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

9 Hung Ba Nguyen,
10 Petitioner,

11 vs.

12 David R. Rivas, Warden, et al.,
13 Respondents.
14

No.

Motion for a Preliminary Injunction

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

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

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

20 Respectfully submitted:

December 17, 2025.

21 JON M. SANDS
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25 Assistant Federal Public Defender
26 *Attorney for Petitioner Nguyen*
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