

1 JON M. SANDS
Federal Public Defender
2 KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
3 250 North 7th Avenue, Suite 600
4 Phoenix, Arizona 85007
5 (602) 382-2700 voice
keith_hilzendeger@fd.org
6 *Attorneys for Petitioner Joseph*

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Frandy Joseph,

10 Petitioner,

11 vs.

12 David R. Rivas, Warden, et al.,

13 Respondents.
14

No.

**Motion for a Preliminary Injunction and
for a Temporary Restraining Order**

15 Along with his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Mr. Joseph is
16 filing this motion for a preliminary injunction and a temporary restraining order. In his petition,
17 he asserts that he will not be removed to Haiti in the reasonably foreseeable future, such that his
18 continued detention by immigration officials violates the Fifth Amendment’s Due Process
19 Clause. He also asserts that his detention is illegal because he has not received notice and an
20 opportunity to seek relief from removal to a country other than Haiti. Because he is almost
21 certain to prevail on at least one of these claims, he respectfully asks the Court to order his
22 immediate release from custody while this case is litigated.

23 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
24 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
25 balance of equities tips in his favor, and that an injunction is in the public interest.” *Planned*
26 *Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843–44 (9th Cir. 2024) (quoting *Alliance*
27 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). “Alternatively, a preliminary
28

1 injunction may issue where serious questions going to the merits were raised and the balance of
2 hardships tips sharply in plaintiff's favor if the plaintiff also shows that there is a likelihood of
3 irreparable injury and that the injunction is in the public interest." *Id.* at 844 (quoting *Alliance for*
4 *the Wild Rockies*, 632 F.3d at 1135). The standards for granting a temporary restraining order are
5 the same as the standards for granting a preliminary injunction. *See O.M. ex rel. Moultrie v. Nat'l*
6 *Women's Soccer League, LLC*, 541 F. Supp. 3d 1171, 1177 (D. Or. 2021). Here, Mr. Joseph can
7 make all four of these showings.

8 First, he is almost certain to succeed on the merits of his habeas petition. His continued,
9 indefinite detention in immigration custody violates the Due Process Clause of the Fifth
10 Amendment because there is no significant likelihood that he can be removed to Haiti in the
11 reasonably foreseeable future. Second, illegal confinement is quintessentially irreparable harm,
12 because "the deprivation of constitutional rights unquestionably constitutes irreparable injury."
13 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Third, and finally, when the government
14 is a party, as it is here, "the balance of equities and public interest factors merge." *Pimentel-*
15 *Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v.*
16 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The risk of harm to Mr. Joseph far outweighs the
17 government's interest in illegally detaining him, for it is "always in the public interest to prevent
18 the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002.

19 For the foregoing reasons, Mr. Joseph respectfully asks the Court to grant a preliminary
20 injunction and order his immediate release from custody.

21 Respectfully submitted:

October 10, 2025.

22 JON M. SANDS
23 Federal Public Defender

24 s/Keith J. Hilzendeger
25 KEITH J. HILZENDEGER
26 Assistant Federal Public Defender
27 Attorney for Petitioner Joseph
28