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

9 Salim Masamba Malemba,

10 Petitioner,

11 vs.

12 Chris Howard, Acting Warden, Eloy
13 Detention Center;

14 John Cantu, Phoenix Field Office Director,
15 U.S. Immigration and Customs Enforcement;

16 Pamela Jo Bondi, Attorney General of the
17 United States; and

18 Kristi Noem, Secretary of Homeland
19 Security,


20 Respondents.

No. 2:25-cv-3641-PHX-SPL (ESW)

**Amended Petition for a Writ of Habeas
Corpus Under 28 U.S.C. § 2241**

21 Petitioner Salim Malemba now files, with the assistance of appointed counsel, this
22 amended petition for a writ of habeas corpus under 28 U.S.C. § 2241. This amended petition
23 supersedes the *pro se* filing docketed on October 1, 2025, in this Court. (Dkt. #1) *See Hal Roach*
24 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (explaining that “an
25 amended pleading supersedes the original”).
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Technical Data

1. Mr. Malemba is challenging the validity of his detention in immigration custody. His A-number is 
2. Mr. Malemba is challenging the decision of U.S. Immigration and Customs Enforcement to revoke his release on an order of supervision and order him detained pending removal to whatever country ICE may find that is willing to receive him for deportation.
3. The decision to detain Mr. Malemba beyond the statutory removal period, *see* 8 U.S.C. § 1231(a)(1), (a)(6), is discretionary. As such, there are no administrative remedies available to him to exhaust.



Parties, Jurisdiction, and Venue

4. Petitioner Salim Malemba is a citizen of the Democratic Republic of the Congo. He was ordered removed to that country in 2013, but also granted relief from removal under the Convention Against Torture. He has been in respondents' custody since approximately June 20, 2025, when he was apprehended by ICE agents patrolling the streets of Phoenix.
5. Respondent Fred Figueroa is the Warden of the Eloy Detention Center, where Mr. Malemba is being detained. He is Mr. Malemba's immediate physical custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
6. Respondent John Cantu is the Phoenix Field Office Director for U.S. Immigration and Customs Enforcement. He is responsible for Mr. Malemba's detention, and thus a legal custodian of Mr. Malemba.
7. Respondents Pamela Jo Bondi and Kristi Noem are, respectively, the Attorney General of the United States and the Secretary of Homeland Security. As such, they are responsible for maintaining the immigration detention system. They are thus legal custodians of Mr. Malemba.
8. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Administrative

1 Procedure Act, 5 U.S.C. §§ 701 *et seq.*; and the Fifth Amendment to the U.S.
2 Constitution.

- 3 9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a
4 substantial part of the events or omissions giving rise to the claims set forth herein
5 occurred in this district.

6 Background Information

- 7 10. Mr. Malemba was born in 1988 in the Democratic Republic of the Congo 
8 
- 9 11. In mid-September 2001, Mr. Malemba came to the United States with his family. They
10 settled in the Phoenix area. In approximately 2005, he was granted legal permanent
11 resident status. Mr. Malemba graduated from high school in the Phoenix area and
12 attended a local community college. He and his family continue to reside in the Phoenix
13 area.
- 14 12. In 2012, Mr. Malemba pleaded guilty in Maricopa County Superior Court to solicitation
15 of possession of marijuana for sale, in violation of Ariz. Rev. Stat. §§ 13-1002 and -3405.
16 He was sentenced to 2½ years in prison. He ultimately completed his period of
17 community supervision on June 5, 2014.
- 18 13. In 2013, Mr. Malemba was ordered removed to the Democratic Republic of the Congo.
19 a. Upon information and belief, Mr. Malemba was accused of being removable under
20 8 U.S.C. § 1227(a)(2)(B)(i). Under that provision, any alien who has been
21 “convicted of a violation of (or a conspiracy or attempt to violate) any law or
22 regulation of a State, the United States, or a foreign country relating to a
23 controlled substance (as defined in section 802 of title 21), other than a single
24 offense involving possession for one’s own use of 30 grams or less of marijuana, is
25 deportable.” Mr. Malemba’s conviction for solicitation of possession of marijuana
26 for sale, in violation of Ariz. Rev. Stat. §§ 13-1002 and 13-3405, did not qualify as a
27 removable offense. *See Leyva-Licea v. INS*, 187 F.3d 1147 (9th Cir. 1999) (holding
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1 that Arizona solicitation to possess marijuana for sale was not a deportable
2 offense, either under § 1227(a)(2)(B)(i) or § 1227(a)(2)(A)(iii)).

3 b. An immigration judge granted him relief from removal to that country under the
4 Convention Against Torture. The removal order became final on November 7,
5 2013. After he was released from state prison, and ordered removed but granted
6 relief from removal, he was also released from ICE custody on an order of
7 supervision.

8 14. Mr. Malemba regularly checked in under the terms of his order of supervision until June
9 20, 2025. On that day, Mr. Malemba was arrested by ICE agents who were patrolling the
10 streets of Phoenix at a gas station while he was on his way to work. He is now detained at
11 the Eloy Detention Center in Eloy, Arizona.

12 15. On June 27, 2025, ICE informed Mr. Malemba that his custody would be reviewed on or
13 about September 18, 2025.

14 16. The custody review took place on September 4, 2025. ICE determined that it would
15 continue to detain him because of his criminal history. This criminal history, ICE said,
16 made him a flight risk. It also said, "ICE has the means to obtain a travel document to
17 effectuate your removal, and removal is likely and reasonably foreseeable."

18 a. This last assertion is almost certainly false.

19 b. Mr. Malemba cannot be removed to the Democratic Republic of the Congo,
20 because an immigration judge has granted him relief from removal to that country
21 under the Convention Against Torture.

22 c. Upon information and belief, while Mr. Malemba has been in detention, ICE has
23 sought to remove him to Belize, Panama, and Mexico. *See* 8 U.S.C.

24 § 1231(b)(2)(E)(vii) (allowing removal to any country that may be willing to accept
25 the alien for removal). Each of these countries has refused to accept Mr. Malemba
26 for removal.

Grounds for Relief

Ground One: Mr. Malemba's detention in immigration custody violates the Due Process Clause of the Fifth Amendment because there is no likelihood that he will be removed to any country in the reasonably foreseeable future.

17. Mr. Malemba cannot be removed to his country of citizenship, the Democratic Republic of the Congo, because an immigration judge has concluded that he faces a likelihood of torture if he is returned there, and granted relief under the Convention Against Torture. ICE has failed to identify any other third country that will accept him for removal.
18. Mr. Malemba was ordered removed from the United States in 2013. That order triggered a statutory 90-day period (the "removal period") within which the government had to remove him from the United States. *See* 8 U.S.C. § 1231(a)(1)(A), (B)(i). He was not removed during that time; rather, he was later released from immigration detention. He remained at liberty under ICE supervision until his arrest by ICE officials on June 20, 2025.
19. The Due Process Clause of the Fifth Amendment limits "an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). Because of this constitutional limitation, § 1231 "does not permit indefinite detention." *Id.*
20. Detention following the removal period is presumptively limited to six months. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701.
21. Even though Mr. Malemba has not been in ICE custody for six months since his arrest on June 20, 2025, this petition is not premature. Mr. Malemba cannot be returned to his country of origin, because an immigration judge has granted him relief from removal to that country. No third country that will accept him has been identified, even though ICE has inquired of Belize, Panama, and Mexico. ICE has struck out swinging in its efforts to

1 remove Mr. Malemba at all. Thus his continued detention in immigration custody violates
2 the Due Process Clause of the Fifth Amendment.

3 **Ground Two: Mr. Malemba's detention in immigration custody pending removal to any**
4 **third country violates the Due Process Clause of the Fifth Amendment**
5 **because ICE has not given him sufficient notice of the proposed third country**
6 **and an opportunity to request relief from removal to that country, either from**
7 **an immigration officer, an immigration judge, or a federal court.**

- 8 22. "It is well established that the Fifth Amendment entitles aliens to due process of law in
9 the context of removal proceedings." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per
10 curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Mr. Malemba thus is entitled
11 to "notice and an opportunity to be heard appropriate to the nature of the case." *Id.*
12 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As
13 relevant here, this means that Mr. Malemba is entitled to notice that he is to be removed
14 to a third country "within a reasonable time and in such a manner as will allow [him] to
15 actually seek habeas relief in the proper venue before such removal occurs." *Id.*
- 16 23. Mr. Malemba has not been formally ordered removed to any country other than the
17 Democratic Republic of the Congo. As such, he has never had an opportunity to contest
18 removal to any third country on the ground that he may face persecution or torture if he is
19 removed to that country.
- 20 24. To the extent that Mr. Malemba's detention is meant to facilitate his removal to a third
21 country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a
22 removal order is intended to facilitate removal), if such a removal is accomplished in
23 violation of his due-process rights, then his detention is illegal. This due-process claim
24 "necessarily impl[ies] the invalidity of [his] confinement and removal" to a third country
25 not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus his due-process
26 claim is properly brought in a habeas petition, and a court order that he be released from
27 detention is a proper remedy for such a violation.
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Prayer for Relief

25. Mr. Malemba is being illegally detained, in violation of 8 U.S.C. § 1231(a), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. He respectfully asks the Court to:

- a. order the respondents to answer the petition;
- b. permit him to file a reply in support;
- c. allow him to conduct discovery in support of his claims for relief;
- d. convene an evidentiary hearing, if necessary to resolve disputed facts;
- e. order Mr. Malemba released from respondents' custody on an order of supervision; and
- f. grant him any other relief that is just and practicable.

Respectfully submitted:

October 23, 2025.

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s/Keith J. Hilzendege
KEITH J. HILZENDEGER
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