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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, et al.,
13 Respondents.

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

**Motion for Limited Discovery in
Support of Petition for a Writ of Habeas
Corpus and Motion for a Preliminary
Injunction**

14 In his petition for a writ of habeas corpus, Mr. Malemba contends that his prolonged
15 detention by immigration officials pending an attempt to remove him from the United States
16 amounts to unconstitutional indefinite detention, in violation of the Due Process Clause of the
17 Fifth Amendment as interpreted in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Under *Zadvydas*, an
18 alien who has been ordered removed from the United States may be detained only “during a
19 period reasonably necessary to bring about that alien’s removal from the United States.” *Id.* at
20 689. After six months of post-removal-period detention, there arises a presumption that the
21 detention is unlawful; however, even after that six-month period, “an alien may be held in
22 confinement until it has been determined that there is no significant likelihood of removal in the
23 reasonably foreseeable future.” *Id.* at 701. Mr. Malemba contends that he cannot be removed to
24 his country of origin, the Democratic Republic of the Congo, because he has been granted relief
25 from removal to that country, and no third country is willing to accept him, such that there is no
26 likelihood of his removal in the reasonably foreseeable future. Accordingly, his detention in
27 respondents’ custody violates the Fifth Amendment as interpreted in *Zadvydas*.
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1 The allegations in the petition come from counsel's interview with Mr. Malemba, and a
2 handful of documents provided by Mr. Malemba during that interview. Owing to his current
3 custody status, Mr. Malemba does not have access to other documents than those that he
4 provided counsel that may substantiate the allegations in the petition; as a result, many crucial
5 facts in the petition are alleged on information and belief. Respondents, however, are certain to
6 have these documents in their possession. Mr. Malemba respectfully asks the Court to provide
7 those documents to his counsel so that he may again amend his petition as necessary.

8 Where "specific allegations before the court show reason to believe that the petitioner
9 may, if the facts are fully developed, be able to demonstrate that he is entitled to relief, it is the
10 duty of the court to provide the necessary facilities for an adequate inquiry." *Bracy v. Gramley*,
11 520 U.S. 899, 909 (1997) (quoting *Harris v. Nelson*, 394 U.S. 286, 300 (1969)). The facts as they
12 stand now are not fully developed, because the government presumably possesses information
13 that bears on whether Mr. Malemba's due process claims are likely to succeed. This information
14 is likely contained in Mr. Malemba's A-file, or in other files or databases maintained by the
15 Departments of Justice and Homeland Security, to which neither he nor his counsel have access.
16 The relevant documents include, but are not limited to, the following:

- 17 1. Mr. Malemba's entire A-file;
- 18 2. A transcript (or, failing that, a recording) of any and all hearings in Mr. Malemba's
19 case before the immigration courts that led to his being ordered removed from the
20 United States;
- 21 3. Any and all requests from ICE to any diplomatic representative of the Democratic
22 Republic of the Congo, Belize, Panama, or Mexico, or any other third country
23 pertaining to travel documents that would "facilitate" Mr. Malemba's removal
24 from the United States, and any responsive or related correspondence to or from
25 those diplomatic representatives pertaining to these requests for travel
26 documents;
- 27 4. Any and all documents relating to the periodic custody reviews described in 8
28 C.F.R. § 241.4 for all periods of time that Mr. Malemba has been in ICE custody;
and
5. Any and all documents relating to any determination under 8 C.F.R. § 241.13 and
8 C.F.R. § 241.14, whenever made, regarding whether there is a significant
likelihood of removing Mr. Malemba in the reasonably foreseeable future.

1 Mr. Malemba respectfully asks the Court to order the government to furnish these
2 documents to his counsel by the close of business on Friday, October 31, 2025. Mr. Malemba has
3 good cause for the Court to allow discovery. *Cf. Bracy*, 520 U.S. at 909 (guarantee of success on
4 the merits of a habeas claim is not required for allowing discovery). The deportation officers who
5 have been and are now responsible for assisting Mr. Malemba in obtaining travel documents have
6 likely been privy to information about efforts to obtain those documents have been unsuccessful.
7 Because Mr. Malemba cannot obtain travel documents, further such efforts are likely to prove
8 not to be fruitful.

9 In sum, the discovery Mr. Malemba is requesting may help him establish that there is no
10 reasonable likelihood of his removal in the foreseeable future. This Court should grant the
11 motion and order the government to provide the requested documents to Mr. Malemba and his
12 counsel.

13 A proposed order is being lodged herewith.

14 Respectfully submitted:

October 23, 2025.

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