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8 **United States District Court**
9 **Central District of California**

10 Ambartsoum Pogolian,
11 Petitioner,
12 v.
13 Kristi Noem, et. al.
14 Respondents.

No. 5:25-cv-03380-DOC-DTB
**Brief in Support of
Preliminary Injunction**

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I. Introduction

This Court previously issued a well-reasoned decision granting Pogosian a temporary restraining order (TRO). In that TRO, the Court noted the Government had three weeks to respond to the application, but never did. Docket 6, p. 7. The Court added that “[i]f the government wishes to rebut Petitioner’s claims they will have opportunity to do so at the preliminary injunction stage.”

They have not. Instead, they solely raise a misguided mootness argument. Docket 11, p. 2. Pogosian replies in support of a preliminary injunction and to explain why the mootness argument is far afield.

II. Arguments

A. The Court was correct on the merits of the TRO, and those same findings justify the preliminary injunction.

The Government does not address the merits of the preliminary injunction, and therefore, they have waived any arguments. Nonetheless, the Court was correct to find the TRO factors satisfied.

Those four factors are: (1) likelihood of success on the merits; (2) irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the petitioner’s favor; and (4) an injunction is in the public interest. *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843-44 (9th Cir. 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). The third and fourth factors merge where, as here, the Government is a party. *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)).

1 These same standards govern both TROs and preliminary
2 injunctions. *See O.M. v. Nat'l Women's Soccer League, LLC*, 541 F. Supp.
3 3d 1171, 1177 (D. Or. 2021).

4 **1. Pogosian is likely to succeed on the merits.**

5 As this Court already held, Pogosian is likely to succeed on the
6 merits. Docket 6, p. 3-6. In particular, the Government bears the burden
7 “to establish changed circumstances that make removal significantly
8 likely in the reasonably foreseeable future and have not done so.” *Id.* at 5;
9 *see also* 8 C.F.R. § 241.13. That is correct.

10 Pogosian has been in the United States for decades. In 2018, ICE
11 detained him and ordered him removed. But they released him in August
12 2018, because they could not deport him to Armenia and could not obtain
13 any travel documents. Docket 1, p. 2. Now, they’ve detained him a second
14 time and again failed to secure travel documents. *See id.*

15 The reason for that comes from the unique citizenship problems
16 posed by republics of the former Soviet Union regarding their diaspora.
17 Armenia in particular, adopted its constitution and citizenship laws in
18 1995. And those provide for citizenship for:

19 (1) citizens of the former Armenian Socialist Republic
20 permanently residing on the territory of the Republic of Armenia
21 who until the enactment of the Constitution has not acquired the
22 citizenship of the another State or has rejected that citizenship
23 within one year from the day of the enactment of this Law;

24 (2) Stateless persons or former citizens of other USSR republics
25 who are not foreign citizens permanently residing in the RA and
26 before 31 December 2003 have applied for the acquisition of the
27 RA citizenship (amended on 20 March 2002);

(3) Citizens of the former Armenian SSR residing [since] 21
September 1991 outside the Republic of Armenia who [had not]
acquire[d] citizenship of another state, as well as citizens of the
former Armenian SSR who [were] Armenians by origin and who
[had] resided before outside Armenia and [had] not acquire[d]

1 citizenship of another state and prior to the enactment of the
2 present Law were on the consular record.

3 *See On the Citizenship of the Republic of Armenia*, Article 10 (1995) (no
4 official translation, as amended), available here;¹ *see also* European
5 University Institute, EUDO Citizenship Observatory, *Country Report:*
6 *Armenia*, 7 (2010), available here (explaining the third option).

7 Because Pogosian came to the United States in 1992, he appears to
8 be caught in a no man's land of this law. He was not physically present in
9 Armenia, so the residency options do not apply. And he was not residing
10 outside Armenia since September 1991, so that doesn't appear to apply
11 either. The Armenian government seems to agree, given their refusal to
12 provide him travel documents.

13 Therefore, there is no significant likelihood of removal in the
14 reasonably foreseeable future. The Government doesn't even attempt to
15 meet it's burden to show otherwise. This establishes a violation, as the
16 Court noted, of 8 C.F.R. § 241.13 because there are no changed
17 circumstances that make Pogosian's removal likely. And it establishes a
18 violation of Due Process under *Zadyvadas v. Davis*, 533 U.S. 678 (2001)
19 for the same reasons.

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24 ¹ These laws have changed repeatedly. As a result, without a country-
25 specific legal expert, it's impossible to say any of this definitively. Pogosian
26 simply notes this to explain why the Government has been unable to deport
him. Of course, however, *why* the Government can't deport him isn't
dispositive to the claim, it's *that* the Government has been unable to deport
him.

1 **2. Pogosian will suffer irreparable harm absent a**
2 **preliminary injunction.**

3 Illegal confinement is quintessentially irreparable harm, because
4 “the deprivation of constitutional rights unquestionably constitutes
5 irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
6 2012). Because Pogosian suffers a deprivation of Due Process, this factor
7 favors him. Docket 6, p. 6.

8 **3. The balance of equities and public interest favor**
9 **Pogosian.**

10 It is “always in the public interest to prevent the violation of a
11 party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. Therefore,
12 because “Petitioner has demonstrated a likelihood of success on the
13 merits . . . [,] the third and fourth factors also tilt in his favor.” Docket 6,
14 p. 6.

15 **B. The Government’s mootness argument is misguided.**

16 The Government claims the preliminary injunction request is moot
17 in light of the TRO. Docket 11, p. 2. That argument fails on numerous
18 levels.

19 First, this Court recently twice rejected the Government’s attempts
20 to raise this argument. *See Tran v. Noem et. al.*, 25-cv-02881, Dockets 14,
21 22 (C.D. Cal. 2025); *Trifonov v. Noem et. al.*, 25-cv-03460, Dockets 6, 11
22 (C.D. Cal. 2025).

23 Second, the TRO will expire. At that point, absent a preliminary
24 injunction, Pogosian will once again be left without any protection from
25 unconstitutional re-detention. Therefore, “[g]iven the TRO’s expiration . .
26 ., the necessity of further injunctive relief maintaining the status quo

1 during the pendency of litigation means the claim is necessarily *not*
2 moot.” *Esmail v. Noem*, No. 2:25-CV-08325, 2025 WL 3030589, at *3, n.5
3 (C.D. Cal. 2025).

4 Third, Judge Hsu recently held this argument “strains credulity.”
5 *Id.* If the Government were correct, “no court would issue a preliminary
6 injunction following the grant of a TRO ordering a habeas petitioner’s
7 release, which is plainly not the case.” *Id.* (citing cases). Indeed, taken to
8 its logical conclusion, no court would ever grant *any* preliminary
9 injunction following a TRO, because a plaintiff will have necessarily
10 already received the requested relief.

11 Fourth, all that is required to avoid mootness is something that
12 could be addressed by success on the petition. *See Abdala v. INS*, 488
13 F.3d 1061, 1064 (9th Cir. 2007). Here, that something is obvious:
14 preventing Pogosian’s re-detention unless the Government has travel
15 documents and a travel plan in hand.

16 This is particularly true because, after the expiration of the TRO,
17 without an injunction, Respondents would be free to return to the
18 unconstitutional situation that existed before this Court intervened. And
19 “defendants who argue that a case has been mooted by their voluntary
20 cessation of allegedly wrongful conduct must meet a very high burden
21 because a mootness-based dismissal would ‘leave the defendant . . . free
22 to return to his old ways.’” *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d
23 1125, 1130 n.3 (9th Cir. 2005) (citations omitted). The Government’s brief
24 falls well short of meeting that very high burden.

25 Fifth, most of the Government’s mootness citations involved the
26 deprivation of an immigration bond hearing and the petitioner

1 subsequently being afforded one. In other words, petitioners requested
2 bond hearings and got them—the entire requested relief. But here, the
3 Government doesn't even claim it complied with due process, nor does it
4 offer assurances that it will follow due process or its own regulations. It
5 doesn't even promise it won't re-detain Pogosian after the TRO expires.

6 Interestingly, in response to undersigned counsel last pointing out
7 this deficiency in the Government's argument, they've added a citation to
8 *Munoz* for the proposition that when a petitioner has been released, the
9 Court can no longer provide the preliminary relief sought. Docket 11, p. 2
10 (*citing Munoz v. Rowland*, 104 F.3d 1096, 1097-98 (9th Cir. 1997)).

11 But in *Munoz*, a state habeas petitioner complained of various
12 special housing unit conditions, and his release from prison mooted that
13 request. *Munoz*, 104 F.3d at 1097-98. It's hard to see how that logic
14 applies here. To the contrary, the Ninth Circuit has explicitly held that
15 even a deportation doesn't necessarily moot a § 2241 immigration habeas:
16 "Deportation from the United States after filing a habeas petition does
17 not necessarily moot a petitioner's claim." *Abdala*, 488 F.3d at 1063. The
18 real question, as always, is whether there remains consequences or
19 something to be addressed by the Court in granting relief. *See id.* at 1064.

20 Finally, even if the case was moot, an exception exists for claims
21 "capable of repetition, yet evading review." *So. Pac. Terminal Co. v.*
22 *Interstate Commerce Comm'n*, 219 U.S. 498, 513 (1911). The sheer volume
23 of these cases only prove this exception would apply here: ICE is likely to
24 arrest individuals without any travel documents or plans to effectuate
25 their deportation.

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1 At bottom, this mootness argument is gravely wrong. For months
2 now, the US Attorney’s Office has been raising this argument, and each
3 time, they’ve lost. The one court that addressed this argument head on
4 told them months ago that it “strains credulity.” *Esmail*, 2025 WL
5 3030589, at *3, n.5. At a certain point, it borders on the frivolous.

6 **III. Conclusion**

7 For the foregoing reasons, and those in the Court’s prior order, this
8 Court should issue the preliminary injunction.

9 Respectfully submitted,
10 Cuauhtemoc Ortega
11 Federal Public Defender

12 Dated: January 7, 2026

13 By: /s/ Dale F. Ogden
14 Dale F. Ogden
15 Deputy Federal Public Defender
16 Attorneys for Petitioner

17 **IV. Certificate of Compliance**

18 The undersigned certifies that this filing contains 1,676 words,
19 which complies with the word limit of L.R. 11-6.1.

20 Dated: January 7, 2026

21 /s/ Dale F. Ogden
22 Dale F. Ogden
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