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DETAINED

4
5 **THE UNITED STATES DISTRICT COURT**
FOR THE WESTERN DISTRICT OF WASHINGTON
6 **SEATTLE, WASHINGTON**

7 DAVID LAHAMENDU,

8 Petitioner,

9 vs.

10 PAMELA BONDI, United States Attorney
General;
11 KRISTI NOEM, Secretary of U.S. Department
of Homeland Security;
12 TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
13 CAMMILLA WAMSLEY, Seattle Field Office
Director, Immigration and Customs
Enforcement;
14 BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

15 Respondents.

Case No.: 2:25-cv-2155

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER

16 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

17 **I. Motion**

18 1. Under FRCP 65, the petitioner moves this Court for an Emergency Temporary
19 Restraining Order ordering his immediate release and preventing his transfer to another detention
20 facility while these proceedings are pending.
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22 **II. Basis for Motion**

23 **Emergency Motion for Temporary
Restraining Order - 1
Case No: 2:25-cv-2155**

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1 2. This Motion is filed in conjunction with a Petition for Writ of Habeas Corpus
2 filed with the Court on October 31, 2025. The basis for this motion is explained more fully in
3 that Petition.

4 3. Petitioner, Mr. David Lahamendu, a native and citizen of Indonesia, is currently
5 detained in the Northwest ICE Processing Center in Tacoma, Washington. This is a privately-
6 owned and operated immigration detention center run by the GEO Group, a private contractor
7 for Immigration and Customs Enforcement (“ICE”). Petitioner has concurrently filed a Petition
8 for a Writ of Habeas Corpus under 28 U.S.C. § 2241; the Suspension Clause, U.S. Const. art I, §
9 9, cl. 2; and other constitutional provisions challenging the procedures that have led to his
10 prolonged detention.

11 4. After a final order of removal has been issued, the government must remove the
12 noncitizen within 90 days from the date that the order becomes final (“removal period”). 8
13 U.S.C. § 1231(a)(1)(A). It can detain the person longer under certain circumstances or release
14 them under supervision. 8 U.S.C. § 1231(a)(6).

15 5. But the government cannot detain the person indefinitely. *Zadvydas v. Davis*, 533
16 U.S. 678 (2001). In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) does not allow
17 the government to detain a noncitizen indefinitely while attempting to carry out removal.
18 *Zadvydas*, 533 U.S. at 689. Because indefinite detention poses a “serious constitutional problem”
19 under the Fifth Amendment’s Due Process clause, the Court read the statute to limit a
20 noncitizen’s detention to “a period reasonably necessary to bring about that alien’s removal from
21 the United States.” *Zadvydas*, 533 U.S. at 689-90.

1 6. *Zadvydas* recognized 90 days as a “presumptively reasonable period” of detention
2 after a removal order. *Zadvydas*, 533 U.S. at 701. After 90 days, if the noncitizen provides “good
3 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
4 future,” the burden shifts to the government to rebut that showing. *Id.* Moreover, “as the period
5 of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’
6 conversely would have to shrink.” *Id.*

7 7. Petitioner is still waiting. He has been detained for 277 days, since ICE detained
8 him on January 26, 2025, despite already being under an order of supervision. The government
9 has neither released him nor removed him. As such, he is being detained indefinitely.

10 8. There are no further administrative avenues by which Petitioner could seek
11 redress for his prolonged detention. The only avenue by which an alien can challenge their
12 prolonged detention is by filing a petition for a writ of habeas corpus. As such no other appeals
13 have been filed in any court.

14 9. Although Petitioner was ordered removed from the United States over twenty
15 years ago, his deportation is not imminent, nor even reasonably foreseeable. Petitioner’s
16 substantive and procedural due process rights were violated. More specifically, he is being held
17 in violation of the Immigration and Nationality Act (INA), whose post-removal-period detention
18 provision “does not permit indefinite detention of alien beyond 90–day removal period in event
19 government is unable to remove, but rather contains implicit limitation of detention period to that
20 reasonably necessary to bring about removal.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).
21 Petitioner’s continued detention constitutes cruel and unusual punishment, and there is no
22 conceivable reason as to why ICE can justify his continued detention.

1 10. Since Petitioner is no longer within the 90-day removal period, his continued
2 detention is entirely discretionary. DHS does not allege that he has committed any crimes that
3 would trigger mandatory detention beyond the 90-day removal period.

4 11. Petitioner now moves this Court to issue an order to immediately release him, to
5 prevent the Respondents from transferring him to another detention facility while these
6 proceedings are pending. There is no conceivable reason as to why ICE can continue to justify
7 his detention. Holding Petitioner in detention is a violation of the Suspension Clause and
8 constitutes cruel and unusual punishment.

9 12. Petitioner is seeking a TRO to maintain the status quo and prevent Respondents
10 from moving him to another detention facility before this Court has had an opportunity to
11 consider and rule on the merits of his petition.

12 13. Petitioner's counsel was informed that evening that ICE is likely going to be
13 effectuating his transfer to another facility outside of this jurisdiction.

14 14. As stated in the Petition, there is a likelihood of irreparable harm and restriction
15 of liberty to Petitioner if this order is not issued and there is no adequate alternative remedy at
16 law available to him. The balance of harm clearly favors him while these proceedings are
17 pending.

18 **Argument**

19 ***A. Standards for Temporary Restraining Order***

20
21 15. To grant a Temporary Restraining Order, the plaintiff must meet one of two tests. The
22 more recent test, known as the *Winter* test, requires the plaintiff to prove as follows:

23 [1] that he is likely to succeed on the merits,

1 [2] that he is likely to suffer irreparable harm in the absence of preliminary
relief,

2 [3] that the balance of equities tips in his favor, and

3 [4] that an injunction is in the public interest.

4 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter v.*
5 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both
6 temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-*
7 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
8 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

9 16. The traditional test, which remains viable in the Ninth Circuit, is known as the “sliding
10 scale” test and requires the plaintiff to prove “serious questions going to the merits” and “a
11 hardship balance that tips sharply toward the plaintiff.” *Alliance For The Wild Rockies v.*
12 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the plaintiff must also show a
13 likelihood of irreparable injury and that the injunction is in the public interest. “Under this
14 approach, the elements of the preliminary injunction test are balanced, so that a stronger
15 showing of one element may offset a weaker showing of another.” *Alliance For The Wild*
16 *Rockies*, 632 F.3d at 1131.

17 17. Petitioner meets both of these tests.

18 ***B. Petitioner is likely to succeed on the merits and has raised serious legal questions.***

19 18. As the Petition sets out, Petitioner detention is prolonged and indefinite and is a
20 violation of Due Process. He is likely to succeed on the merits, as *Winter* requires, and he has
21 raised serious legal questions, as the sliding scale test requires.

1 **C. *Petitioner faces irreparable harm, and a hardship balance tips sharply toward him.***

2 19. Petitioner faces substantial hardships and irreparable harm if he is not immediately
3 released or if he is transferred to another facility.

4 20. Petitioner's detention is already beyond the "presumptively reasonable" timeframe of six
5 months.

6 21. The probability of transfer to another detention center is high. Petitioner's wife called
7 counsel the evening of October 30, 2025. Petitioner told his wife was likely being transported to
8 another facility in the middle of the night. *See* Declaration of Hilary Smith.

9 22. If Petitioner is transferred to another detention facility during the pendency of these
10 proceedings, he will lose contact not only with his family, but also with his attorneys. Any
11 transfer will severely impair, if not cut, his ties with his legal and social supports. And this in
12 turn will limit his ability to succeed on the merits of the litigation.

13
14 **D. *The balance of equities tips in favor of Mr. Petitioner, and an injunction is in the public interest.***

15 23. The remaining two factors for an injunction are the same under both legal tests, and they
16 both favor Petitioner.

17 24. As to the balance of equities, although Petitioner will suffer great harm if he is
18 transferred, the Defendants will suffer no harm if he is not transferred. Additionally, there is no
19 harm to Defendants if he is released, as they are not alleging he is subject to mandatory
20 detention for the commission of any crime.

21 25. As to the public interest, it is in the public interest for the government to follow its word
22 and allow noncitizens to remain in one place during the pendency of their proceedings

1 especially if they have counsel. It is in the public's interest to allow litigants to remain in touch
2 with their lawyers, to allow to prisoners to stay in touch with their families and their lawyers,
3 and to have a government that follows its own policies and regulations.

4 26. It is also in the public's interest to have faith in its government to not hold noncitizens in
5 detention facilities for an indefinite amount of time.

6 27. Further, this administration is developing a pattern of transferring individuals from a
7 facility near their home and creating even more of a delay and backlog in a system they claim
8 they are trying to "fix." Petitioner asks that he remain detained in Tacoma at the NWIPC during
9 the pendency of his habeas litigation and his removal proceedings.

10 WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas Corpus and in
11 this Motion, the Petitioner respectfully requests this Court:

12 A. Grant this Emergency Motion for Temporary Restraining Order today, October
13 31, 2025;

14 B. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary
15 Restraining Order today, granting the following relief:

- 16 1) Ordering Petitioner's immediate release;
- 17 2) Enjoining and restraining the Respondents and all of their respective officers,
18 agents, servants, employees, attorneys and persons acting on their behalf in concert or in
19 participation with them from transferring Petitioner from the Northwest ICE Processing Center
20 in Tacoma, Washington, to any other facility during the pendency of these proceedings;

21 C. Grant such other and further relief as justice may require.

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Respectfully submitted this 31st day of October, 2024.

/s/ Hilary Smith
Hilary Smith
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