Daniel M Huynh (SBN: 036779)
Law Office Of Daniel Huynh
4709 Wilson Blvd
Arlington, VA 22203
Phone: 408-569-3932
Email: daniel@huynhlaws.com

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Toan Sy Le, Petitioner, v. Fred Figueroa, et al., Respondents.	**Case No:** CV-25-04130-PHX-SMB (CDB) **PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION**

Introduction

Petitioner Toan Le respectfully moves for a preliminary injunction ordering his release from immigration detention. He has been held by ICE since July 24, 2025, without a bond hearing, under a final removal order to Vietnam. This motion challenges his prolonged detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), which bars civil detention beyond the period reasonably necessary to effect removal. Nearly five months have passed, yet Vietnam has not agreed to repatriate Mr. Le, and legal and humanitarian obstacles make removal unlikely. Continued detention serves no legitimate purpose and causes ongoing harm to Mr. Le's health, family, and liberty interests.

Mr. Le meets the *Zadvydas* standard and is likely to succeed on the merits. Vietnam routinely delays or refuses repatriation of refugees like Mr. Le, and his pending legal challenges make removal even more remote. He suffers from serious health conditions, and detention exacerbates his family's hardship. He poses no danger or flight risk, and ICE permitted him to live in the community for years without incident. Detaining him further violates due process, wastes resources, and defies constitutional limits. All four Winter factors support release, and Mr. Le respectfully requests that the Court grant preliminary injunctive relief.

Factual Background

I. Mr. Le's Admission to the U.S. as a Refugee

Mr. Le, a 46-year-old Vietnamese national, has lawfully resided in the U.S. since March 7, 1995, when he and his family were admitted as refugees under the U.S. Humanitarian Operation program, which protected those persecuted for their ties to the U.S. during the Vietnam War (Ex. 11, Final Removal Order/BIA Decision at 2; Ex. 13, Phuoc Le Decl. ¶¶ 2–4). His father, Phuoc Le, a Vietnam War veteran who fought alongside U.S. forces, was imprisoned in a "re-education" camp post-1975 (Ex. 13 ¶ 3). The U.S. resettled the family in recognition of this service. Mr. Le, then 14, adjusted to lawful permanent resident status upon arrival and has lived in Arizona ever since (Ex. 13 ¶ 4). He built his life in the U.S.—attending school, starting a business, and raising a family. He is married to a U.S. citizen (Ex. 14, Anna Le Decl. ¶ 2) and has two U.S. citizen daughters, ages 8 and 24 (Ex. 14 ¶ 3; Ex. 15, Eldest Daughter Decl. ¶ 4), the elder of whom he largely raised alone (Ex. 15 ¶¶ 3–5). His entire immediate and extended

family lives in the U.S. (Ex. 13 ¶ 4; Ex. 14 ¶ 3). Removal to Vietnam would sever these ties and cause severe hardship to his citizen relatives (Ex. 15 ¶¶ 6–8; Ex. 14 ¶¶ 8–10).

II. 2002 Conviction and Rehabilitative History

At age 19, Mr. Le was arrested in Arizona and later pleaded guilty to one count of Solicitation to Sell a Dangerous Drug (MDMA), a Class 4 felony under A.R.S. §§ 13-1002 and 13-3407 (Ex. 8, Chandler Police Dept. Rep. No. 01-xxxxxx). He received probation and a brief jail term, which he completed by 2003 (Ex. 11 at 2). This 2001 offense is his only criminal conviction, and he has no further arrests (Ex. 16, Community Leader Decl. ¶ 5). Since then, Mr. Le has lived a law-abiding life—marrying, operating a small business, and serving as the main provider for his wife, daughters, and elderly parents (Ex. 13 ¶¶ 5–8; Ex. 14 ¶¶ 6–9). Community members regard him as responsible and morally upright (Exs. 16–18, Community Decls. ¶¶ 4–7). In 2010, Mr. Le was the victim of an armed robbery and fully cooperated with police, applying for a U visa as a result (Ex. 8 at 4–5; Ex. 17, Victim Advocate Decl. ¶¶ 3–6). The Chandler Police Department certified his helpfulness (Ex. 17 ¶ 5). His clean record since 2002 and collaboration with law enforcement underscore that he poses no danger to the community.

III. Removal Proceedings and Final Order (2011–2018)

Nearly ten years after Mr. Le's 2002 conviction, DHS initiated removal proceedings by issuing a Notice to Appear ("NTA") on March 22, 2011, charging him as removable under INA §§ 237(a)(2)(A)(iii) and 237(a)(2)(B)(i) based on an aggravated felony drug offense (Ex. 11 at 1). The NTA lacked a date or time for hearing — a defect later held unlawful in Pereira v. Sessions, 138 S. Ct. 2105 (2018). Mr. Le contested the charges and

applied for relief based on hardship to his family and a then-pending U visa. The Immigration Judge denied relief and ordered removal, and the BIA affirmed on May 30, 2018, citing the aggravated felony bar and concluding the U visa did not prevent removal (Ex. 11 at 3). Mr. Le's subsequent Ninth Circuit petition raised Pereira and other issues, but the case was dismissed in 2019. Since then, Mr. Le has remained under a final removal order.

IV. Post-Order Developments and ICE Detention in 2025:

Though subject to a final removal order since 2018, Mr. Le was not detained by ICE for over seven years. During that time, he lived openly, checked in as required, and ICE made no removal attempt (Ex. 14 ¶ 7; Ex. 16 ¶ 6). ICE's inaction likely reflected ongoing legal and diplomatic hurdles. His U visa petition remains pending, and ICE has often deferred removal in such cases. Moreover, Vietnam generally refuses to repatriate individuals like Mr. Le—those who arrived before 1995—especially those with ties to the South Vietnamese military or U.S. criminal convictions (Ex. 13 ¶¶ 9–11; Ex. 18 ¶¶ 4–7). These obstacles led Mr. Le and his family to reasonably believe he would remain under supervision.

That changed on July 24, 2025, when ICE arrested Mr. Le during a routine check-in at his home in Chandler, Arizona, pursuant to the 2018 removal order (Ex. 11 at 4). ICE issued a Notice of Custody Determination stating he would be detained without bond. Since then, Mr. Le has been held at La Palma Correctional Center, with no opportunity to contest detention before an immigration judge, as post-order detainees are denied bond hearings. After 90 days, ICE issued a cursory Post-Order Custody Review continuing detention

without addressing the likelihood of removal. Mr. Le has now been detained for over four months, with no foreseeable end.

Following his July 2025 detention, Mr. Le swiftly pursued legal remedies to challenge removal and its underlying basis. In August 2025, he filed a motion to reopen with the BIA, citing new evidence of his fear of persecution in Vietnam and his pending U visa. The BIA denied the motion on October 1, 2025 (Ex. 11), and Mr. Le sought Ninth Circuit review (Pet. for Rev. No. 25-7xxxx), prompting an administrative stay of removal, which remains in effect.

He also filed a second BIA motion (pending) based on ineffective assistance of counsel and potential vacatur of his 2002 conviction. Separately, he filed a Rule 32 post-conviction petition in Maricopa County, asserting a Padilla violation. If successful, he intends to seek termination of the removal order. These proceedings are ongoing and unlikely to conclude soon. Despite this, ICE continues detaining Mr. Le, even though actual removal is legally barred and may ultimately prove invalid.

Even aside from the current stay of removal, there is no foreseeable path for Mr. Le's deportation to Vietnam. The Government has not obtained travel documents or offered any timeline for removal (Ex. 13, Father's Decl. ¶ 10). Vietnam has historically declined to accept deportees who, like Mr. Le, arrived before 1995 under refugee programs. His lack of ties there and his family's pro-U.S. background make repatriation even less likely. Mr. Le's pending motion to reopen includes a fear-of-return claim, citing risk of persecution or torture (Ex. 18 ¶¶ 5–7). Vietnam has not agreed to repatriate him.

Meanwhile, Mr. Le's continued detention has caused significant hardship. He suffers from worsening hypertension and depression under poor detention conditions (Ex. 7 at 3–6), and his mental health has declined due to fear and uncertainty. His family is in crisis: his young daughter is emotionally distressed (Ex. 14 ¶ 9), his wife struggles alone (Ex. 14 ¶¶ 7–10), and his elderly father's health has sharply declined (Ex. 13 ¶¶ 7–8). These humanitarian harms are well-documented (Exs. 13–18). Mr. Le poses no flight risk or danger and is eager to comply with any release conditions (Ex. 15 ¶ 8; Ex. 16 ¶ 7). Continued detention serves no purpose and only deepens the damage.

Procedural Posture

On November 10, 2025, Mr. Le filed a Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, challenging his continued detention under Zadvydas and the Due Process Clause. He now seeks a preliminary injunction for release while the case proceeds. This is not an emergency motion; Mr. Le requests standard briefing, recognizing his detention is already unreasonably prolonged and likely to surpass six months before a ruling. Pursuant to LRCiv 7.2 and Fed. R. Civ. P. 65, Mr. Le asks the Court to order his release under supervision, addressing only his claim that post-removal-order detention has become unlawful under Zadvydas. The following memorandum explains why he meets each standard for preliminary relief.

Legal Standard

A preliminary injunction is "an extraordinary remedy" designed to preserve the status quo and prevent irreparable harm during litigation. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). To obtain a preliminary injunction, the moving party must

establish: (1) a likelihood of success on the merits; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Id.* at 20. In the Ninth Circuit, these elements are balanced on a sliding scale; a particularly strong showing on one factor (e.g., serious questions on the merits and a sharp balance of hardships in plaintiff's favor) can compensate for a lesser showing on another, but at an irreducible minimum the plaintiff must demonstrate a fair chance of success on the merits and a significant threat of irreparable injury. *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The movant carries the burden of proof on each element.

In the context of immigration detention, the merits of Mr. Le's claim turn on the substantive limits the Constitution places on civil detention under 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas* and its progeny. The Supreme Court in *Zadvydas* read § 1231(a)(6) to incorporate an implicit temporal limitation: the statute permits detention only for "a period reasonably necessary to secure removal," and indefinite or prolonged detention is not authorized absent a realistic prospect of removal. 533 U.S. at 689, 699–700. The Court identified six months as a presumptively reasonable period for the Government to effect removal. *Id.* at 701. After six months, if the noncitizen can provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the Government to rebut that showing with evidence. *Id.* If the Government cannot rebut with concrete evidence that removal is likely soon, continued detention violates the statute as construed to avoid serious constitutional doubts (namely, the Fifth Amendment due process concerns with indefinite deprivation of

liberty). *Id.* at 690, 696. This standard has been applied to all post-final-order detainees, including those deemed "inadmissible," via *Clark v. Martinez*, 543 U.S. 371 (2005). In short, the law does not permit ICE to detain a person subject to a final removal order indefinitely; absent a realistic prospect of actual removal, the person must be released under supervision.

The Ninth Circuit has further elaborated on standards governing prolonged immigration detention, recognizing that "the private interests at stake are profound" once detention stretches beyond the initial months. Detention that exceeds approximately six months is considered "prolonged" and triggers heightened scrutiny under due process. *See Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081, 1086, 1091–92 (9th Cir. 2011) (holding that noncitizens detained under § 1231(a)(6) are entitled to an individualized bond hearing after 180 days of detention, because prolonged detention without such process would raise serious constitutional concerns). Although the availability of bond hearings has been subject to evolving case law, the fundamental principle remains: continued civil detention must remain tied to its regulatory purpose (effectuating removal) and must be accompanied by adequate procedural safeguards. *See id.* at 1087 ("When detention becomes prolonged, 'special care' is required so that the detention does not become a punitive end run around the statute."). Where, as here, removal is not imminent or realistically attainable, detaining the individual for months on end violates both the statute and the Due Process Clause.

Accordingly, to succeed on the merits of his claim, Mr. Le need not show with absolute certainty that he will never be removed; rather, he must show (and has shown) that his removal is not significantly likely in the reasonably foreseeable future, such that

further detention is unjustified. *Zadvydas*, 533 U.S. at 701. This is a fact-intensive inquiry. Courts consider evidence of the Government's efforts to obtain travel documents, the receiving country's responsiveness (or lack thereof), the detainee's circumstances (including any impediments like pending legal proceedings or medical issues), and historical factors affecting removals to the country in question. If after considering the evidence the court determines that removal is not likely soon, the proper remedy is an order releasing the detainee under appropriate conditions of supervision. *See id.* at 699–700 (noting that § 1231(a)(3) provides for supervised release conditions for aliens who cannot be removed but remain under final orders).

With this legal framework in mind, we turn to the four preliminary injunction factors and their application to the facts of Mr. Le's case.

Argument

A. Likelihood of Success on the Merits of the Prolonged Detention Claim

Mr. Le is highly likely to prevail on his claim that his continued detention violates *Zadvydas v. Davis* and the Fifth Amendment's Due Process Clause. He has been detained since July 24, 2025—nearly five months—and is approaching the six-month benchmark recognized in *Zadvydas*. Yet there is no significant likelihood of removal in the reasonably foreseeable future, and his detention could extend indefinitely without judicial intervention.

First, Vietnam has not agreed to repatriate Mr. Le. ICE cannot deport him without travel documents, and none have been issued despite nearly five months of detention. Vietnam's track record—especially with refugees like Mr. Le, who arrived in 1995 under

humanitarian parole and has family ties to the former South Vietnamese military—makes removal highly unlikely. This mirrors the scenario in *Zadvydas*, where detention was deemed unlawful due to the unlikelihood of repatriation. ICE has presented no concrete evidence that removal is imminent, as required under *Zadvydas*.

Second, Mr. Le's removal is legally barred while his Ninth Circuit appeal is pending. Though the Government may argue that his own litigation is causing delay, courts have consistently rejected the idea that seeking legal relief justifies indefinite detention. See Ly v. Hansen, 351 F.3d 263, 272 (6th Cir. 2003). Even if Mr. Le abandoned his appeals, removal still could not occur due to Vietnam's inaction. Thus, his detention is not justifiable under *Zadvydas*.

Third, his continued detention no longer serves any legitimate government purpose. *Zadvydas* authorizes post-removal detention only to facilitate actual removal or prevent danger. Mr. Le poses neither risk. Aside from a single 2002 conviction, his record is clean. He complied with ICE supervision for seven years and remains committed to lawful resolution of his case. ICE never considered him dangerous or flight-prone, and further detention appears punitive, not administrative. See *Zadvydas*, 533 U.S. at 690.

Finally, Ninth Circuit precedent in Diouf II reinforces Mr. Le's position. There, the court held that prolonged detention past six months raises serious due process concerns, requiring individualized review. 634 F.3d at 1091–92. Mr. Le has never had such a hearing. Given his compelling equities and the Government's lack of justification, his continued incarceration squarely fits the unlawful detention condemned in *Zadvydas* and its progeny.

In sum, Mr. Le has shown a strong likelihood of success—or at minimum, raised serious legal questions—which weighs heavily in favor of a preliminary injunction.

B. Irreparable Harm in the Absence of Injunctive Relief

Mr. Le suffers irreparable harm each day he remains in ICE detention. Courts consistently recognize that prolonged loss of liberty constitutes such harm. See Odhiambo v. Chertoff, 538 F. Supp. 2d 19, 27 (D.D.C. 2008); Rodriguez v. Robbins, 715 F.3d 1127, 1144 (9th Cir. 2013). Mr. Le has been detained for nearly five months without being a flight risk or danger, and every day of incarceration irreversibly strips him of time with his family and freedom that cannot be restored.

Beyond liberty, Mr. Le's health is at risk. His medical records (Ex. 7) document serious hypertension with spikes in blood pressure, exacerbated by inadequate care and detention stress. He also suffers from anxiety and depression, worsened by confinement. Courts have found that such deteriorating health conditions and inadequate care qualify as irreparable harm. See *Fraihat v. ICE*, 445 F. Supp. 3d 709, 736 (C.D. Cal. 2020).

Separation from family adds further injury. Mr. Le's 8-year-old daughter is emotionally distressed, and his wife struggles to manage work and caregiving alone (Ex. 14 ¶¶ 7–10; Ex. 15 ¶¶ 5–8). These family disruptions are exactly the kind of non-compensable harms courts deem irreparable. See Chalk v. U.S. Dist. Ct., 840 F.2d 701, 709–10 (9th Cir. 1988).

Mr. Le also faces the threat of removal to a country where he fears persecution. Even with a temporary stay, the uncertainty of litigation means that wrongful removal is possible — a risk courts recognize as irreparable. See Nken v. Holder, 556 U.S. 418, 435

(2009). The injunction sought here would protect him from further detention-related harms while his legal claims proceed.

In short, Mr. Le's detention is inflicting serious physical, emotional, and constitutional injuries that cannot be remedied later. The irreparable harm factor weighs strongly in favor of granting relief.

C. Balance of Equities Tips Sharply in Petitioner's Favor

The balance of equities in this case is decidedly in Mr. Le's favor. This factor requires the Court to weigh the harm that Mr. Le will suffer absent an injunction against the harm the Government (or other interested parties) will suffer if an injunction is granted. *Winter*, 555 U.S. at 24. Here, that comparison is not close: Mr. Le's continued detention imposes severe, personal harms on him and his family (as described above), whereas the Government would face little to no cognizable injury from Mr. Le's release under reasonable conditions.

On Mr. Le's side, the equities include his fundamental liberty interest and the severe personal and familial harm from continued detention. The Supreme Court has recognized that freedom from government custody is at the core of due process protections. *Zadvydas*, 533 U.S. at 690. That interest is especially strong here, as Mr. Le has been held for months without a judicial hearing. He is a father, husband, and son whose U.S. citizen family relies on him. The emotional and financial toll on his family is significant. Courts routinely find family unity and avoiding trauma to children as strong equitable factors. See *Leiva-Perez v. Holder*, 640 F.3d 962, 970–71 (9th Cir. 2011).

In contrast, the Government faces little harm if Mr. Le is released under supervision. Their interests—ensuring appearance for removal and public safety—can be met with conditions such as ICE check-ins or monitoring. Mr. Le has complied with supervision in the past, poses no flight risk, and is committed to resolving his legal cases while remaining with his family.

Mr. Le's release would not pose a danger. He has no history of violence, and his only conviction—over two decades ago—was for a non-violent drug offense. Since then, he has been a model resident, even assisting law enforcement as a crime victim. Community members and family have consistently vouched for his peaceful character and responsibility (Ex. 16 ¶¶ 4–7; Ex. 17 ¶ 6; Ex. 18 ¶ 3). ICE has never cited him as a danger, and there's no evidence suggesting otherwise. Upon release, he would resume caring for his family, operating his business, and complying with supervision.

Detaining Mr. Le also burdens the Government. ICE custody is expensive, and resources would be better used elsewhere. Upholding *Zadvydas* promotes lawful detention practices. Continuing to hold Mr. Le, despite no removal timeline and no legal basis, serves no legitimate interest. As the Ninth Circuit held in Rodriguez, ending unlawful detention practices cannot harm the Government.

In balancing equities, courts also sometimes consider the timing and circumstances: Mr. Le did not sleep on his rights; he diligently sought relief through the administrative process and came to this Court only after it became clear that ICE would not release him notwithstanding his lengthy detention and evidence of its unreasonableness. Any purported government interest in administrative efficiency or deference to agency process has largely

been met: he gave the agency time (over four months and a POCR review) to make a decision, and the agency chose continued detention without a solid basis. Now equitable intervention by the judiciary is warranted.

In sum, the harm to Mr. Le absent an injunction (continued unlawful detention and all its personal tolls) far outweighs any theoretical harm to the Government from letting Mr. Le live at home under supervision. The balance of hardships is therefore not just in Mr. Le's favor, but sharply so. This strongly supports granting relief. At the very least, even if success on the merits were deemed a "serious question" rather than near-certain, the balance of equities tipping so heavily toward Mr. Le would satisfy the Ninth Circuit's alternate "serious questions" test for a preliminary injunction. *See Alliance for Wild Rockies*, 632 F.3d at 1135.

D. Public Interest Considerations Support the Requested Injunction

Finally, the public interest will be served, not disserved, by granting a preliminary injunction and releasing Mr. Le from detention. In cases where the Government is a party, the balance of equities and public interest factors merge, *Nken*, 556 U.S. at 435, but here both analyses favor Mr. Le independently. Several compelling public interest considerations apply:

1. Adherence to Rule of Law and Constitutional Values:

Upholding the Constitution and statutory limits on detention is always in the public interest. Granting an injunction enforces *Zadvydas*, curbing indefinite detention and ensuring accountability. Denying relief would undermine individual liberty and signal tolerance for unlawful confinement—contrary to core American legal principles.

2. Protection of Human Dignity and Family Unity:

Mr. Le's release would reunite him with his U.S. citizen family, reducing their hardship and potential reliance on public aid. Keeping families intact benefits both the individuals and the broader community. Given that his family includes young children, the public interest strongly supports minimizing the trauma of separation. Courts have consistently affirmed the public interest in preserving family unity during immigration proceedings. See *Villanueva v. Barr*, 919 F.3d 434, 441 (7th Cir. 2019).

3. Community Contributions and Support:

Mr. Le has been a hardworking business owner and valued community member, with local leaders and a victim advocate confirming his positive impact (Exs. 16–17). Releasing him allows him to resume contributing economically and caring for his family, avoiding unnecessary public expense. Continued detention serves no useful purpose and only adds taxpayer costs.

4. No Detriment to Public Safety or Immigration Enforcement:

Releasing Mr. Le under supervision aligns with both *Zadvydas* and the statutory framework for post-removal-order custody. It does not invalidate his removal order—only ensures he is not needlessly detained while removal remains uncertain. Should removal become viable, ICE retains authority to re-detain him. Mr. Le poses no public safety risk, and his strong community ties reduce flight risk. Detaining non-dangerous individuals wastes resources and erodes trust in fair immigration enforcement.

5. Preventing Indefinite Detention Precedent:

Granting relief affirms that indefinite civil detention has no place in our legal system. Denying it risks setting a harmful precedent for others facing similar uncertainty. An injunction reinforces that immigration detention must remain within constitutional limits and courts will intervene to prevent unlawful confinement. This upholds accountability and aligns with the public interest. The benefits of releasing Mr. Le clearly outweigh any downside.

Considering these factors, the public interest supports Mr. Le's release. The benefits clearly outweigh any potential harm. Mr. Le has demonstrated a strong *Zadvydas* claim, irreparable harm, favorable equities, and alignment with public interest. A preliminary injunction is warranted.

Conclusion

For these reasons, Mr. Le respectfully asks the Court to grant a preliminary injunction and order his immediate release from ICE custody under appropriate supervision. His continued detention violates Zadvydas, as removal is not foreseeable and detention has become unreasonably prolonged. Each day causes irreparable harm without serving any valid government purpose. An injunction would restore his prior supervised release, letting him support his family and pursue his legal remedies.

Petitioner accordingly asks that the Court enter the Proposed Order submitted herewith. In accordance with District of Arizona Local Rule Civ. 7.1(b)(2), the Proposed

Order is prepared as a separate document with the case caption, for the Court's convenience.

Dated: November 14, 2025.

Respectfully submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2025, I electronically filed the foregoing Motion for Preliminary Injunction with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq.
4709 Wilson Blvd
Arlington, VA 22203
Counsel for Petitioner