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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 WENJUAN WANG)
12)
13 PETITIONER)
14 v.)
15 FRED FIGUEROA, in his official capacity as)
16 Warden of Eloy Detention Center;)
17 John E. Cantú, in his official capacity as the Field)
18 Office Director of the ICE Enforcement and)
19 Removal Operations (ERO) Phoenix Field Office)
20 KRISTI NOEM, in her official capacity as)
21 Secretary of DHS;)
22 RESPONDENTS)

Case No:
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

23 **I. INTRODUCTION AND REQUESTED RELIEF**

24 Petitioner Wenjuan Wang (“Petitioner”) respectfully moves this Court pursuant to
25 Federal Rule of Civil Procedure 65(b) for an emergency Temporary Restraining Order (“TRO”)
26 directing her immediate release from custody at Eloy Detention Center, to be issued without
27 prior notice to Respondents due to the immediate and irreparable harm she faces, or
28 alternatively, ordering Respondents to appear and show cause within 48 hours why Petitioner
should not be released pending adjudication of this Habeas action.

1 Petitioner has been detained since July 2, 2025, despite the Immigration Judge's order
2 terminating removal proceeding on August 22, 2025, which explicitly held that Petitioner is
3 "clearly and beyond a doubt entitled to admission to the United States and is not inadmissible as
4 charged." ICE nevertheless refuses to release Petitioner, citing only its intent to appeal, even
5 though no automatic stay applies to custody and continued detention serves no lawful purpose.

6 Each day of detention exacerbates Petitioner's serious medical conditions, including
7 hypothyroidism, anemia, hyperlipidemia, and xerosis cutis, none of which existed prior to
8 custody and all of which have been documented by the facility. Prolonged detention is also
9 severe emotional hardship to Petitioner's US Citizen husband, Michael Constantine.

10 Immediate Judicial Intervention is necessary because Petitioner faces irreparable harm to
11 her health and family integrity, while ICE faces no cognizable hardship from release.
12 Accordingly, this Court should grant emergency relief by ordering (1) Petitioner's immediate
13 release (2) Respondents to show cause within 48 hours why she should remain in custody.

14 **II. FACTUAL BACKGROUND**

- 15 1. Petitioner is a native and citizen of China, last paroled into the U.S. on February 3, 2023.
- 16 2. On June 14, 2025, she entered into a bona fide marriage with U.S. Citizen Michael Con-
17 stantine, and filed a Form I-130 (Petition for Alien Relative) on July 29, 2025 and a Form
18 I-485 (Application to Register Permanent Residence or Adjust Status) on August 6, 2025,
19 both of which remain pending with USCIS.
- 20 3. On July 2, 2025, she was detained by ICE.
- 21 4. On August 22, 2025, Immigration Judge Nicolas Orechwa granted Petitioner's Motion to
22 Terminate Removal Proceedings, finding her admissible and not removable as charged.
- 23 5. Despite termination of proceedings, Petitioner remains detained, with ICE stating only its
24 intent to appeal to BIA.
- 25 6. Petitioner suffers from documented medical harm, hypothyroidism, anemia, hyper-
26 lipidemia, and xerosis cutis, conditions only developed and exacerbated by detention.
27 Prolonged custody serves no lawful purpose and violates the Fifth Amendment Due Pro-
28 cess Clause.

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III. LEGAL STANDARD

A temporary restraining order prevents irreparable harm until a hearing can be held on a preliminary injunction applicable. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974) . A temporary restraining order may be issued without providing the opposing party an opportunity to be heard where “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition,” and “the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civi. P. 65(b)(1).

The standards for issuing a temporary restraining order and a preliminary injunction are the same. *See, e.g., Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F. 3d 832, 839 n.7 (9th Cir. 2001). The Ninth Circuit has established two sets of criteria for evaluating a request for injunctive relief. *Earth Island Inst. v. United States Forest Serv.*, 351 F. 3d 1291, 1297 (9th Cir. 2003). Under the traditional criteria, a movant must show (1) a strong likelihood of success on the merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardship favoring the plaintiff and (4) advancement of the public interest. *See. E.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,20 (2008).

Alternatively, a temporary restraining order or preliminary injunction may be appropriate when a movant raises “serious questions going to the merits” and the “balance of hardship tips sharply in the petitioner’s favor,” provided that Petitioner is able to show there is a likelihood of irreparable injury and that the injunction is in the public interest. *Alliance for Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1131 (9th Cir.2011). We demonstrate below that all these requirements are met.

IV. ARGUMENTS

A. Petitioner Raises Serious Questions as to the Legality of Her Continued Detention, and the Balance of Hardships Tips Sharply in Her Favor

1 Petitioner presents at minimum “serious questions going to the merits” of whether her
2 ongoing detention is lawful in light of 8 C.F.R. § 1003.6 and the August 22, 2025 Immigration
3 Judge’s order.

4 Under § 1003.6(a), certain immigration judge decisions are subject to an automatic stay
5 when appealed to the BIA. However, the regulation expressly applies to final orders of removal
6 and other merits decisions in which DHS has prevailed. Here, Judge Orechwa terminated
7 proceedings, finding Petitioner “clearly and beyond a doubt entitled to admission to the United
8 States and not inadmissible as charged.” That order did not create a removal order against
9 Petitioner, but instead stripped DHS of jurisdiction absent USCIS action on her pending family-
10 based petitions. As Judge Orechwa explained, “acceptance by USCIS of the Respondent’s I-485
11 and I-830 [sic: I-130] without prior approval of the I-830 [sic: I-130] causes this Court to lose
12 jurisdiction over this matter. Should USCIS deny the respondent’s petition(s), DHS may refile an
13 NTA.”

14 Accordingly, ICE’s reliance on an “intended appeal” does not automatically authorize
15 Petitioner’s continued custody. DHS retains the right to seek review, but it may not indefinitely
16 detain an individual who has been found not removable, particularly where no statutory or
17 regulatory authority mandates detention during a DHS appeal of a termination order. At a
18 minimum, this unresolved question of whether ICE may detain Petitioner solely on the basis of
19 an intended BIA appeal raises a substantial legal issue that warrants immediate judicial review.

20 The balance of hardships tips sharply toward Petitioner. She is suffering escalating
21 medical harm and emotional hardship from detention, while ICE suffers no meaningful prejudice
22 from release. Petitioner is married to a U.S. citizen, has filed an I-130 and I-485, owns property,
23 and has no criminal history. ICE’s enforcement interests are fully protected by DHS’s ability to
24 refile charges if USCIS denies her petitions. In contrast, every additional day of confinement
25 compounds Petitioner’s physical injury and constitutional deprivation.

26 For these reasons, Petitioner easily satisfies the alternative Ninth Circuit standard: she
27 raises serious legal questions, demonstrates that the hardships fall overwhelmingly in her favor,
28 and shows that detention serves no lawful government purpose.

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B. Petitioner is Suffering Ongoing Irreparable Harm from Continued Detention

Petitioner’s ongoing confinement is inflicting irreparable physical, psychological, and constitutional injury. The Ninth Circuit has consistently recognized that unlawful detention and the deprivation of constitutional rights constitute irreparable harm. See *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“[I]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury’”).

Petitioner has developed hypothyroidism, anemia, hyperlipidemia, and xerosis cutis while detained, conditions she did not suffer prior to custody. These medical harms are ongoing and worsening, and continued detention threatens long-term physical damage that cannot be undone by later judicial review. See *Lopez-Marroquin v. Barr*, 955 F.3d 759, 765 (9th Cir. 2020) (granting emergency relief in immigration detention where “continued custody would cause irreparable harm to health and wellbeing”).

In addition to her medical decline, detention has caused profound emotional hardship to her U.S. citizen husband and destabilized her family life. Every additional day of confinement exacerbates this harm, stripping Petitioner of her liberty, her health, and her ability to pursue adjustment of status as the spouse of a U.S. citizen.

By contrast, ICE faces no comparable harm if Petitioner is released. Release would not prejudice DHS’s right to pursue its intended BIA appeal, nor impede enforcement if USCIS ultimately denies Petitioner’s adjustment application. The only effect of release is to prevent unlawful and injurious detention.

Thus, the record establishes not only “serious questions going to the merits” but also irreparable harm that is immediate, concrete, and ongoing. Judicial intervention is urgently required.

C. The Public Interest Strongly Favors Petitioner’s Release

The public interest is always served by the protection of constitutional rights and by ensuring that the government acts within the bounds of lawful authority. See *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“It is always in the public interest to prevent the violation of a party’s constitutional rights”). Here, continued detention despite an Immigration

1 Judge's termination order undermines the rule of law and erodes public confidence in fair and
2 lawful immigration enforcement.

3 Moreover, detention consumes scarce government resources without any corresponding
4 benefit to the public. ICE has already acknowledged that its sole basis for continuing to hold
5 Petitioner is its intent to appeal the IJ's decision. Yet, as the IJ expressly recognized, DHS
6 retains full authority to refile an NTA if USCIS denies Petitioner's pending I-130 or I-485.
7 Release therefore imposes no risk to the integrity of the immigration system, while preventing
8 the waste of taxpayer dollars on unnecessary detention.

9 Finally, the public interest favors family unity and the avoidance of needless harm to
10 U.S. citizens. Petitioner's husband, a U.S. citizen, suffers ongoing hardship from his wife's
11 confinement. The immigration laws are designed to preserve family stability, not to needlessly
12 disrupt it when an individual has already been deemed "clearly and beyond a doubt entitled to
13 admission" by a federal immigration judge.

14 In short, Petitioner's release advances the public interest by safeguarding constitutional
15 rights, conserving government resources, and protecting U.S. citizen family members from
16 gratuitous harm.

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18 **V. REQUESTED RELIEF**

19 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 20 1) Order Respondents to immediately release Petitioner from ICE custody upon issuance of
21 this Court's order, subject to reasonable conditions of supervision as the Court deems ap-
22 propriate; or
23 2) In the alternative, issue an Order to Show Cause requiring Respondents to appear before
24 this Court within forty-eight (48) hours and demonstrate why Petitioner should not be re-
25 leased pending resolution of this habeas action; and
26 3) Grant such other and further relief as the Court deems just and proper.

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28 Respectfully submitted.

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Dated: September 10 , 2025

Paramount Law Group



Adele Yan, Esq.
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