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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Toan Sy Le, Petitioner, v. Fred Figueroa, Eloy Detention Center; John Cantu, Field Office Director, Phoenix ICE; Todd Lyons, Director, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Respondents.	**Case No:** **Motion for Preliminary Injunctive Relief (Stay of Removal and Release from Detention)**

Introduction

Petitioner Toan Sy Le respectfully moves this Court for a preliminary injunction to (1) stay his removal from the United States and (2) secure his release from immigration

detention during the pendency of his habeas corpus proceedings. Mr. Le is a lawful permanent resident and refugee who fled Vietnam in 1995 and has resided in the U.S. for three decades. He has deep family roots in this country – including multiple U.S. citizen family members (such as his wife, two daughters and elderly parents) – who depend on him and would suffer extreme, irreversible hardship if he were deported. Yet Mr. Le is currently detained by ICE under a final removal order based solely on a 2002 criminal conviction, despite the fact that he has significant legal challenges pending against that conviction and removal order. Through this motion, Mr. Le seeks modest interim relief to preserve the status quo: a temporary halt to his removal and his conditional release from custody, so that his serious claims can be adjudicated without causing irreparable harm.

Mr. Le easily satisfies the requirements for preliminary injunctive relief under *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008). He has strong likelihood of success on the merits of his claims – or at minimum, he raises serious legal questions going to the merits – including a compelling Sixth Amendment ineffective assistance of counsel claim and significant due process violations in his removal proceedings. He will suffer irreparable injury absent relief: deportation would permanently separate him from his U.S. citizen family and strip him of his refugee status, and continued detention exacerbates his health conditions and inflicts severe hardship. In contrast, a stay and release would pose no meaningful harm to Respondents, as Mr. Le has no flight risk or public safety risk – he has lived an upright life for over twenty years since his offense, operating a business and caring for his children. Finally, the balance of equities and public interest tilt sharply in favor of maintaining family unity and ensuring that Mr. Le's substantial legal

claims are resolved before he is irreversibly expelled. This request is not frivolous or dilatory; it is a good-faith effort to prevent grievous harm and secure due process while the Court considers the merits of his habeas petition. Accordingly, Mr. Le respectfully asks the Court to grant the preliminary injunction and enter the Proposed Order submitted herewith.

Factual Background

I. Mr. Le's Longstanding U.S. Ties and Humanitarian Status

Mr. Le is a 49-year-old native of Vietnam who was admitted to the United States as a refugee in 1995, after his family suffered persecution due to his father's alliance with U.S. forces during the Vietnam War. He adjusted to lawful permanent resident (LPR) status on March 7, 1995 and has lived in this country continuously for the past 30 years. Over that time, Mr. Le has built an extensive life in America. He is a devoted father to two U.S. citizen daughters – Lilian (now in her early 20s) and [redacted] (age 10) – and has been the sole caretaker for one of them since infancy, after the child's mother abandoned her. He tragically lost his wife to suicide in 2010, leaving him as a single parent to his children. Mr. Le's elderly parents are also U.S. citizens residing here, and he has other close relatives in the community. This is the only home that Mr. Le and his immediate family have known for decades.

In addition to family bonds, Mr. Le has deep economic and community ties in Arizona. He has a long history of gainful employment and is currently a small-business owner – he owns and operates "The Nail Spa" salon in Phoenix, Arizona. (This is the second nail salon he has successfully built in Arizona.) He pays taxes and has contributed to the local economy, as reflected in his tax records and business licenses (Exhibit 10).

Friends, customers, and family describe Mr. Le as a hard-working, responsible, and caring individual who is integral to his community and family (see Hardship and Character Declarations, Exhibit 8). Notably, Mr. Le has no subsequent criminal record aside from the single 2002 offense at issue; in the 23 years since, he has led an upright life and even became the victim of a violent crime himself in 2004 (as discussed below). Given his decades of lawful residence and responsible behavior, Mr. Le poses no danger or flight risk whatsoever – his "life is entrenched" in the U.S., and his conduct confirms he will comply with any conditions the Court may impose. Indeed, even after his removal order became final in 2018, Mr. Le remained in the community and attended to his legal cases, never attempting to flee. His presence is critical to the wellbeing of his U.S. family, and he is fully committed to resolving his legal situation through the courts rather than evading it.

II. Conviction in 2002 and Lack of Immigration Advisement

The sole basis for Mr. Le's removal order is a drug-related conviction from 2002. On February 5, 2002, Mr. Le (then in his mid-20s) pleaded guilty in the Maricopa County Superior Court to one count of Solicitation to Sell a Dangerous Drug (MDMA/Ecstasy), a Class 4 felony, in violation of A.R.S. § 13-1002 and § 13-3407. He received a relatively light sentence (probation and no lengthy imprisonment) as part of the plea agreement. Crucially, however, at the time of his plea Mr. Le was never advised – by either his defense attorney or the state court – about the immigration consequences of this conviction. Neither the written plea agreement nor the plea colloquy contain any warning that Mr. Le's offense would affect his immigration status. The record is clear on this point: the plea agreement makes no mention of deportation or immigration risks (Exhibit 1), and the change-of-plea

and sentencing minute entry similarly reflect no advisement regarding deportation (Exhibit 2). At no point did the judge inform Mr. Le that his conviction "carried a risk of deportation." And Mr. Le's defense counsel also remained silent on this critical issue – counsel never told Mr. Le that pleading guilty could trigger mandatory removal from the United States.

At the time, in 2002, Arizona practice (and many jurisdictions) treated immigration consequences as a mere "collateral" matter beyond defense counsel's constitutional duties. Mr. Le, a young refugee who had immigrated as a child, was unfamiliar with U.S. immigration law and had no independent knowledge that his plea to a drug offense would put his LPR status in jeopardy. Unaware of the dire consequences, he accepted the plea deal, aiming to move forward with his life. Unfortunately, the immigration law was unequivocal that his offense fell in a category (drug trafficking/aggravated felony) that mandated deportation and barred almost all forms of relief. In other words, by pleading guilty, Mr. Le was essentially guaranteed to be deported – a fact that neither his attorney nor the court bothered to mention. Had Mr. Le known this, he would never have agreed to that plea without seeking an alternative outcome. As discussed below, this failure by counsel is a classic *Padilla* violation: in 2010, the U.S. Supreme Court confirmed that criminal defense attorneys must advise noncitizen clients of deportation risks when the law is clear, and that failing to do so is deficient performance under the Sixth Amendment. Mr. Le's case exemplifies *Padilla* – a lawful permanent resident pleading guilty to an aggravated felony drug offense, "not a hard case in which to find deficiency" under *Padilla* because the deportation consequence was "truly clear" and "presumptively mandatory". In

short, neither counsel nor the court gave Mr. Le the required warning that his plea would "permanently strip [him] of lawful status and subject him to removal", a lapse that fell below professional norms and violated his constitutional right to effective counsel.

III. Removal Proceedings and Pending Legal Challenges

DHS did not initiate removal proceedings against Mr. Le until 2011, almost a decade after his conviction. On March 22, 2011, DHS issued a Notice to Appear (NTA) charging Mr. Le as removable based on the 2002 conviction (INA §§ 237(a)(2)(B)(i) – controlled substance offense – and 101(a)(43)(B) – aggravated felony). Notably, the NTA was defective in that it failed to specify the date and time of any removal hearing – an issue which was later raised as a jurisdictional challenge in Mr. Le's appeals (under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)). Regardless, proceedings did move forward. Mr. Le was never detained during the 2011–2018 timeframe; he remained non-detained and living at home while contesting his case.

In the removal proceedings, Mr. Le pursued all avenues of relief. He applied for a U nonimmigrant visa (U-visa) as a victim of crime: in 2004, Mr. Le had been the victim of a horrific violent crime in Arizona – he was kidnapped, assaulted, and robbed at gunpoint by criminals. The Chandler Police Department issued Mr. Le a certified I-918 Supplement B U-visa certification, confirming that he was a victim of qualifying crimes and had cooperated in the investigation. Mr. Le duly filed a U-visa petition (Form I-918) in 2014, along with an application for a waiver of inadmissibility (Form I-192) to forgive his old conviction. These applications remain pending with USCIS to this day (USCIS has not yet adjudicated many older U-visa cases due to backlogs). Had the immigration judge afforded

Mr. Le a continuance, it is quite possible Mr. Le would by now have U-visa status (which confers lawful presence and a path to residency after 3 years). Unfortunately, the Immigration Judge (IJ) denied a continuance and ordered Mr. Le removed to Vietnam, concluding that no relief was available due to the aggravated felony conviction. The Board of Immigration Appeals (BIA) dismissed Mr. Le's appeal on May 30, 2018 (BIA Decision, Exhibit 4), affirming the removal order. The BIA's decision also denied Mr. Le's motion to remand or reconsider, which had argued for termination under *Pereira* and a continuance for the U-visa.

Mr. Le petitioned the Ninth Circuit for review of the BIA's decision (PFR No. 18-71871) and obtained a temporary judicial stay of removal during that appeal. In the Ninth Circuit proceedings, he raised due process and jurisdictional arguments – including the *Pereira* defect (that the NTA lacked time/place and thus the IJ never had proper jurisdiction) and the IJ's abuse of discretion in refusing to accommodate the U-visa process. He also highlighted that his equities are extraordinarily compelling: a refugee LPR with U.S. children and no danger to society. Despite these arguments, the Ninth Circuit ultimately denied relief in or around 2019, and the stay of removal lifted. This left Mr. Le once again subject to the final removal order.

Crucially, however, Mr. Le's legal fight did not end there. In light of *Padilla* and other developments, Mr. Le sought to challenge the validity of his 2002 conviction itself. He consulted new counsel in 2025, after it became clear that his deportation was being pursued. On August 9, 2025, Mr. Le filed a Petition for Post-Conviction Relief (PCR) in Maricopa County Superior Court (Case No. CR2001-095348), asserting that his 2002

conviction was constitutionally defective because of his counsel's failure to advise him about the immigration consequences (an ineffective assistance claim under *Padilla*). In that PCR petition, Mr. Le presented evidence – including the plea documents and his own declaration – proving that no one warned him his plea would make deportation "legally inevitable," and argued that under *Padilla v. Kentucky*, 559 U.S. 356 (2010), he should be allowed to withdraw his plea to avoid the "life-altering consequence of deportation". He also moved to excuse the untimely filing, explaining that he did not discover the immigration consequences until 2025 when ICE took action to remove him. The state trial court denied relief, and Mr. Le promptly appealed – as of now, his petition for post-conviction relief is pending in the Arizona Court of Appeals. If Mr. Le prevails in that PCR appeal, his 2002 conviction could be vacated or reopened, which would eliminate the sole basis for his removal order. This state-court litigation is moving forward with urgency; Mr. Le has requested expedited consideration due to the threat of removal.

Simultaneously, Mr. Le also filed a Motion to Reopen his removal proceedings with the BIA (currently pending). The motion to reopen (and/or a BIA appeal of the IJ's denial of reopening) raises newly available evidence and due process arguments. In particular, Mr. Le informed the BIA that he has a *Padilla*-based PCR action underway which may nullify the conviction. He also submitted additional evidence of his mental state and the circumstances of ICE's attempts to execute his removal (discussed below), which call into question the voluntariness and fairness of the removal process. That motion remains pending before the BIA – to date, the BIA has not yet rendered a decision on reopening, and Mr. Le's removal order could be reopened or stayed by the agency. Despite these active

proceedings, ICE has thus far refused to stay removal on its own, prompting Mr. Le to seek protection from this Court.

IV. Detention, Failed Removal Attempt, and Mental Health

After years of living under an order of supervision, Mr. Le was suddenly arrested by ICE on July 24, 2025 and taken into immigration custody. This came as a shock to Mr. Le and his family – although he knew a removal order existed, he had not been detained in 2011 or at any point during his appeals, and he was not aware that ICE would take immediate steps to deport him 23 years after the conviction. Upon being detained in July 2025, Mr. Le learned for the first time that his 2002 plea indeed subjected him to mandatory deportation with virtually no relief available. He immediately acted to secure counsel and file the above-described motions to reopen and PCR petition – demonstrating his diligence once he finally understood the stakes. While those legal efforts have been pending, ICE has continued to detain Mr. Le at the La Palma Correctional Center in Arizona.

In 2010, Mr. Le traveled to Vietnam to visit his ex-wife, who was gravely ill with cancer. Upon returning to the United States, he was detained at the airport by U.S. Customs and Border Protection (CBP). During his reentry inspection, CBP officers questioned him regarding his 2002 criminal conviction. This encounter marked the first time Mr. Le became aware that his past conviction could carry serious immigration consequences. During this ordeal, Mr. Le – who is a survivor of past trauma – suffered extreme distress. Back in 2004, Mr. Le survived a violent kidnapping and assault, an experience that left him with diagnosed Post-Traumatic Stress Disorder (PTSD) symptoms. Being shackled and transported against his will triggered those symptoms. By the time the plane reached a

refueling stop, Mr. Le was exhausted, disoriented, and emotionally distraught. Taking advantage of his compromised state, ICE officers presented Mr. Le with a form I-877 "Record of Sworn Statement" and directed him to sign it, without providing a Vietnamese interpreter. The Form I-877 – written in English – ostensibly contains a statement by Mr. Le relating to his removal (its exact content is disputed, but such forms are often used to record an alien's "admissions" or waiver of certain rights). Mr. Le, confused and under duress, signed the form as instructed, but he did not understand what he was signing. He was never orally translated the contents. In effect, ICE obtained what purports to be a "sworn statement" from Mr. Le under coercive and questionable circumstances, when he was in no condition to give knowing, voluntary testimony. Mr. Le has since submitted a sworn declaration contesting the voluntariness and accuracy of the I-877 form (Exhibit 7 (Le Declaration)) – he affirms that he did not knowingly waive any rights or agree to be removed at that time. Indeed, far from being voluntary, the entire scenario was a product of exhaustion and intimidation, amounting to a violation of due process and basic fairness. Notably, ICE's removal attempt was aborted (reportedly due to issues with travel documents or the Vietnamese authorities), and Mr. Le was returned to ICE custody in Arizona after this harrowing flight. The I-877 form remains in his file, and the Government has not disclaimed an intent to rely on it; thus, it is a live issue in his motion to reopen and in these habeas proceedings. The Court should not permit ICE to shortcut the normal judicial process by using an improperly obtained form or "stipulation" to remove Mr. Le without a full and fair hearing. This incident underscores the urgent need for Court

intervention: absent a stay, ICE may at any moment attempt another removal, potentially under the same due process-flouting conditions.

In summary, as of today, Mr. Le is detained with an imminent threat of removal, yet he has significant matters pending that could invalidate the removal. He has been a model detainee and has pursued every legal avenue available in good faith. His U.S. citizen family – including his two daughters (one still a minor) and his aging parents – are suffering greatly from his detention and the prospect of his deportation (see Family Hardship Declarations, Exhibit 8). Mr. Le's youngest child cries and struggles daily with the absence of her father, and his business is on the brink of collapse without him at the helm. If he is released, Mr. Le has a reliable residence with family in Arizona and is willing to submit to any supervision or monitoring conditions. He simply seeks the chance to remain here, temporarily, until the courts determine whether his removal is lawful.

Legal Standard

A preliminary injunction is an extraordinary remedy governed by a four-factor test. The movant must demonstrate: (1) a likelihood of success on the merits (or at least serious questions going to the merits); (2) a likelihood of irreparable harm in the absence of relief; (3) that the balance of equities tips in the movant's favor; and (4) that an injunction is in the public interest. See *Winter v. NRDC*, 555 U.S. 7, 20 (2008). In the Ninth Circuit, these criteria are applied flexibly: a strong showing on one can offset a weaker showing on another, and a preliminary injunction may issue where the petitioner shows "serious legal questions… and the balance of hardships tips sharply" in his favor (though after *Winter*, the movant still must establish at least a likelihood of irreparable harm). Additionally,

because Mr. Le seeks to stay removal (a prohibitory injunction) and to be released from custody (which functions as a mandatory injunction), the Court should be satisfied that the law and facts clearly favor relief in order to grant the latter. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (stay factors overlap with preliminary injunction standard). As shown below, Mr. Le meets all elements of the *Winter* test. Moreover, this Court's intervention is authorized and warranted under 28 U.S.C. § 2241 and Article I habeas corpus jurisdiction, as Mr. Le is in custody in violation of the Constitution and seeks relief that *preserves the Court's ability to render meaningful habeas relief.*

Argument

A. Likelihood of Success on the Merits (Serious Legal Questions)

Mr. Le's underlying claims are meritorious and likely to succeed, providing a strong basis for injunctive relief. At a minimum, he raises substantial legal questions going to the core legality of his detention and removal. In his habeas petition (and related filings), Mr. Le advances two primary arguments: (1) his 2002 conviction – the sole ground of removability – is constitutionally invalid due to ineffective assistance of counsel under *Padilla*, and thus the removal order cannot stand; and (2) the manner in which his removal order has been executed violates due process, given the coerced I-877 "waiver" and the denial of a fair opportunity to be heard on his pending claims. He also contends that his continued detention without an individualized bond hearing violates statutory and constitutional limits, especially since his removal is not reasonably imminent. Each of these points has substantial support in law and fact:

1. Ineffective Assistance of Counsel / *Padilla v. Kentucky* Claim

There is a high likelihood that Mr. Le's 2002 conviction will be vacated or that he will be allowed to withdraw his guilty plea, because it was obtained in violation of the Sixth Amendment right to effective counsel. The U.S. Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010) held that criminal defense attorneys have a duty to advise non-citizen defendants about the immigration consequences of a guilty plea, particularly when the consequence (deportation) is clear and certain. Failing to provide such advice constitutes deficient performance under the *Strickland* v. Washington standard, and can warrant vacating the conviction if the defendant was prejudiced. Here, Mr. Le's case falls squarely within *Padilla*'s heartland. The removal outcome for his offense was not speculative or obscure – it was "clear and unequivocal" that a conviction for solicitation to sell a controlled substance made him deportable and ineligible for relief, a fact easily ascertainable from the immigration statutes. In *Padilla*, the Supreme Court specifically noted that when the law "explicitly" dictates deportation (as it did for the drug-trafficking offense in Padilla's own case), counsel "must advise the client that deportation will be a presumptively mandatory consequence" of the plea. Mr. Le was in the same position as Mr. Padilla – a longtime LPR pleading to a drug trafficking offense, making his eventual deportation "virtually inevitable". Yet Mr. Le's attorney gave him no warning at all. This was a blatant breach of the duty recognized in *Padilla*, and indeed *Padilla* itself remarked that such a situation is "not a hard case" in finding counsel's performance constitutionally deficient.

On the prejudice prong, Mr. Le can also demonstrate a strong likelihood that he was prejudiced by counsel's failure. The question is whether, had he been properly advised,

there is a "reasonable probability" he would have rejected the plea offer and insisted on trial or sought a different plea bargain. All evidence indicates he would have done so. Avoiding deportation was of paramount importance to Mr. Le, far outweighing any criminal penalty. At the time of his plea, he had a young U.S. citizen daughter and an LPR wife (now deceased), and his parents and siblings were here; remaining in the U.S. was critical for his family unity. As courts have recognized, for many noncitizen defendants "preserving the…right to remain in the United States" is even more important than any jail time. Mr. Le's circumstances exemplify this concern – the "drastic measure" of deportation would exile him from the only life he knows. If he had known his plea would guarantee permanent banishment, rationally he would have explored every other option (including going to trial, or negotiating a plea to a non-deportable offense if possible). The Government may argue that *Padilla* cannot help Mr. Le because it was decided in 2010 and is not retroactively applicable to 2002 convictions on federal habeas. But importantly, Mr. Le is pursuing relief in state court, where Arizona law provides a mechanism (Ariz. R. Crim. P. 32.1(g)) to raise claims based on a "significant change in the law" – and Arizona's courts have recognized that *Padilla* was a "transformative event" that marked a clear break from prior law. Indeed, Arizona's Court of Appeals has expressly held that *Padilla* "constitutes a significant change in the law" for Rule 32.1(g) purposes. Thus, the state courts *can* grant relief on Mr. Le's Padilla claim despite federal retroactivity rules. Mr. Le's PCR petition persuasively argues that his case meets the criteria for post-conviction relief: *Padilla* would have probably changed the outcome (his conviction) if it applied, and fundamental fairness demands allowing him to seek relief now since he was not aware of

the claim earlier. The trial court's denial of PCR is now on appeal, and Mr. Le has a strong chance of prevailing, given the compelling evidence (the plea record clearly lacks any advisement and counsel's failure is undisputed). If the conviction is vacated or the plea withdrawn, Mr. Le will no longer be removable for that offense. The entire removal case would collapse, as DHS has no other charges against him. Therefore, Mr. Le's claim that his removal order is unlawful due to a constitutionally flawed conviction is likely to succeed. At the very least, it presents a "serious legal question" on which he has shown diligent pursuit and substantial support – more than enough to merit a stay while the issue is resolved.

2. Due Process Violations in Removal (Involuntary I-877 & Lack of Interpreter)

Independently, Mr. Le has a substantial claim that his due process rights have been violated in the course of executing the removal order, casting doubt on the validity and enforceability of the order. Noncitizens are entitled to due process in deportation proceedings, which includes the right to be heard in a meaningful manner and to have accurate, voluntary records of any purported admissions or waivers. Here, ICE's handling of Mr. Le's attempted removal – specifically the procurement of the Form I-877 "sworn statement" – violated those principles. As described above, ICE agents effectively coerced Mr. Le into signing a form in English with no interpreter, when he was sleep-deprived and under extreme duress. Mr. Le's sworn declaration (Exh. 4) attests that he did not understand the form and did not willingly agree to any statement waiving his rights. Such conduct by ICE violates DHS's own procedures and basic due process. Federal regulations and policies

generally require that communications with detainees be in a language they understand, especially for critical decisions like stipulating to removal or waiving hearings. Mr. Le never knowingly waived his right to pursue his pending remedies; to the contrary, he has been actively fighting his case. If ICE is suggesting that the I-877 form amounts to a "stipulated removal" or an admission of something material, the Court should find it invalid. The form is the product of coercion and language barriers, not an intelligent or voluntary act of Mr. Le. The Ninth Circuit has held that due process is violated where an immigrant's purported waiver of rights or stipulation to removal is not knowing and voluntary. Here, any such "waiver" cannot stand. Thus, Mr. Le has raised at least a serious question that the Government's attempt to enforce the removal order (relying on the I-877) is fundamentally unfair and illegal. This Court is empowered to stay removal in such a scenario to allow full consideration of the due process challenge. Moreover, the Board of Immigration Appeals is currently considering this issue in Mr. Le's motion to reopen – a strong signal that the claim is not frivolous. Given the evidence of misconduct, Mr. Le is likely to prevail in having the I-877 disregarded or in having his case reopened on that basis as well.

3. Prolonged Detention / Right to Release on Bond

Finally, Mr. Le is likely to succeed on his claim that his continued detention without a bond hearing violates 8 U.S.C. § 1231 and the Constitution. Although he is under a final removal order, detention is not indefinite – if removal cannot be effectuated in the reasonably foreseeable future, *Zadvydas v. Davis*, 533 U.S. 678 (2001) requires release. Mr. Le has now been detained for over three months, and there is good reason to believe

his removal will not be accomplished soon (or ever) if his legal challenges succeed. One removal attempt already failed, and with proceedings in state and federal court likely to continue for months, the end date of his detention is uncertain. As the Supreme Court held, habeas remains available to challenge the Attorney General's authority to detain post-removal-order when it exceeds statutory or constitutional limits. Mr. Le is not asking this Court to cancel his removal outright at this stage; he asks for *conditional liberty* while his case is under review. Given his lack of danger or flight risk, due process strongly favors a bond hearing or supervised release. The Ninth Circuit (even after *Jennings v. Rodriguez*) has recognized that prolonged detention can demand an individualized hearing. By the time this motion is heard, Mr. Le's detention will be approaching the 6-month Zadvydas threshold, with no guarantee of removal in sight (especially as Vietnam has been historically reluctant in accepting repatriations of certain individuals, and Mr. Le's pending U visa and potential vacatur add further complications). The likelihood of success on this claim is high because the facts are on Mr. Le's side – ICE cannot demonstrate that Mr. Le's removal is significantly likely in the near future, nor that he would pose any risk if released. Thus, continued lock-up is unlawful. At minimum, the Court can readily order a bond hearing where the Government must show necessity of detention. In sum, Mr. Le's detention challenge is an additional merits point favoring relief.

In light of all the above, Mr. Le's case for relief is far from speculative – it is grounded in concrete constitutional violations and supported by voluminous evidence (plea records, declarations, medical records, and more). He has shown at least a substantial case on the merits. Therefore, the first *Winter* factor is satisfied.

B. Irreparable Harm Absent Injunction

If this Court does not grant the requested stay of removal and release, Mr. Le will suffer irreparable harm of the highest order. Deportation in his circumstances would impose injuries that no later court victory could undo. Likewise, continued detention inflicts severe, potentially permanent harms on Mr. Le and his family that cannot be remedied after the fact.

Removal = Permanent Family Separation and Exile: Absent a stay, ICE could deport Mr. Le to Vietnam at any time. This would cause him to be permanently separated from his family and life in the United States. Mr. Le's U.S. citizen daughters, one of whom is still a child, would effectively grow up without their father present. His elderly parents (both U.S. residents/citizens) would likely never see their son again in person. The emotional and psychological damage to these family members would be profound. As Mr. Le explained in his filings, *"deportation means permanent separation from his U.S. citizen daughters, his elderly parents, and the only home he has known since fleeing Vietnam as a refugee in 1995."*. This kind of loss – years of a child's upbringing without a parent, and denial of care to aging parents – cannot be compensated or reversed. If Mr. Le were to prevail eventually in vacating his conviction or otherwise legalizing his status, it would be too late if he had already been expelled; he might have a right to return on paper, but reunification could take many years or prove impracticable. Courts have repeatedly recognized that wrongful removal constitutes irreparable harm because it "deprives [the petitioner] of the opportunity to pursue relief in U.S. courts and to remain united with [family]", among other hardships.

Moreover, Mr. Le's removal would not just be a temporary geographic relocation – it likely entails a lifetime bar from returning. Because his removal order is for an aggravated felony, he would be permanently inadmissible absent some extraordinary permission. Thus, removal is truly irreparable. No subsequent court order can truly "fix" the destruction of Mr. Le's American life, the loss of his LPR status, and the trauma to his loved ones. This is precisely why stays of removal are issued in cases presenting significant questions.

Hardship and Risk in Country of Removal: Mr. Le would also face serious hardships and possible danger in Vietnam, which intensify the irreparable harm. He has not lived in Vietnam since he was a teenager. He has no immediate family or support network there. Repatriating a nearly 50-year-old individual to a country he fled as a refugee poses significant challenges. Notably, Mr. Le's family were associated with the U.S. during the war, as his father was a South Vietnamese ally of the United States. The current Vietnamese regime has a documented record of persecution and mistreatment of those tied to the former South Vietnamese/American side. Mr. Le reasonably fears that as the son of a U.S. ally, he could be subject to harassment or worse. Even putting persecution aside, Mr. Le's mental health would be at grave risk: he suffers from PTSD, and being deported to a foreign environment with no support and lingering trauma triggers could lead to severe depression or other decompensation. He would also lose access to the U.S. medical care and counseling he has been receiving for his PTSD. In short, removal is not just a benign relocation for Mr. Le – it carries potential physical and psychological harm that could be irreparable (for example, PTSD can be worsened by trauma to the point of being life-

threatening). These considerations underscore that without a stay, Mr. Le faces harm far beyond mere inconvenience; he faces potentially life-altering, irreversible consequences.

It bears emphasis that the very relief Mr. Le ultimately seeks (vacatur of his conviction and restoration of his status) would be rendered moot or ineffective if he is removed now. Courts have deemed this a quintessential irreparable harm: the loss of an opportunity to obtain effective relief due to interim removal. For instance, Mr. Le's pending state court appeal could succeed in a few months – but if he is deported in the meantime, that victory might be hollow as he languishes abroad unable to reunite with family. Additionally, removal could cause Arizona courts to dismiss his PCR as moot or for lack of jurisdiction (some courts refuse to entertain post-conviction matters if the defendant is no longer in the country, though that would be contested). Thus, removal would seriously undermine Mr. Le's right to meaningful judicial review, itself an irreparable injury.

Continuing Detention Harms: Even aside from deportation, keeping Mr. Le in immigration detention causes irreparable harm to him and his family. Mr. Le has already been detained for over three months. During this time, he has been separated from his children, who rely on him for emotional and financial support. His youngest daughter in particular is suffering anxiety and emotional trauma from not having her father at home. These missed months (or years, if litigation drags on) with a parent are lost forever in a child's life. Mr. Le's business is also likely to collapse without his presence, meaning his livelihood (and his employees' jobs) are in jeopardy – even if he is later released, the damage to his financial stability may be irreparable. Mr. Le's own mental and physical

health are at stake: detention conditions (especially during a pandemic era) are known to be arduous, and for someone with PTSD, incarceration can be highly traumatizing. Mr. Le has experienced nightmares and flashbacks in detention as a result of his 2004 kidnapping trauma being re-triggered by confinement. Every additional day in custody is a harm that cannot be refunded to Mr. Le if he prevails. Courts recognize that unlawful detention, even for a short period, constitutes irreparable harm because one cannot recover the time spent imprisoned.

By contrast, if Mr. Le is released on supervision, ICE's ability to eventually execute removal (should it become lawful to do so) will not be compromised – he can be ordered to appear for removal if that day comes. He has shown no inclination to abscond; the harm from detention is therefore not a necessary cost. In sum, the balance of harms from detention weighs heavily on the side of irreparability for Mr. Le, whereas the government's interest can be safeguarded by less restrictive means (monitoring).

In light of all these factors, Mr. Le has demonstrated that without a stay of removal and interim release, he will suffer irreparable harm. This harm is concrete, severe, and imminent. It is not speculative: we have direct evidence (in the form of family declarations and medical reports) of the emotional devastation already being wrought by his detention and the prospect of deportation (Exhibits 8 & 9). Moreover, courts have found similar harms – separation from family, loss of one's home, psychological trauma – to be irreparable injuries supporting injunctive relief. Therefore, the second *Winter* factor decisively favors Mr. Le.

C. Balance of Equities

The balance of equities tips sharply in Mr. Le's favor. On one side of the scales, we have the harms to Mr. Le and his family detailed above – effectively, the destruction of an entire life's foundation and the infliction of extreme suffering. On the other side, we have the interests of the Government in enforcing immigration laws and the timing thereof. Granting the injunction would merely maintain the status quo for a limited period: Mr. Le would remain physically present (under Court supervision) while his legal challenges are resolved. The Government would temporarily forego removing him and detaining him, but it retains the ultimate ability to remove him later if it prevails on the merits. The question is whether any significant prejudice or injury befalls the Government by this delay or by Mr. Le's presence in the community in the interim. The answer is no.

No Significant Harm to Government from a Stay: A stay of removal postpones Mr. Le's deportation; it does not cancel it. The Government's interest is in removing individuals who are properly ordered removed. If Mr. Le's order remains proper after judicial review, the Government can carry out the removal at that time. There is minimal harm in allowing Mr. Le to remain for the short term, especially given that he was free in the community from 2011 until 2025 without incident. The Government incurs little cost – indeed, releasing Mr. Le from detention *saves* the Government the expense of detention space and resources. The primary "harm" the Government might allege is a generalized interest in promptly executing removal orders or an argument that enjoining removal could marginally impact immigration enforcement objectives. But courts have held that compliance with the law and ensuring due process is always in the public interest

(discussed below), and the Government cannot be said to be "harmed" by being asked to wait to remove someone who has a credible claim to relief. Especially when that person is not dangerous, the equities do not favor rushed enforcement. Here, DHS itself effectively waited seven years (2004–2011) to even initiate removal, and then another seven years (2018–2025) to detain and attempt removal of Mr. Le. That undermines any claim of urgent harm if Mr. Le is allowed to remain a bit longer pending resolution of his court cases. In fact, Mr. Le's post-conviction case is on an expedited track precisely to minimize any delay, indicating that any injunction would likely be measured in months, not years.

Petitioner's Equities Are Overwhelming: In contrast to the negligible harm to the Government, the equities on Mr. Le's side are profound. He has many positive equities: a 30-year residence, U.S. citizen close family, a history of working and contributing, and evidence of rehabilitation (no re-offending since 2002). He is not the type of individual whose continued presence during litigation poses a danger or scandal. By the Government's own assessments, Mr. Le "does not pose a security threat…and there is no risk of flight". These favorable factors mean that releasing Mr. Le or delaying his removal will not compromise public safety or immigration enforcement in any meaningful way. On the contrary, equity and humanity support allowing him to be with his family and keep his affairs in order while the courts consider his case. If removed now, his U.S. family suffers irreparably; if removed later (after fair consideration of his claims), at least they will have had the benefit of due process and potentially time to prepare.

Hardship to Family vs. Administrative Convenience: Balancing the respective hardships, Mr. Le's U.S. citizen family would endure extreme hardship absent an

injunction – including a child possibly entering the foster care or welfare system if no parent is available, and elderly parents lacking the care of their son. The Government, on the other hand, would only face the "hardship" of having to wait and possibly litigate Mr. Le's case on the merits rather than mooting it by deportation. That is not a cognizable hardship; it is part of the duty to follow legal process. Indeed, preventing irreparable family hardship is a strong equitable consideration in immigration cases. Here we have multiple U.S. citizens (two generations of Mr. Le's family) who would suffer alongside him.

In weighing equities, courts also consider if the movant has acted in good faith. Mr. Le has diligently complied with the law and asserted his rights without undue delay. Once he learned of his lawyer's failure in 2025, he promptly sought relief. There is no evidence of manipulation or bad-faith delay on his part; he is not seeking an injunction simply to stall removal indefinitely – he has concrete relief (the PCR and motions) in progress. Thus, equity favors giving him the chance to see those through.

Conclusion on Equities: On balance, the hardship to Mr. Le and his family vastly outweighs any harm to the Government from granting interim relief. The worst-case scenario for the Government is that Mr. Le remains here a bit longer and requires an additional removal arrangement later – a manageable outcome. The worst-case for Mr. Le is losing his family and mental well-being forever. The disparity is obvious. Accordingly, the third *Winter* factor (balance of equities) strongly supports Mr. Le's motion.

D. Public Interest

Finally, the public interest favors granting the preliminary injunction. The public has a compelling interest in ensuring that the laws are faithfully applied and that individuals

are not wrongfully removed or detained in violation of their rights. Here, staying Mr. Le's removal and releasing him on supervision pending resolution of his claims will advance several public interest considerations:

Upholding Constitutional Rights and the Rule of Law: The public interest is always served by safeguarding constitutional rights, including the Sixth Amendment right to effective counsel and Fifth Amendment due process. Granting an injunction in this case signals that the Court will not permit an arguably unlawful removal to go forward without careful judicial review. This enhances public confidence in the fairness of our legal system. If Mr. Le's *Padilla* claim has merit (as we believe it does), then allowing his removal now would effectively sanction a constitutional violation – something decidedly against the public interest. The Supreme Court has noted that "the public has a strong interest in the accurate and just enforcement of immigration laws", which includes not deporting those who have valid legal grounds to remain. By temporarily halting Mr. Le's removal, the Court would be upholding this interest, ensuring that he is not erroneously deported and that the law (Padilla, etc.) is given effect. Moreover, avoiding a potential wrongful deportation saves the public from the difficult situation of trying to later rectify such an error (which can involve diplomatic arrangements to return someone or simply leaving a wrong unredressed).

Family Unity and Humanitarian Values: The public interest also encompasses family unity, especially for U.S. citizen children. Congress and policymakers have repeatedly recognized the value of keeping families together when possible. Here, an injunction would keep Mr. Le with (or at least in the same country as) his daughters and

parents while his status is resolved. The alternative would cause immediate family separation, which is generally disfavored. The broader community benefits when families remain intact – it reduces the social service burdens (e.g., a child who might otherwise need state care if a sole parent is deported) and aligns with societal values of compassion. Mr. Le's family members – who are part of the public – clearly have an interest in his remaining here. Their interest is not just private but one that echoes the public's interest in humane treatment of long-time community members.

Productive Members of Society: Additionally, allowing Mr. Le's release serves the public interest by enabling him to resume his economic contributions and community involvement while his case is pending. If released, Mr. Le can run his business, employ others, pay taxes, and support his family – all positive economic and social contributions. Detaining him (or removing him) cuts off those contributions, to the detriment of the community and economy. There is little public benefit to keeping a non-dangerous business owner locked up at taxpayer expense. Indeed, *releasing him under monitoring* would convert him from a cost (detention) to a contributor (taxpayer and provider). The public interest favors efficient allocation of resources, which here means not detaining someone unnecessarily and not breaking a self-sufficient family unit.

Integrity of the Immigration System: The public also has an interest in the integrity of the immigration system. Mr. Le's case, while unique in facts, reflects a broader principle: that refugees and long-term residents should not be expelled without full due process, especially where a past injustice (ineffective counsel) may have occurred. Granting a preliminary injunction here aligns with the public interest in seeing that the

system does not deport people who have meritorious claims for relief. Conversely, if Mr. Le were removed and later won his case, the public's trust in the system would be undermined (not to mention the moral weight of having deported a refugee who then proved his removal was unwarranted). Thus, erring on the side of caution via a stay is in the public's interest.

No Public Safety Drawback: Importantly, nothing about the requested injunction undermines public safety or the orderly enforcement of immigration laws. Mr. Le is not a fugitive or a risk to the community. His only crime is decades old, non-violent, and he has been rehabilitated. The public interest in safety is not implicated adversely by allowing him out on bond or by delaying his deportation – he is far more likely to continue being a law-abiding, productive neighbor and father, as he has been for years. The conditions of supervision can ensure he remains so. In short, there is no countervailing public interest that would be harmed by granting this relief. The oft-cited public interest in prompt removal of those with final orders is not absolute; it yields where, as here, serious legal and equitable factors justify a stay. Indeed, Congress allowed for judicial review of removal orders precisely because of the public interest in avoiding unjust removals. Our immigration system's credibility rests on balancing enforcement with fairness, and granting an injunction here strikes that balance appropriately.

In sum, granting the preliminary injunction serves the public interest by promoting justice, preventing irreparable harm to citizens and residents, and upholding constitutional values. It tells the community that our courts will take the time to get it right, rather than

inflict irreversible harm in haste. This final *Winter* factor thus also supports Mr. Le's request.

Conclusion

All four *Winter* factors counsel in favor of relief for Mr. Le. He has demonstrated serious merits in his habeas claims (and a likelihood of ultimately overturning the basis for his removal), he faces irreparable harm absent interim protection, the balance of hardships tips heavily in his favor, and the public interest is aligned with preventing an unjust deportation and unwarranted detention. This motion is far from frivolous – it is brought to prevent a grave miscarriage of justice: the deportation of a refugee LPR who may well be legally entitled to remain, and the needless suffering of his U.S. family. Granting preliminary injunctive relief here will ensure that Mr. Le's rights are adjudicated in an orderly manner, without rendering the outcome moot by his absence.

Accordingly, Petitioner Toan Le respectfully requests that the Court GRANT this Motion and issue an order providing the following relief:

- **Stay of Removal:** Enjoin Respondents from removing or deporting Mr. Le from the United States while his Petition for Writ of Habeas Corpus (and any related appeals or motions) remain pending, or at least until the resolution of his pending BIA motion and state post-conviction appeal.
- **Release from Detention:** Order Respondents to immediately release Mr. Le from ICE custody under appropriate conditions of supervision. This may include conditions such as periodic check-ins, surrender of travel documents, or GPS monitoring as the Court deems necessary to assure his availability. In the alternative,

the Court should order that Mr. Le be provided a prompt individualized bond hearing before an immigration judge, at which the Government bears the burden to prove that Mr. Le's continued detention is justified.

Petitioner further requests any additional relief the Court finds just and proper to effectuate the stay and preserve the Court's jurisdiction (including, if needed, an order that Respondents report compliance and/or not remove Mr. Le to any third country).

Dated: November 5th, 2025.

Respectfully submitted,

/s/Daniel M Huynh

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