

1 JON M. SANDS
Federal Public Defender
2 KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
3 250 North 7th Avenue, Suite 600
4 Phoenix, Arizona 85007
5 (602) 382-2700 voice
keith_hilzendeger@fd.org
6 *Attorneys for Petitioner Malemba*

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 a Preliminary Injunction

14 Along with his petition for a writ of habeas corpus under 28 U.S.C. § 2241, Mr. Malemba
15 is filing this motion for a preliminary injunction and a temporary restraining order. In his
16 amended petition, he asserts that he cannot be removed to the Democratic Republic of the
17 Congo, or any other third country, such that his continued detention by immigration officials
18 violates the Fifth Amendment's Due Process Clause. He also asserts that his detention is illegal
19 because he has not received notice and an opportunity to seek relief from removal to a country
20 other than the Democratic Republic of the Congo, Belize, Panama, or Mexico. Because he is
21 almost certain to prevail on at least one of these claims, he respectfully asks the Court to order his
22 immediate release from custody while 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. Malemba 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 the Democratic
8 Republic of the Congo, or any other third country, in the reasonably foreseeable future. Indeed,
9 ICE released him from detention 12 years ago for this very reason, and he fully complied with an
10 order of supervision until he was abruptly re-arrested on or about June 20, 2025. Second, illegal
11 confinement is quintessentially irreparable harm, because "the deprivation of constitutional
12 rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002
13 (9th Cir. 2012). Third, and finally, when the government is a party, as it is here, "the balance of
14 equities and public interest factors merge." *Pimentel-Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237
15 (W.D. Wash. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)).
16 The risk of harm to Mr. Malemba far outweighs the government's interest in illegally detaining
17 him, for it is "always in the public interest to prevent the violation of a party's constitutional
18 rights." *Melendres*, 695 F.3d at 1002.

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

21 Respectfully submitted:

October 23, 2025.

22 JON M. SANDS
23 Federal Public Defender

24 s/Keith J. Hilzendeger
25 KEITH J. HILZENDEGER
26 Assistant Federal Public Defender
27 Attorney for Petitioner Malemba
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