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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Salim Masamba Malemba,
 13
 14 Petitioner,
 15
 16 v.
 17 Pam Bondi, *et al.*,
 Respondents.

No. CV-25-03641-SPL (ESW)

**RESPONSE TO MOTION FOR A
 PRELIMINARY INJUNCTION**

18 **I. INTRODUCTION**

19 Respondents, by and through counsel, respond to the Amended Petition for a Writ
 20 of Habeas Corpus (Doc. 6) and the Motion for a Preliminary Injunction (Doc. 8). Petitioner
 21 Salim Masamba Malemba is a national of the Democratic Republic of the Congo (“the
 22 DRC”) and a criminal alien convicted of drug trafficking. After his conviction, the
 23 immigration court ordered that he be removed to the DRC and granted withholding of
 24 removal under the Convention Against Torture. Petitioner was most recently detained by
 25 U.S. Immigration and Customs Enforcement (“ICE”) on June 20, 2025, because ICE
 26 determined that his removal would occur in the reasonably foreseeable future. In this
 27 habeas petition, Petitioner seeks a Court order directing ICE to immediately release him
 28 from immigration detention pending disposition of this action. Respondents respectfully

1 request that this Court deny the Petition and Motion because Petitioner has not been
2 unconstitutionally detained and he cannot establish that his removal is not likely to occur
3 in the reasonably foreseeable future. For these reasons, which are explained fully below,
4 the Court should deny the Petition and Motion.

5 **II. FACTUAL BACKGROUND**

6 Petitioner entered the United States on September 20, 2001. Declaration of Jayson
7 McElhaney, Deportation Officer, Enforcement and Removal Operations, attached as
8 Exhibit A, at ¶¶ 4–5. Petitioner was granted lawful permanent resident status in 2007. *Id.*
9 at ¶ 6. Petitioner was subsequently convicted in state court of numerous offenses, including
10 misconduct involving a firearm (2007), possession of marijuana (June 2008 and October
11 2008), domestic violence assault (2008), and possession of marijuana for sale (2012). *Id.*
12 at ¶¶ 7–11. ICE began removal proceedings against Petitioner on May 23, 2012, under
13 Immigration and Nationality Act (“INA”) sections 237(a)(2)(A)(iii) and 237(a)(2)(B)(i).
14 *Id.* at ¶ 13. On November 7, 2013, an immigration judge ordered Petitioner removed to the
15 DRC, but the immigration judge granted withholding of removal under the Convention
16 Against Torture. *Id.* at ¶ 14. Petitioner was released from immigration detention on June 2,
17 2016. *Id.* at ¶ 15. As a condition of Petitioner’s supervised release, Petitioner was required
18 to check in with ICE regularly, and Petitioner habitually failed to do so. *See id.* at ¶ 16. On
19 June 20, 2025, Petitioner was redetained pursuant to his outstanding removal order. *Id.* at
20 ¶ 18.

21 **III. THE HABEAS PETITION SHOULD BE DENIED**

22 **A. Legal Standard.**

23 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
24 678 (2001) because his removal is not “reasonably foreseeable.” An alien who is ordered
25 removed must be detained for 90 days once their removal order becomes administratively
26 final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien has not left the United States
27 voluntarily or been removed during this 90-day period, the alien will generally be granted
28 supervised release. 8 U.S.C. § 1231(a)(3). However, an alien ordered removed under INA

1 § 237(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not
2 authorize indefinite detention. *Zadvydas*, 533 U.S. at 689. An alien may be detained for up
3 to six months pursuant to a final order of removal, after which, the alien may be released
4 if they can “provide[] good reason to believe that there is no significant likelihood of
5 removal in the reasonably foreseeable future” and the government fails to show otherwise.
6 *Id.* at 701. At that time, an alien is not presumed to be entitled to release; the alien must
7 show that their detention is “indefinite—i.e., that there is good reason to believe that there
8 is no significant likelihood of removal in the reasonably foreseeable future.” *Diouf v.*
9 *Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701)
10 (internal quotation marks removed). This six-month period includes the initial 90-day
11 mandatory detention period and three months thereafter. *Ma v. Ashcroft*, 257 F.3d 1095,
12 1102 n.5 (9th Cir. 2001).

13 A petitioner entitled to release under *Zadvydas* “may and should be conditioned on
14 any of the various forms of supervised release that are appropriate in the circumstances.”
15 *Zadvydas*, 533 U.S. at 700. If a petitioner is granted supervised release and violates a
16 condition of release, the petitioner “may no doubt be returned to custody[.]” *Id.*

17 Respondents do not have particular information at this time about the status of travel
18 document requests related to Petitioner. However, Respondents note that Petitioner must
19 first “provide[] good reason” to believe that his removal is not significantly likely to occur
20 in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Petitioner made bare
21 factual assertions in his Petition that he says are based on documentary evidence, but
22 Petitioner did not provide to the Court nor to Respondents the documents on which these
23 assertions were based. Respondents respectfully request that the Court consider
24 Petitioner’s preliminary showing under the “good reason” standard provided by *Zadvydas*
25 and accordingly deny his Petition.

26 **IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF**

27 **A. Legal Standard**

28 Petitioner asks this Court to issue a preliminary injunction granting him immediate

1 release from custody. This motion should be denied because Petitioner has not
2 demonstrated entitlement to any of the relief he requests.

3 To obtain a preliminary injunction, a petitioner must show “that he is likely to
4 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
5 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
6 the public interest.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Injunctive
7 relief is “an extraordinary remedy never awarded as of right.” *Winter*, 555 U.S. at 9.

8 **B. Petitioner is not likely to succeed on the merits.**

9 Petitioner requests that this Court order his immediate release. As argued in Section
10 III above, Petitioner’s habeas claim should not be granted. For these same reasons,
11 Petitioner cannot show that he is “likely to succeed on the merits,” as is required for
12 injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court should not issue a preliminary
13 injunction.

14 **C. Petitioner cannot establish irreparable harm.**

15 The Court should deny Petitioner’s motion for a preliminary injunction because
16 Petitioner “must demonstrate immediate threatened injury as a prerequisite to preliminary
17 injunctive relief.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir.
18 1988). The “possibility” of injury is “too remote and speculative to constitute an irreparable
19 injury meriting preliminary injunctive relief.” *Id.* “Subjective apprehensions and
20 unsupported predictions . . . are not sufficient to satisfy a plaintiff’s burden of
21 demonstrating an immediate threat of irreparable harm.” *Id.* at 675-76.

22 Petitioner cannot show that denying a preliminary injunction would make
23 “irreparable harm” the likely outcome. *Winter*, 555 U.S. at 22 (“[P]laintiffs . . . [must]
24 demonstrate that irreparable injury is likely in the absence of an injunction.”). “[A]
25 preliminary injunction will not be issued simply to prevent the possibility of some remote
26 future injury.” *Id.* “Speculative injury does not constitute irreparable injury.” *Goldie’s*
27 *Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984).
28 Petitioner cannot establish irreparable harm if he is not released from detention where he

1 is lawfully and constitutionally detained pursuant to a final executable removal order.

2 **D. The equities and public interest do not favor Petitioner.**

3 The third and fourth factors, “harm to the opposing party” and the “public interest,”
4 “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. “In exercising
5 their sound discretion, courts of equity should pay particular regard for the public
6 consequences in employing the extraordinary remedy of injunction.” *Weinberger v.*
7 *Romero-Barcelo*, 456 U.S. 305, 312 (1982).

8 An adverse decision here would negatively impact the public interest by
9 jeopardizing “the orderly and efficient administration of this country’s immigration laws.”
10 *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ.*
11 *Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) (“[I]t is clear that a state suffers
12 irreparable injury whenever an enactment of its people or their representatives is
13 enjoined.”). The public has a legitimate interest in the government’s enforcement of its
14 laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) (“[T]he
15 district court should give due weight to the serious consideration of the public interest in
16 this case that has already been undertaken by the responsible state officials in Washington,
17 who unanimously passed the rules that are the subject of this appeal.”).

18 While it is in the public interest to protect constitutional rights, if the petitioner has
19 not shown a likelihood of success on the merits of that claim—as Petitioner has not shown
20 here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d
21 815, 826 (9th Cir. 2005). And the public interest lies in the Executive’s ability to enforce
22 U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d
23 742, 750 (9th Cir. 1991) (“Control over immigration is a sovereign prerogative.”). Given
24 Petitioner’s undisputed criminal history and likelihood of removal, the public and
25 governmental interest in permitting his continued detention to effectuate removal is
26 significant. Because Petitioner is a convicted criminal subject to a final removal order, the
27 public interest lies with the government’s ability to effectuate his removal.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/Lindsay Little
United States Attorney's Office