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4

5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF COLORADO

7 Le, Yao )  
8 Petitioner, )  
9 V. )  
10 KRISTI NOEM, Secretary of )  
the United States Department of Homeland )  
11 Security; PAM BONDI, )  
United States Attorney General; )  
12 TODD LYONS, Director of )  
United States Immigration and Customs )  
13 Enforcement; Kelei Walker, )  
Field Office Director for Detention and )  
14 Removal, U.S. Immigration and Customs )  
Enforcement, Department of Homeland )  
15 Security; )  
16 UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY; UNITED )  
17 STATES IMMIGRATION AND )  
CUSTOMS ENFORCEMENT; )  
18 Respondents )  
19

A  Detained

Case File No.:

Immigration file No.:



**PETITIONER'S  
MOTION FOR  
PRELIMINARY  
INJUNCTION**

**EMERGENCY MOTION**

20 Petitioner seeks a preliminary injunction that requires Respondents to release  
21 him within 24 hours because he has been detained more than two-hundred and ten  
22 (210) days since being ordered removed but grant Withholding of Removal.  
23 *Zadvydas v. Davis*, 533 U.S. 678 (2001).  
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**ARGUMENT**

To obtain a preliminary injunction, Petitioner must demonstrate that (1) they are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Petitioner raises only “serious questions going to the merits,” the Court can nevertheless grant relief if the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Id.*

**I. Petitioner satisfies all the factors required for a preliminary injunction.**

**A. Petitioner is likely to succeed on the merits of their argument that ICE and EOIR are violating his Due Process.**

Under 28 U.S.C. § 2241, federal courts have jurisdiction to review the legality of immigration detention. The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that post-removal-order detention under 8 U.S.C. § 1231(a)(6) is limited to a period reasonably necessary to effectuate removal. The Court established a presumptively reasonable period of six months; beyond that, continued detention is permissible only if removal is significantly likely in the reasonably foreseeable future.

This holding was expanded in *Clark v. Martinez*, 543 U.S. 371 (2005) to inadmissible aliens, confirming the six-month presumption applies universally.

Likewise, Tenth Circuit recognized and implemented this framework in

1 *Soberanes v. Comfort*, 388 F.3d 1305 (10th Cir. 2004), requiring proof of removal  
2 likelihood.

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4 Here, Petitioner has been detained for more than six months following a  
5 final order of removal. ICE has not demonstrated that removal is significantly  
6 likely in the reasonably foreseeable future. Petitioner’s continued detention  
7 violates the Fifth Amendment Due Process Clause where prolonged detention  
8 without adequate justification infringes liberty interests. INA: § 1231(a)(6) does  
9 not authorize indefinite detention.  
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11  
12 Once detention exceeds six months, the burden shifts to the government to  
13 rebut the presumption of unreasonableness by showing removal is likely soon.  
14 *Zadvydas*, 533 U.S. at 701.

15  
16 **B. Petitioner will suffer irreparable harm absent an injunction.**

17 Parties seeking preliminary injunctive relief must also show they are “likely  
18 to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at  
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20 20. Irreparable harm is the type of harm for which there is “no adequate legal  
21 remedy, such as an award of damages.” *Id.*

22 Detention constitutes a loss of liberty that is irreparable.

23  
24 Petitioner’s detention constitutes such a harm, as “civil commitment for any  
25 purpose constitutes a significant deprivation of liberty that requires due process  
26 protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, “[f]reedom  
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28 from imprisonment—from government custody, detention, or other forms of

1 physical restraint—lies at the heart of the liberty” that the Due Process Clause  
2 protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, the  
3  
4 Supreme Court has repeatedly made clear that prolonged deprivations of liberty—  
5 like those that noncitizens regularly experience—require a timely hearing to test  
6 the legality of detention before a “neutral and detached magistrate.” *Gerstein v.*  
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8 *Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of Riverside v. McLaughlin*, 500  
9 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. & Customs*  
10 *Enft*, 975 F.3d 788, 823–26 (9<sup>th</sup> Cir. 2020) (holding that *Gerstein* applies to the  
11 detention of noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention  
12 requires a hearing before an independent decisionmaker to assess whether the  
13 detention “bear[s] [a] reasonable relation” to a valid government purpose, such as  
14 preventing flight or protecting the community against dangerous individuals  
15 (alterations in original) (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972));  
16  
17 *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding Bail Reform Act’s  
18 pre-trial civil detention scheme precisely because it required the government to  
19 justify detention in a “full-blown adversary hearing” before a “neutral  
20 decisionmaker”—a federal judge).

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24       Petitioner’s claims raise constitutional concerns, for civil detention “violates  
25 due process outside of ‘certain special and narrow nonpunitive circumstances.’”  
26 *Rodriguez v. Marin*, 909 F.3d 252, 257 (9<sup>th</sup> Cir. 2018) (citation omitted). These  
27 constitutional concerns reflect irreparable harm, with strong likelihood of success  
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1 on his claim that he is being held under § 1226.

2 Detention has also taken an emotional and mental toll on Petitioner, who  
3 reports significant emotional trauma and physical struggles. Such emotional stress,  
4 depression and reduced sense of well-being further support a finding of irreparable  
5 harm.  
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8 **C. The balance of hardships and public interest weigh heavily in Petitioner’s**  
9 **favor.**

10 The final two factors for a preliminary injunction—the balance of hardships  
11 and public interest—“merge when the Government is the opposing party.” *Nken v.*  
12 *Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner face weighty hardships: loss of  
13 liberty, separation from family, significant stress and anxiety, and difficulty in  
14 obtaining an attorney.  
15

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17 The government, by contrast, faces minimal hardship: the administrative  
18 costs associated with bond hearings. “[T]he balance of hardships tips decidedly in  
19 Petitioner’s favor” when “[f]aced with such a conflict between financial concerns  
20 and preventable human suffering.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v.*  
21 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).  
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23  
24 Accordingly, the balance of hardships and the public interest  
25 overwhelmingly favor injunctive relief to ensure that Respondents comply with  
26 federal law and afford Petitioner release on bond.  
27

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1 **II. Prudential exhaustion is not required.**

2 There are a number of exceptions to the general rule requiring exhaustion,  
3 covering situations such as where administrative remedies are inadequate or not  
4 efficacious, or irreparable injury will result.  
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6 In addition, a court may waive an exhaustion requirement when “requiring  
7 resort to the administrative remedy may occasion undue prejudice to subsequent  
8 assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992),  
9 superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S.  
10 731, 739–41 (2001). “Such prejudice may result . . . from an unreasonable or  
11 indefinite  
12 timeframe for administrative action.” *Id.* at 147 (citing cases). Hise, the exceptions  
13 regarding irreparable injury and agency delay apply and warrant waiving any  
14 prudential exhaustion requirement.  
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18 As with the irreparable harm analysis, “in cases involving a constitutional  
19 claim, a likelihood of success on the merits . . . strongly tips the balance of equities  
20 and public interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at  
21 1048.  
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23  
24 **CONCLUSION**

25 For the foregoing reasons, Petitioner respectfully requests the Court grant his  
26 motion for a preliminary injunction and:  
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- 28 1. Issue an order as to Petitioner, requiring that Respondents release Mr. Le within

1 twenty-four hours.

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4 Respectfully submitted,

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CERTIFICATION FOR EMERGENCY MOTION

(1) Petitioner is unlawfully detained, and every day his irreparable harm is compounded, where no remedy of law can make him whole;

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(3) and Petitioner, through counsel, has attempted to meet-and confer with Respondents, who remain unreachable and who have made it abundantly clear that they will not consider voluntarily releasing any

