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

9 Vinh Van Phan,
10 Petitioner,
11 vs.
12 David R. Rivas, Warden, et al.,
13 Respondents.

No.
Motion for a Preliminary Injunction

14
15 Along with his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Mr. Phan is
16 filing this motion for a preliminary injunction. In his petition, he asserts that he cannot be
17 removed to Vietnam, such that his continued detention by immigration officials violates the Fifth
18 Amendment's Due Process Clause. He also asserts that his detention is illegal because he has not
19 received notice and an opportunity to seek relief from removal to a country other than Vietnam.
20 Because he is almost certain to prevail on at least one of these claims, he respectfully asks the
21 Court to order his immediate release from custody while this case is litigated.

22 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
23 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
24 balance of equities tips in his favor, and that an injunction is in the public interest." *Planned*
25 *Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843-44 (9th Cir. 2024) (quoting *Alliance*
26 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)). "Alternatively, a preliminary
27 injunction may issue where serious questions going to the merits were raised and the balance of
28 hardships tips sharply in plaintiff's favor if the plaintiff also shows that there is a likelihood of

1 irreparable injury and that the injunction is in the public interest.” *Id.* at 844 (quoting *Alliance for*
2 *the Wild Rockies*, 632 F.3d at 1135). Here, Mr. Phan can make all four of these showings.

3 First, he is almost certain to succeed on the merits of his habeas petition. His continued,
4 indefinite detention in immigration custody violates the Due Process Clause of the Fifth
5 Amendment because there is no significant likelihood that he can be removed to Vietnam in the
6 reasonably foreseeable future. Indeed, ICE has released him numerous times on orders of
7 supervision on account of the fact that they cannot obtain travel documents for Mr. Phan.
8 Second, illegal confinement is quintessentially irreparable harm, because “the deprivation of
9 constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d
10 990, 1002 (9th Cir. 2012). Third, and finally, when the government is a party, as it is here, “the
11 balance of equities and public interest factors merge.” *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d
12 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th
13 Cir. 2014)). The risk of harm to Mr. Phan far outweighs the government’s interest in illegally
14 detaining him, for it is “always in the public interest to prevent the violation of a party’s
15 constitutional rights.” *Melendres*, 695 F.3d at 1002.

16 For the foregoing reasons, Mr. Phan respectfully asks the Court to grant a preliminary
17 injunction and order his immediate release from custody.

18 Respectfully submitted:

November 18, 2025.

19 JON M. SANDS
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