

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LIEN NGOC DO,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center; Cammilla WAMSLEY,
Enforcement and Removal Operations,
Seattle Field Office Director, U.S.
Immigration and Customs Enforcement;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security; and U.S.
DEPARTMENT OF HOMELAND
SECURITY,

Respondents.

Civil Case No.: 25-cv-02187-RSL

**MEMORANDUM OF LAW IN
SUPPORT OF A TEMPORARY
RESTRAINING ORDER**

Note on Motion: December 2, 2025

1 **I. INTRODUCTION AND FACTUAL BACKGROUND**

2 Petitioner Lien Ngoc Do returns to this Court to request an immediate order for her release
3 because her youngest son tragically died of suicide on November 29, 2025. Declaration of Ploy
4 Kerdttes ¶4, filed concurrently; Declaration of J. Pasquarella, ¶2 (Funeral Home Statement). Ms.
5 Do deserves the opportunity to attend her son’s viewing and funeral—which the family believes
6 will happen on Friday, December 5 and Saturday, December 6—and to grieve together with her
7 family. Kerdttes Decl. ¶7.

8 Ms. Do’s continuing detention is unconstitutional because it is indefinite and it is punitive.
9 She should not be detained a day longer, particularly not under the unbearably difficult
10 circumstances that brings her to seek this emergency relief. For the past three and a half months,
11 ICE has cruelly and unlawfully removed Ms. Do from her life; from her husband and children;
12 from her job; from “all that makes life worth living.” *Ng Fung Ho v. White*, 259 U.S. 276, 284
13 (1922). It has warehoused her in the Northwest ICE Processing Center, less than two miles away
14 from her family’s home, but an entire world apart. Now, her youngest son is gone.

15 Petitioner and her family respectfully request that this court order her immediate release
16 and protect her against any future unconstitutional detention.

17 **II. LEGAL STANDARD**

18 This court may grant a temporary restraining order (“TRO”) pursuant to Fed. R. Civ. P.
19 (“FRCP”) 65 if the plaintiff can “establish that he is likely to succeed on the merits, that he is likely
20 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
21 his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*,
22 555 U.S. 7, 20 (2008). The Ninth Circuit applies a “sliding scale” approach to the *Winter* standard,
23 where “serious questions going to the merits and a balance of hardships that tips sharply towards
24 the plaintiffs can support issuance of a [TRO],” so long as the other *Winter* factors are met. *Fraihat*
25 *v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir. 2021) (citation omitted). Under this
26 approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may

offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

III. ARGUMENT

This Court should issue a TRO because “immediate and irreparable injury” is occurring and will continue in the absence of an order. Fed. R. Civ. Pro. 65(b). Respondents have re-detained Petitioner in violation of her due process, statutory, and regulatory rights, and she needs immediate relief to be released in time to attend her son’s funeral.

A. Petitioner Is Likely to Succeed on the Merits of Her Claims.

Ms. Do’s habeas petition has been fully briefed since November 21, 2025. *See* Dkt. 16 (Pet’s Reply Brief). She therefore incorporates by reference the briefing before this Court, which need not be repeated in detail. She is likely to succeed on her claims that her re-detention and continuing detention violates substantive and procedural due process and the regulations governing revocation of release on supervision, 8 C.F.R. § 241.13.

To summarize, Ms. Do is a pre-1995 Vietnamese refugee with a 26-year-old removal order whom Vietnam has never accepted for repatriation in all those years—not during the nearly ten months she was previously held indefinitely in immigration custody, and not in the now three and a half months Immigration and Customs Enforcement (“ICE”) has detained her since August 21, 2025. Dkt. 16 at 5. Ms. Do does not possess a Vietnamese passport or a birth certificate. Dkt. 16 at 6. Indeed, as an Amerasian, there is no official record of her birth and her childhood in Vietnam was marked by the society’s attempts to exclude and erase her. *See id.*; Dkt. 12 ¶¶3-4. As such, there is no evidence that Vietnam will accept her under the 2020 Memorandum of Understanding criteria for the repatriation of pre-1995 Vietnamese arrivals. Dkt. 16 at 6. There is no certain end or lawful purpose to ICE’s detention of Ms. Do, making her detention unconstitutionally indefinite under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and unconstitutionally punitive under a long line of cases dating back to *Wong Wing v. United States*, 163 U.S. 228 (1896).

1 Ms. Do never violated the ICE Order of Supervision (“OSUP”) under which she has lived
2 since March 2000. Absent a violation of her OSUP, ICE had no authority to re-detain her because
3 she is categorically not a flight risk, and civil immigration detention is only authorized to prevent
4 flight or a danger to society. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F.Supp.3d 1163, 1172
5 (W.D. Wash. 2023).¹

6 Moreover, ICE had no authority to re-detain her without prior notice and a hearing, under
7 Supreme Court precedent first announced in *Morrissey v. Brewer*, 408 U.S. 471 (1972). *See* Dkt.
8 16 at 7-9 (discussing procedural due process cases).

9 ICE had no authority to re-detain Ms. Do in August 2025 because the six-month post-
10 removal order period had long since expired. *See, e.g., Tran v. Bondi*, No. C25-01897-JLR, 2025
11 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025). ICE did not have a travel document or a date
12 certain for Ms. Do’s removal or any degree of assurance that Vietnam would now issue a travel
13 document for Ms. Do. Indeed, the plain fact that Ms. Do has now been cruelly detained for three
14 and a half months awaiting a phantom travel document that ICE has not even clearly requested
15 from Vietnam is itself evidence of their lack of lawful authority to re-detain her. *See* Dkt. 16 at 6.
16 To the extent it has requested her travel document, it only did so seventy-five days *after* it re-
17 detained her. *See id.* As Judge Robart recently wrote in a similar case, “ICE is not permitted to
18 hold [Petitioner] indefinitely while it waits for travel documents for Vietnam.” *Tran*, 2025 WL
19 3140462, at *3.

20 For these and the reasons raised in Petitioner’s complaint and reply brief, Dkt. 1; Dkt. 16,
21 Petitioner is likely to succeed on the merits of her claims and emergency relief should be granted.

22 ¹ Moreover, to the extent detention is authorized at all at this point under *Zadvydas*, even
23 without a showing of flight risk or danger to society, it can only be for the “narrow nonpunitive”
24 purpose of securing a person’s removal “at the moment” of removal. *Zadvydas*, 533 U.S. at 690,
25 699. “Reasonableness” is measured “in terms of the statute’s basic purpose”: “assuring the
26 [noncitizen’s] presence *at the moment* of removal.” *Id.* at 699. ICE’s current detention of Petition
has no definitive end and is not designed to facilitate her presence “at the moment” of removal—
indeed, there is no known moment of removal because it is not known whether she can even be
removed.

1 **B. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief.**

2 “It is well established that the deprivation of constitutional rights ‘unquestionably
3 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
4 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation of a constitutional right
5 is involved, most courts hold that no further showing of irreparable injury is necessary.”
6 *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (citing 11A Charles Alan Wright
7 et al., *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). “Unlawful detention certainly
8 constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.”
9 *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

10 Here, the irreparable harm to Petitioner and her family is severe. She has already been
11 unreasonably deprived of more than a year of her life in prolonged immigration detention
12 following the issuance of her removal order. Absent relief, Petitioner will not be able to attend
13 her son’s funeral, grieve with her family and loved ones, and will remain detained in an
14 indefinite and prolonged state, denied her liberty, removed from her livelihood, separated from
15 her children, grandchildren and husband.

16
17 **C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner’s Favor.**

18 The final two factors for a PI—the balance of hardships and public interest—“merge
19 when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). “[T]he
20 balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a conflict
21 between financial concerns and preventable human suffering.” *Hernandez*, 872 F.3d at 996
22 (citing *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Here, the balance of hardships
23 tips in Petitioner’s favor. Petitioner faces weighty hardships: the loss of her son, the mourning of
24 a child, and continued deprivation of her life and liberty. “[T]he [government] cannot reasonably
25 assert that it is harmed in any legally cognizable sense by being enjoined from constitutional
26 violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the public

1 interest to prevent violations of the U.S. Constitution and ensure the rule of law. *See Nken*, 556
2 U.S. at 436 (describing public interest in preventing noncitizens “from being wrongfully
3 removed, particularly to countries where they are likely to face substantial harm”). Accordingly,
4 the balance of hardships and the public interest overwhelmingly favor emergency relief to ensure
5 Petitioner’s freedom and prevent unlawful third country removal.

6 IV. CONCLUSION

7 For the foregoing reasons, the Court should immediately grant Petitioner’s TRO. Petitioner
8 requests that she be ordered released immediately and returned to her prior Order of Supervision
9 (OSUP)—the status quo before her re-detention. To further protect Petitioner’s rights against any
10 future re-detention, Ms. Do asks for an order specifying the conditions under which she may be
11 lawfully re-detained. Specifically, she requests an order that Respondents may not re-detain her
12 unless she violates a condition of her OSUP or Respondents obtain a valid travel document to
13 Vietnam, provide her that document, and permit her the opportunity to leave on her own within
14 two months. As Petitioner is not a flight risk, any re-detention would not be lawful or necessary if
15 Respondents obtain her travel document to Vietnam. Instead, she should be given the opportunity
16 to leave on her own within two months or to appear for a scheduled flight. If she does not comply,
17 the government would be permitted to re-detain her provided it has already made concrete
18 arrangements for her to be put on a flight to Vietnam in the reasonably foreseeable future. Such an
19 order would enforce the law and protect Petitioner against any future unconstitutional detention.

1 *I certify that this memorandum contains 1,810 words, in compliance with the Local Civil Rules.*

2
3 Dated: December 2, 2025

4 Respectfully submitted,

5 By: /s/ Jennifer Pasquarella

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CERTIFICATE OF SERVICE

I, Jennifer Pasquarella, hereby certify that on December 2, 2025, I served the above and foregoing, by causing a true and accurate copy of such papers to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Jennifer Pasquarella

Jennifer Pasquarella