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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DUNG PHAM,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Case No.: 5:25-cv-03373-MEMF-PD

Reply to Respondents' Response to OSC *re:* Preliminary Injunction

Hon. Maame Ewusi-Mensah Frimpong

DISCUSSION

A preliminary inunction should issue

The government meaningfully disputes neither Pham's allegations nor her likelihood of success on the merits. It says nothing to disturb this court's preliminary finding that Pham "was detained for failing to assist with travel documents *before* she was asked to do so." Order at 10 (emphasis in original). Nor does it confront this Court's determination that "Pham's prolonged illegal detention poses critical risks, both to her own health and to her mother's survival." Order at 2. Instead, the government rests on its conclusion that "the issue is mooted . . . by the TRO's issuance and the subsequent release of Petitioner from ICE custody." Response to OSC at 1. As this Court has already explained in an identical context, that is wrong. "[T]o treat the TRO as mooting the case would also imply the Court's preliminary findings substitute for disposition on the merits." *Phu Van Ta v. Noem et al*, Case No. 5:25-cv-02902-MEMF-JDE, Dkt. No. 19 at 5. But "the TRO, like the requested preliminary injunction, is inherently temporary; neither would outlive this case." *Id.* at 3. The case is not moot—both because there exists further relief that this Court can provide, and because significant constraints on Pham's liberty remain. This Court should grant a Preliminary Injunction.

A. The government's compliance with the temporary restraining order does not moot Pham's petition.

"A case becomes moot—and therefore no longer a 'case' or 'controversy' for purposes of Article III—when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Ta* at 3 (quoting *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2013). So "[a] case might become moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not be reasonably expected to recur." *Id.* (citing *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 120 S. Ct. 693, 700 (2000). But that has not happened here and "the Supreme Court has rejected the idea that temporary relief of the sort this Court

ordered would moot a habeas petition." *Id.* (citing *Nielsen* v. *Preap*, 586 U.S. 392 (2019)).

Pham, like Ta, challenges neither her deportation nor her extended detention. Instead, she is "challenging [her] redetention without certain due process protections." *Ta* at 4. And here, as in *Ta*, the government has not demonstrated that "there is no reasonable expectation that the wrong will be repeated." *Id.* at 3 (citing *United States v. W.T. Grant Co.*, 73 S. Ct. 894, 897 (1953)). Instead, the government "maintain[s] that their interpretation of underlying law is correct and have not adjusted their policies to align them with this Court's analysis or that of numerous other district courts." *Ta* at 4. *See* Response to OSC at 1 ("Respondents continue to oppose the issuance of a preliminary injunction pursuant to the legal positions stated in the Respondent's brief in opposition [to Petitioner's application for a TRO], and the Respondents maintain that those positions warrant denying a preliminary injunction on the merits . . .") Further, as set forth in more detail *infra*, far from "sworn assurances" from the government that "the alleged wrong w[ould] not recur," ICE has instead placed Pham on electronic monitoring after more than three decades of compliance without it. *Ta* at 3 (quoting *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991). Just like the plaintiffs in *Preap*, who obtained bond hearings pursuant to a preliminary injunction, Pham continues to "face the threat of [illegal] re-arrest and . . . detention" absent the issuance of a preliminary injunction. *Ta* at 3 (quoting *Preap*, 586 U.S. at 402). Her case is not moot.

More fundamentally, the government's position misunderstands the nature of temporary relief. The district court in *Esmail v. Noem*, No. 2:25-CV-08325-WLH-RAO, 2025 WL 3030589 (C.D. Cal. Sep. 26, 2025) explained: "The government's argument that the Court's granting of a TRO mooted the habeas case "strains credulity." *Ta* at 4 (quoting *Esmail* at *3 n.5). That is because under the government's theory, "no court would issue a preliminary injunction following the grant of a TRO ordering a habeas petitioner's release, which is plainly not the case." *Ta* at 4-5 (quoting

Esmail at *3 n.5). And as this Court observed, "there are several other decisions in the same vein." *See Ta* at 5 (collecting cases); *see also Cruz v. Lyons*, Case No. 5:25-cv-02879-MCS-MBK, 2025 WL 3443146, at *2 (holding that "the release from detention the Court's temporary restraining order afforded is just that—temporary.")

Conversely, the government offers (1) a case mooted by the petitioner's *voluntary notice of dismissal*, *Moises Salmon Zaragoza Mosqueda v. Noem et al.*, 5:25-cv-002304-CAS-BFM, Dkt. No. 15, 16; (2) a case mooted after the petitioner sought only individualized bond hearings which they then received, *Coc Tut v. Noem*, 5:25-cv-02701-DOC; and (3) a 1984 case confronting the "geological and geophysical exploration . . . [of] aquatic life." *United States v. Geophysical Corp. of Alaska*, 732 F.2d 693, 698 (9th Cir. 1984). Response to OSC at 1. These cases contemplate different issues in which the petitioners sought different relief. They do not meaningfully engage with the swell of cases cited by this Court in *Ta* (and *Ta* itself) in which the petitioners sought and were afforded the same temporary relief Pham has now received.

Pham has been granted temporary relief by this Court. "The necessity of further injunctive relief maintaining the status quo during the pendency of litigation means [her] claim is necessarily *not* moot." *Ta* at 4-5 (quoting *Esmail* at *3 n.5) (emphasis in original).

B. The government's continued restraint on Pham's liberty provides an additional reason this case is not moot

As set forth in Pham's Petition, a final order of removal was issued against Pham on August 5, 1992. *See* Petition at 3. After roughly 90 days of detention, Pham was then released on supervision. She complied with the terms of that supervision without fail, appearing for each of her regularly scheduled ICE check-ins over a more than three-decade period. *Id.* Despite this, ICE placed Pham on electronic monitoring as of October 13, 2025, three weeks prior to re-detaining her. After her release from custody on December 23, 2025, ICE informed her she would be required to comply with electronic monitoring of her location. As set forth below, this constraint on Pham's

liberty is illegal. *See infra* Section C. But, relevant here, it means that Pham's petition is not moot for an additional, independent reason: "[P]etitioner is in custody for purposes of the habeas corpus statute." *Hensley v. Municipal Court, San Jose Milpitas Judicial Dist., Santa Clara County, California*, 411 U.S. 345, 351 (1973).

In *Jones v. Cunningham*, 371 U.S. 236 (1963) the Supreme Court considered whether a petitioner "who has been placed on parole is 'in custody' within the meaning of [28 U.S.C. § 2241]" such that "a Federal District Court has jurisdiction to hear and determine his charge that his state sentence was imposed in violation of the United States constitution." It determined that the answer was yes, explaining: "English courts have long recognized the writ as a proper remedy even though the restraint is something less than close physical confinement . . . Similarly, *in the United States the use of habeas corpus has not been restricted to situations in which the applicant is in actual, physical custody*." *Id.* at 238-39 (emphasis added). Then, in *Hensley*, the Court considered "whether a person released on his own recognizance is 'in custody' within the meaning of the federal habeas corpus statute. 411 U.S. at 345. Again, it answered yes. *Id.* The Court explained:

> First, [petitioner] is subject to restraints not shared by the public generally, that is the obligation to appear at all times and places as ordered by any court or magistrate of competent jurisdiction . . . He cannot come and go as he pleases. His freedom of movement rests in the hands of state judicial officers, who may demand his presence at any time and without a moment's notice. Disobedience itself is a criminal offense.

Id. at 351 (cleaned up). All of this holds true for Pham. And electronic monitoring subjects her to an additional, significant restraint not shared by an individual (like Hensley) released on their own recognizance, let alone "the public generally."

Courts throughout the Central District have reached the same conclusion. In *Lyons*, 2025 WL 3443146, at *3, the Court found that "the imposition of additional constraints on Petitioner's liberty following her detention, including electronic monitoring, supports a conclusion that she remains in custody." *See also Hogarth v.*

Santacruz, Case No. 5:35-cv-09472-SPG-MAR, 2025 WL 3211461, at *13 ("Petitioner now also wears an electronic monitor . . . These restrictions are sufficient to demonstrate that he is in custody. . .")

"Custody encompass[es] circumstances in which the state has 'imposed significant restraints on [a] petitioner's liberty." *Munoz v. Smith*, 17 F. 4th 1237, 1241 (9th Cir. 2021) (quoting *Cunningham*, 371 U.S. at 242). Because Pham is subject to a significant restraint on her liberty, she remains in custody. For this reason, too, her petition is not moot.

C. This Court should issue a preliminary injunction returning Pham to the status quo of her previous release

In the parties' Joint Status Report, the Government asserts: "The addition of ankle monitoring is permissible under ICE's discretion for supervised release." JSR at 3. True, ICE has discretion with regards to individuals, like Pham, released on OSUP. But it abused that discretion here. The timeline of Pham's compliance, placement on electronic monitoring, detention, and release following this Court's Order is instructive.

First, it is undisputed that Pham appeared for each of her scheduled check-ins with ICE over a span of more than three decades. *See* Petition at 5 (saying this); *see generally* Opposition (not disputing it). Second, Pham was placed on electronic ankle monitoring on October 13, 2025. *See* Petition at 5. Third, Pham then received a notification instructing her to return for a second, unscheduled check-in less than three weeks later, on October 31, 2025. Pham did so, and was promptly detained. *Id.* Given this sequence of events—32 years of non-detention without electronic monitoring, and then detention three weeks after its introduction—it is clear that Pham was placed on electronic monitoring in anticipation of imminent detention and removal. But this Court has now determined (1) Pham's detention was "unlawful"; and (2) there does not exist "any reason to believe Pham's removal . . . will occur in the reasonably foreseeable future." Order at 12. The government has provided this Court no reason to disturb these findings. *See generally* Response to OSC (focusing on the purported mootness of

Pham's petition). And where, as here, detention was unlawful, removal is not foreseeable, and Pham has demonstrated unwavering compliance with her supervised release, the proper remedy is to return Pham to the status quo prior to her illegal detention. *See e.g., Ton v. Noem*, No. ED CV-25-2248-DMG, at 13 ("Respondents shall restore Petitioner . . . to the *status quo ante* by immediately releasing Ton from custody, subject to the conditions of his prior OSUP."); *Murueta v. Noem et al.*, No. 5:25-cv-2973-VBF-AS, Dkt. No. 10 at 1 ("Respondents are ordered to . . . [r]estore Petitioner to the status quo prior to her re-detention by reinstating her prior order of supervision.") The reasons animating Pham's placement on electronic monitoring on October 13, 2025—imminent detention and removal—no longer exist. *See* Order at 12. So the status quo of Pham's prior OSUP is the more than three decades (from August 1992 to October 2025) she spent in full compliance without electronic monitoring.[1]

In sum, the government says it is not "require[d] that Petitioner be subject to the same conditions of her previous release." JSR at 3. But the only thing that has changed between Pham's previous release and today is that, in between, the government illegally detained her without due process. Order at 3. The government may not exercise its discretion to punish Pham for its own illegal acts.

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[1] It bears mention that a growing body of literature recognizes the significant physical, emotional, and financial costs attached to electronic monitoring. As one scholar explained, "[w]earing an ankle monitor is a little bit like being required to wear a criminal record on your body." Lauren Kilgour, *The ethics of aesthetics: Stigma, information, and the politics of electronic ankle monitor design*, The Information Society, 36(3), 131–146 (2020). *See also* Albert Cahn, *Ankle monitors can hold captives in invisible jails of debt, pain, and bugged conversations*, Think: Opinion, Analysis, Essays (Nov. 6, 2019), https://www.nbcnews.com/think/opinion/ankle-monitors-can-hold-captives-invisible-jails-debt-pain-bugged-ncna1076806, *last visited January 7, 2026* (noting that ankle monitors "open[] up wearers to discrimination by employers, law enforcement and members of the public" and citing a finding that "[m]ore than 1 in 4 of those on electronic monitoring report being fired or suspended from at least one job as a result.") *See also id.* for a discussion of physical harms, including "an array of medical complications, . . cuts and bruises and impaired circulation. . ." The well-established emotional and physical consequences of electronic monitoring are consistent with Pham's experience since her release.

CONCLUSION

For all these reasons, the Court should issue a preliminary injunction ordering that the government:

- Shall not re-detain Pham without timely following the procedures in U.S.C. §§ 241.4(/)(1) and 241.13(i);
- Shall subject Pham to the same conditions of her previous release such that the condition of electronic monitoring is removed;
- Shall neither remove Pham from this country nor take her from the Central District of California until the resolution of this case.

Respectfully submitted,

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DATED: January 8, 2026

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Dung Pham, certifies that this reply brief contains 2,264 words, which complies with the word limit of L.R. 11-6.1.

DATED: January 8, 2026

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