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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Samir Aghar, Petitioner, vs. Fred Figueroa, Warden, et al., Respondents.	No. **Motion for a Preliminary Injunction and for a Temporary Restraining Order**

Simultaneously with this document, Mr. Aghar has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. In his petition, he asserts that Afghanistan has no diplomatic presence in the United States, such that it cannot cooperate with ICE's efforts to repatriate Afghani citizens who have been ordered removed, and that his continued detention by immigration officials violates the Fifth Amendment's Due Process Clause. He also asserts that his detention is illegal because he has not been afforded a bond hearing before a neutral decisionmaker, in violation of the Due Process Clause. Because he is almost certain to prevail on at least one of these claims, he respectfully asks the Court to order his immediate release from custody while this case is litigated.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Planned Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843–44 (9th Cir. 2024) (quoting *Alliance*

for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011)). "Alternatively, a preliminary injunction may issue where serious questions going to the merits were raised and the balance of hardships tips sharply in plaintiff's favor if the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* at 844 (quoting *Alliance for the Wild Rockies*, 632 F.3d at 1135). The standards for granting a temporary restraining order are the same as the stanards for granting a preliminary injunction. *See O.M. ex rel. Moultrie v. Nat'l Women's Soccer League, LLC*, 541 F. Supp. 3d 1171, 1177 (D. Or. 2021). Here, Mr. Aghar can make all four of these showings.

First, he is almost certain to succeed on the merits of his habeas petition. His continued, indefinite detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no significant likelihood that he can be removed to Afghanistahn should he ultimately be ordered removed to that country. He is not a danger to the community. He is not a flight risk; until he was transferred from a juvenile foster-care home for unaccompanied alien children to immigration jail, he was available for his removal proceedings. And now he has *pro bono* counsel in connection with his pending removal proceedings in which he is seeking relief from removal based on a fear of persecution or torture in Afghanistan based on his Tajik ethnicity. Second, illegal confinement is quintessentially irreparable harm, because "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Third, and finally, when the government is a party, as it is here, "the balance of equities and public interest factors merge." *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The risk of harm to Mr. Aghar far outweighs the government's interest in illegally detaining him, for it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002.

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

Respectfully submitted:

August 28, 2025.

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