id.*

18 In *Nielsen*, the Supreme Court rejected the idea that temporary relief of the kind  
19 this Court has provided Bui moots a habeas petition. *Nielsen*, 586 U.S. at 403. The  
20 certified class of petitioners in removal proceedings in *Nielsen* challenged their  
21 mandatory detention, but by the time the class was certified, some of the named  
22 plaintiffs had obtained bond hearings pursuant to a preliminary injunction—the relief  
23 they presumably had been seeking. *Id.* But this did not render their cases moot: “Unless  
24 that preliminary injunction was made permanent and was not disturbed on appeal, these  
25 individuals faced the threat of re-arrest and mandatory detention.” *Id.*

26 Faced with a similar argument by Respondents, Hon. Judge Cartwright clearly  
27 summarized the state of the law on this issue in light of *Nielsen*:

1 Under Supreme Court and Ninth Circuit precedent, temporary  
2 relief, up to and including a petitioner’s release, does not render  
3 a case moot. . . . Once the TRO expires—and absent  
4 ‘permanent’ relief from unlawful detention in the form of a  
5 final judgment—Petitioners could suffer ‘collateral  
6 consequences’ and face an ongoing threat of actual injury.”

7 *Martinez v. Wamsley*, No. 2:25-cv-01822-TMC, 2025 U.S. Dist. LEXIS 201309, at \*9-  
8 \*11 (W.D. Wash. Oct. 10, 2025) (citations omitted) (granting preliminary injunction).

9 Respondents’ citations don’t offer anything to the contrary. In *Coc Tut v. Noem*,  
10 No. 5:25-cv-02701-DOC, Dkt. 13, at \*2-\*3 (C.D. Cal. Oct. 13, 2025), and *Zaragoza*  
11 *Mosqueda v. Noem*, 5:25-cv-002304-CAS, Dkt. 15, at \*2-\*3 (C.D. Cal. Sept. 17, 2025),  
12 petitioners sought and received immigration bond hearings, which formed the basis for  
13 the courts’ denials of the preliminary injunctions. Bui’s case obviously does not involve  
14 bond hearings, and he seeks additional relief beyond the temporary relief provided by  
15 the TRO due to the ongoing risk of re-detention. Cases cited by Respondents plainly  
16 contemplate different circumstances in which the petitioners sought different relief. It is  
17 telling that Respondents do not meaningfully engage with the swell of cases in this  
18 District alone where petitioners have sought and obtained the same temporary relief Bui  
19 has received. *See infra* n.1.

20 Respondents’ citation to *J.P.* is similarly unpersuasive. *J.P. v. Santaacruz*, No.  
21 8:25-CV-01640-FWS-JC, 2025 WL 2998305 (C.D. Cal. Oct. 24, 2025). In *J.P.*,  
22 petitioner’s habeas petition sought not a release from custody but only an “anticipatory  
23 remedy to prevent future detention and/or arrest” at a future DHS appointment. *Id.* at  
24 \*2. When Petitioner had such an appointment *after* the expiration of a TRO and was not  
25 detained, the Court found he had failed to show injury or threat of injury. *Id.* at \*4. By  
26 contrast Bui was *in ICE custody*, having already been re-detained without due process,  
27 when he filed his habeas petition. He was only released after this Court issued a TRO  
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1 ordering Respondents to release him. The risk of unlawful re-detention by ICE remains  
2 substantial and ongoing, particularly given that Respondents still do not concede there  
3 was anything improper about the re-detention Bui’s petition challenges and would be  
4 free to do the same the moment temporary relief expires, absent further order of this  
5 Court.

6 Finally, Respondents’ citation to *Munoz* is particularly inapposite. *Munoz v.*  
7 *Rowland*, 104 F.3d 1096, 1097–98 (9th Cir. 1997). In *Munoz*, the petitioner filed a  
8 habeas petition challenging “indefinite assignment to segregated housing” and raising  
9 certain conditions of confinement claims. *Id.* at 1097-98. When Munoz entered the  
10 prison system, he had been suspected of gang involvement and was consequently kept  
11 in confinement and identified as an associate of a prison gang. *Id.* After the district  
12 court denied his habeas petition, he appealed. *Id.* Because Munoz was subsequently  
13 released on parole, however, the Ninth Circuit dismissed the appeal as moot. *Id.* Munoz  
14 claimed that the appeal wasn’t moot because, if he ever re-entered the prison system, he  
15 would be subject to assignment to segregated housing given his gang affiliation  
16 designation. *Id.* The Ninth Circuit rejected that argument, finding that after his release,  
17 there was no longer a live case or controversy since the “possibility” that Munoz would  
18 be subject to segregated housing based on his “someday return[ing] to prison, is far too  
19 ‘ephemeral to constitute a collateral consequence for mootness purposes.’” *Id.*

20 Here, unlike in *Munoz*, Bui is not challenging an administrative decision or  
21 classification. He challenges his re-detention by Respondents absent compliance with  
22 the requirements of due process and ICE’s own regulations. Unlike the ephemeral  
23 nature of the risk Munoz was facing, Bui’s situation here is clearly distinguishable.  
24 The risk of harm Bui faces is not remotely so speculative as Munoz’s argument that he  
25 might “if he ever re-entered the prison system ... be subject to assignment to segregated  
26 housing.” *Id.* And of course, whether Munoz ever wound up back in prison subjected to  
27 the conditions to which he objected was entirely up to him: he would have had to  
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1 violate his parole or be convicted of a new offense. Bui, by contrast, could easily be re-  
2 detained at his first ICE check-in after the TRO in this case expires, notwithstanding his  
3 ongoing compliance with his OSUP.

4 A preliminary injunction is by nature a temporary remedy, intended “to preserve  
5 the relative positions of the parties until a trial on the merits can be held.” *Univ. of*  
6 *Texas v. Camenisch*, 451 U.S. 390, 395 (1981). To now find the case moot when  
7 Respondents have not conceded the unlawfulness of Petitioner’s detention nor provided  
8 sworn assurances that Respondents will not re-detain him until it secures a travel  
9 document from Vietnam would render the Court’s order more akin to a final judgment  
10 on the merits, which is generally inappropriate at the preliminary injunction stage. *See*  
11 *id.*

12 **C. Even if Respondents could show mootness, an exception applies because**  
13 **these harms are ‘capable of repetition, yet evading review’.**

14 Assuming issuance of a TRO or preliminary injunction somehow rendered the  
15 petition moot, that would still not be the end of the analysis. Courts then consider  
16 whether the claims in the petition meet one of the exceptions to the mootness doctrine.  
17 One well-established exception to the mootness doctrine applies where an action is  
18 “capable of repetition, yet evading review.” *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11  
19 (1975). In *U.S. v. Bandau*, for example, the Ninth Circuit remanded a case to determine  
20 whether this exception applied to the litigants’ challenge to a shackling policy—even  
21 though the policy had been officially rescinded. 578 F.3d 1064, 1068 (9th Cir. 2009).  
22 Remand was necessary there because “anecdotal information strongly suggest[ed]” that  
23 the policy was, in fact, ongoing. *Id.*

24 Here, Respondents offer no new argument or evidence that Bui’s re-detention  
25 was constitutional or conducted in accordance with regulatory requirements, nor have  
26 they offered any assurances that Bui will not be subject to unlawful re-detention in the  
27 near future. *See, e.g., Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991) (finding  
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1 petition to be moot where petitioner had been released from custody *and* where the  
2 director of an immigration office signed a declaration under oath assuring that the  
3 petitioner would remain released from custody and on parole absent a change in  
4 circumstances). Meanwhile, Bui has cited numerous cases in his petition showing that  
5 illegal re-detention of individuals released on supervision is occurring with alarming  
6 frequency. *See* Dkt. 1 at 12 n.1 (citing to 13 such cases between July and October of  
7 2025). And that practice remains ongoing.<sup>1</sup> Were the petition to be dismissed simply  
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10 <sup>1</sup> *See, e.g., Hoang v. Noem*, No. 5:25-cv-03177-JLS-RAO, Dkt. 17 (C.D. Cal.  
11 Jan. 12, 2026) (granting TRO); *Pham v. Noem*, 25-cv-03373-MEMF-PD, Dkt. 17 (C.D.  
12 Cal. Jan. 12, 2026) (granting TRO); *Le v. Noem*, No. 5:25-cv-03586-CV-BFM, Dkt. 13,  
13 (C.D. Cal. Jan. 21, 2026) (granting preliminary injunction); *Decyatnik v. Noem*, No.  
14 2:25-cv-10027-AH-PD, Dkt. 24 (C.D. Cal. Dec. 27, 2025) (granting TRO); *Ta v. Noem*,  
15 No. 5:25-cv-02902-MEMF-JDE, Dkt. 19 (C.D. Cal. Dec. 22, 2025) (granting  
16 preliminary injunction); *Ton v. Noem*, No. 5:25-cv-03348-DMG-DSR, Dkt. 12 (C.D.  
17 Cal. Dec. 22, 2025) (granting preliminary injunction); *Minh Xuan Nguyen v. Noem*, No.  
18 8:25-cv-02654-HDV-DSR, Dkt. 17 (C.D. Cal. Dec. 19, 2025) (granting PI); *Tran v.*  
19 *Noem*, No. 5:25-cv-02881-DOC-KS, Dkt. 22 (C.D. Cal. Dec. 7, 2025) (granting  
20 preliminary injunction); *Morales-Sanchez v. Bondi*, No. 5:25-cv-02530-AB-DTB, Dkt.  
21 22 (C.D. Cal. Dec. 5, 2025) (granting preliminary injunction); *Luu v. Bowen*, 5:25-cv-  
22 03145-MEMF-SP, Dkt. 16 (C.D. Cal. Dec. 11, 2025) (granting TRO); *Farsi v. Noem*,  
23 No. 5:25-cv-03275-WLH-MBK, Dkt. 10 (C.D. Cal. Dec. 10, 2025) (granting TRO);  
24 *Loc Huu Nguyen v. Noem*, No. 5:25-cv-03191-WLH-MAR, Dkt. 9 (C.D. Cal. Dec. 1,  
25 2025) (granting TRO); *Mahsel v. Noem*, No. 5:25-cv-03181-JWH-PD, Dkt. 12 (C.D.  
26 Cal. Dec. 18, 2025) (granting preliminary injunction); *Tabatabaee v. Noem*, 5:25-cv-  
27 02968-JGB-PVC, Dkt. 12 (C.D. Cal. Nov. 25, 2025) (granting preliminary injunction);  
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1 because of a TRO ordering Bui’s release *on a temporary basis*, there would be a grave  
2 risk of the same violations occurring again and evading judicial review. *See Brandau*,  
3 578 F.3d at 1068.

## 4 II. CONCLUSION

5 For all these reasons, the Court should issue a preliminary injunction ordering  
6 that Respondents shall refrain from re-detaining Bui without timely following the  
7 procedures in 8 C.F.R. §§ 241.4(l)(1) and 241.13(i), and that they shall neither remove  
8 him from the country nor take him from the Central District of California until the  
9 resolution of this case.

10  
11 Respectfully submitted,

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14  
15 Dated: January 27, 2026

By: */s/ Colin Threlkeld*

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25 *Vo v. Bowen*, No. 5:25-cv-02880-KK-SSC, Dkt. 10 (C.D. Cal. Nov. 12, 2025) (granting  
26 TRO); *Zadori v. Noem*, 5:25-cv-02832-MRA-DFM, Dkt. 11 (C.D. Cal. Nov. 19, 2025)  
27 (granting TRO); *Koziner Murueta v. Noem*, No. 5:25-cv-02973-VBF-AS, Dkt. 10 (C.D.  
28 Cal. Nov. 12, 2025) (granting TRO).

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Tuan Bui, certifies that this reply brief contains 2,685 words, which complies with the word limit of L.R. 11-6.1.

DATED: January 27, 2026

*/s/ Colin Threlkeld*

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