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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.  
14

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

**Reply to Response to Motion for a  
Preliminary Injunction and to Answer to  
Amended Petition for a Writ of Habeas  
Corpus**

15 Respondents have answered the amended petition and responded to the motion for a  
16 preliminary injunction. (Dkt. #14 at 1) Mr. Malemba now addresses the governments  
17 presentation with respect to those two documents.

18 **Background**

19 Mr. Malemba was born in 1988 in the Democratic Republic of the Congo.<sup>1</sup> In 2001 he  
20 came to the United States with his family as refugees from that country. (DISC-42)<sup>2</sup> He applied  
21 for lawful permanent residence in 2002, which was granted in 2004. (DISC-44, DISC-58)

22  
23 <sup>1</sup> There are two countries in central Africa with the name “Congo”—the Republic of the Congo,  
24 and the Democratic Republic of the Congo. The Democratic Republic of the Congo was formerly  
25 known as Zaire. *United States v. Tchibassa*, 452 F.3d 918, 921 (D.C. Cir. 2006). “Zaire is the  
26 name used in 1997 for what was formerly the Belgian Congo and is now the Democratic Republic  
27 of the Congo. The Democratic Republic of the Congo lies immediately east of the Republic of the  
28 Congo, a separate country often referred to as the Congo.” *Yongo v. INS*, 355 F.3d 27, 28 n.1 (1st  
Cir. 2004). Many documents in the discovery overlook this distinction.

<sup>2</sup> Along with this document, Mr. Malemba is filing for the record some of the documents he  
received from the respondents pursuant to the Court’s discovery order. This filing, consisting of

1 On April 17, 2009, following four misdemeanor convictions in either Phoenix Municipal  
2 Court or Maricopa County Superior Court, he was served with a notice to appear (DISC-51) that  
3 charged him with being removable under 8 U.S.C. § 1227(a)(2)(C) (for possession of a firearm),  
4 § 1227(a)(2)(E)(i) (for a conviction for a misdemeanor crime of domestic violence), and  
5 § 1227(a)(2)(B)(i) (for conviction of a controlled substance offense other than for simple  
6 possession of less than an ounce of marijuana). (DISC-53 to DISC-54) In removal proceedings,  
7 Mr. Malemba was granted asylum and withholding of removal. (DISC-45)

8 In 2012, Mr. Malemba pleaded guilty to solicitation of possession of marijuana for sale in  
9 Maricopa County Superior Court, in violation of Ariz. Rev. Stat. §§ 13-1002 and -3405(A). He  
10 was sentenced to 2½ years in state prison. (DISC-47) An ICE agent met with him at the  
11 Alhambra Reception Center and gave him a notice to appear. (DISC-50) The notice to appear  
12 charged him with being removable by virtue of a conviction for an aggravated felony (the  
13 solicitation to possess marijuana for sale conviction), 8 U.S.C. § 1227(a)(2)(A)(iii), and a  
14 controlled substance offense other than simple possession of less than an ounce of marijuana, 8  
15 U.S.C. § 1227(a)(2)(B)(i). (DISC-26) In removal proceedings, he was stripped of the grant of  
16 asylum and the charges of removability were sustained. (DISC-40 to DISC-41) In the wake of the  
17 Supreme Court's decision in *Descamps v. United States*, 570 U.S. 254 (2013), the immigration  
18 judge reaffirmed that these grounds of removability were sustained. (DISC-36) He was ultimately  
19 ordered removed from the United States to the Democratic Republic of the Congo, but also  
20 granted deferral of removal to that country under the Convention Against Torture. (DISC-21)

21 According to the Arizona Department of Corrections, Mr. Malemba was released from  
22 custody on June 5, 2014. He was subject to mandatory detention in immigration custody for 90  
23 days after his release from state prison. *See* 8 U.S.C. § 1231(a)(1)(A), (a)(1)(B)(iii), (a)(2). After  
24 serving his prison sentence and being detained during the subsequent mandatory detention  
25

26 \_\_\_\_\_  
27 a single pdf document of 165 pages, will be submitted separately under seal, and what is  
28 effectively a table of contents will be available for the public docket. The documents will be  
referenced in this filing as "DISC-xxx," where xxx is the pdf page of the filing.

1 period, Mr. Malemba was released from immigration detention on orders of supervision issued in  
2 2016, 2017, and 2018. (DISC-119, DISC-7, DISC-4) Each of these orders required Mr. Malemba  
3 to “assist U.S. Immigration and Customs Enforcement in obtaining any necessary travel  
4 documents.”

5 On June 12, 2025, ICE decided to arrest Mr. Malemba without any evidence that he had  
6 violated the terms of supervision. (DISC-116) He was arrested on June 20, 2025, at his home, and  
7 taken into ICE custody. (DISC-116 to DISC-117) On June 26, he was interviewed at the Eloy  
8 Detention Center in order to establish whether he might have a claim to U.S. citizenship. (DISC-  
9 105) It was determined that he did not have a valid claim.

10 Since Mr. Malemba has been in immigration custody, ICE has twice sought permission to  
11 remove him to either Mexico, Belize, or Panama. (DISC-154 to DISC-156; DISC-148 to DISC-  
12 150) It does not appear that these countries have accepted him for removal. Respondents have  
13 not denied the allegation in Mr. Malemba’s amended petition (Dkt. #6 at 4 ¶ 16c) that these  
14 countries have refused to accept him.

### 15 Legal Backdrop

16 Under section 241 of the Immigration and Nationality Act,<sup>3</sup> “when an alien is ordered  
17 removed, the Attorney General shall remove the alien from the United States within a period of  
18 90 days.” 8 U.S.C. § 1231(a)(1)(A). This 90-day period is known as the “removal period.” *Id.*  
19 The removal period began for Mr. Malemba on June 5, 2014, when he was released from state  
20 prison. 8 U.S.C. § 1231(a)(1)(B)(iii). The purpose of the removal period “is to afford the  
21 government a reasonable amount of time within which to make the travel, consular, and various  
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23 <sup>3</sup> The Immigration and Nationality Act is not codified as positive law. 1 U.S.C. § 204(a); *Angco v.*  
24 *Haig*, 514 F. Supp. 1328, 1331 n.6 (E.D. Pa. 1981). The version of the Act included in Title 8 of  
25 the United States Code, then, “is only prima facie evidence of the law,” and the corresponding  
26 section of the Act as set forth in the *Statutes at Large* will prevail over Title 8. *Id.* While the  
27 sections of the Act are well known to practitioners in immigration court, they are less well known  
28 to those who practice largely in federal district court—even to federal public defenders, whose  
caseload entails a significant number of immigration crimes. This document will make an effort to  
cite the parallel provisions of the Act and Title 8. *See, e.g., Diouf*, 542 F.3d at 1228 (using parallel  
citations to the INA and Title 8). A useful conversion chart is available [here](#).

1 other administrative arrangements that are necessary to secure removal.” *Diouf v. Mukasey*, 542  
2 F.3d 1222, 1231 (9th Cir. 2008) (citing *Khotosouvan v. Morones*, 386 F.3d 1298, 1300 (9th Cir.  
3 2004)).

4 Under section 241, an alien must be detained during the removal period. 8 U.S.C.  
5 § 1231(a)(2)(A). But if “the alien does not leave or is not removed within the removal period, the  
6 alien, pending removal, shall be subject to supervision under regulations prescribed by the  
7 Attorney General.” 8 U.S.C. § 1231(a)(3). After the removal period expires, any inadmissible  
8 alien (as defined in 8 U.S.C. § 1182) and certain categories of deportable aliens (described in 8  
9 U.S.C. § 1227(a)(1)(C), (a)(2), or (a)(4)) may either be detained or released on supervision.  
10 8 U.S.C. § 1231(a)(6).

11 The Supreme Court has held that the detention during and after the removal period  
12 authorized by section 241 is not unlimited. On its face, section 241 authorizes detention that “is  
13 not limited, but potentially permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). But a  
14 “statute permitting indefinite detention of an alien would raise a serious constitutional  
15 problem,” because the “Fifth Amendment’s Due Process Clause forbids the Government to  
16 deprive any person of liberty without due process of law.” *Id.* at 690 (quoting U.S. Const. amend.  
17 V) (cleaned up). Because the detention authorized by section 241 is civil in nature, detention is  
18 authorized only if there exist “certain special and narrow nonpunitive circumstances where a  
19 special justification... outweighs the individual’s constitutionally protected liberty interest in  
20 avoiding physical restraint.” *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992), and then  
21 *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (first cleaned up and then ellipsis added).

22 In *Zadvydas* the Supreme Court held that no such special justifications exist to support  
23 indefinite detention under the auspices of section 241. The Court considered two such potential  
24 justifications, and found both of them wanting. First, ensuring the appearance of aliens at future  
25 immigration proceedings, the Court reasoned, is a “weak or nonexistent” justification “where  
26 removal seems a remote possibility at best.” *Id.* Second, the Court acknowledged that the other  
27 justification, “protecting the community,” “does not necessarily diminish over time.” *Id.* But  
28

1 under the Due Process Clause, and outside of the criminal context, “preventive detention based  
2 on dangerousness” is allowed “only when limited to specially dangerous individuals and subject  
3 to strong procedural protections.” *Id.* at 691. And when “preventive detention is of potentially  
4 *indefinite* duration, we have also demanded that the dangerousness rationale be accompanied by  
5 some other special circumstance, such as mental illness, that helps to create the danger.” *Id.* But  
6 if flight risk is not an adequate justification for indefinite detention, the only other feature of the  
7 detention authorized by section 241 is involves “the alien’s removable status.” *Id.* at 692. The  
8 Court said that this status “bears no relation to the detainee’s dangerousness.” *Id.*

9 Then the Court considered the procedural protections that are available with respect to  
10 detention authorized by section 241. Those protections exist only in administrative proceedings,  
11 “where the alien bears the burden of proving he is not dangerous, without (in the Government’s  
12 view) significant later judicial review.” *Id.* This lack of judicial review doomed indefinite  
13 detention under section 241. The Constitution, the Court said, “may well preclude granting an  
14 administrative body the unreviewable authority to make determinations implicating fundamental  
15 rights.” *Id.* (quoting *Superintendent v. Hill*, 472 U.S. 445, 450 (1985)). People who have “effected  
16 an entry” into the United States enjoy the full protections of the Due Process Clause, whether  
17 their presence in the United States is “lawful, unlawful, temporary, or permanent.” *Id.* (citations  
18 omitted).

19 The upshot is that “once removal is no longer reasonably foreseeable, continued  
20 detention is no longer authorized” by section 241. *Id.* at 699. In this habeas proceeding, this  
21 Court’s task is to determine “whether the detention in question exceeds a period reasonably  
22 necessary to secure removal” of the alien. *Id.* If “removal is not reasonably foreseeable, the court  
23 should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–  
24 700. “And if removal is reasonably foreseeable, the habeas court should consider the risk of the  
25 alien’s committing further crimes as a factor potentially justifying confinement within that  
26 reasonable removal period.” *Id.* at 700. Because, the Court said, whether to order release of an  
27 alien subject to detention under section 241 “will often call for difficult judgments,” *id.*, it  
28

1 articulated a “presumptively reasonable period of detention” in order to minimize the  
2 “occasions when courts will need to make” those difficult judgments,” *id.* at 701. It then decreed  
3 that six months is a presumptively reasonable period of detention under section 241. “After this  
4 6-month period, once the alien provides good reason to believe that there is no significant  
5 likelihood of removal in the reasonably foreseeable future, the Government must respond with  
6 evidence sufficient to rebut that showing.” *Id.* “And for detention to remain reasonable, as the  
7 period of prior post-removal confinement grows, what counts as the reasonably foreseeable  
8 future conversely would have to shrink. This 6-month presumption, of course, does not mean  
9 that every alien not removed must be released after six months. To the contrary, an alien may be  
10 held in confinement until it has been determined that there is no significant likelihood of removal  
11 in the reasonably foreseeable future.” *Id.*

12 The first step for a court entertaining a habeas petition challenging immigration detention  
13 is to “identify the statutory provision that purports” to authorize the alien’s detention. *Prieto-*  
14 *Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here, Mr. Malemba’s detention is  
15 authorized by 8 U.S.C. § 1231(a)(6) because he has been ordered removed under 8 U.S.C.  
16 § 1227(a)(2)(A)(iii) as an alien who has been convicted of an aggravated felony. This is the same  
17 provision under which the aliens in *Zadvydas* had been ordered detained. 533 U.S. at 682; *see also*  
18 *Prieto-Romero*, 534 F.3d at 1062. Thus the due-process requirements set forth in *Zadvydas* govern  
19 the merits of Mr. Malemba’s habeas claim.

## 20 Argument

- 21 **1. Respondents have failed to dispute the factual allegations in the amended petition,**  
22 **which are also supported by the discovery they provided, and so this Court should**  
23 **treat them as admitted.**

24 As their sole reason to deny the petition on the merits, respondents assert that Mr.  
25 Malemba’s amended petition contained “bare factual assertions” that were unsupported by  
26 documents that Mr. Malemba did not submit to the Court with his amended petition. (Dkt. #14  
27 at 3) Thus respondents contend that Mr. Malemba has not provided “good reason to believe that  
28 there is no significant likelihood of removal in the reasonably foreseeable future,” *Zadvydas*, 533

1 U.S. at 701, and urge the Court to deny the petition solely because Mr. Malemba has not met his  
2 initial burden under *Zadvydas*. (Dkt. #14 at 3) Respondents' contention is fatally flawed.

3 As an initial matter, along with this filing Mr. Malemba is providing the supporting  
4 documentation that respondents complain has been missing. These documents have been in  
5 respondents' possession throughout the pendency of this case. These documents bear out the  
6 factual allegations in the amended petition, and do not undermine Mr. Malemba's claim to relief  
7 under *Zadvydas*. Respondents make no effort to argue otherwise.

8 The Federal Rules of Civil Procedure apply in this habeas corpus proceeding "to the  
9 extent that the practice" in habeas corpus proceedings "has previously conformed to the practice  
10 in civil actions." Fed. R. Civ. P. 81(a)(4)(B). This provision was meant to "provide for the  
11 continuing applicability of the 'civil' rules in their new form [the 1938 enactment of the rules of  
12 civil procedure] to those areas of practice in habeas corpus and other enumerated proceedings in  
13 which the 'specified' proceedings had theretofore utilized the modes of civil practice." *Harris v.*  
14 *Nelson*, 394 U.S. 286, 294 (1969). By statute, Mr. Malemba's petition was required to "allege the  
15 facts concerning the applicant's commitment or detention." 28 U.S.C. § 2242 ¶ 2. His petition  
16 does that. In turn, respondents' answer to the petition was required to "certify[] the true cause of  
17 the detention." 28 U.S.C. § 2243 ¶ 3. Respondents' answer fails to do that. The statute that  
18 imposes the certification requirement on respondents "remain[s] substantially unchanged in the  
19 present codification [the 1948 recodification of the habeas statutes]" from the "common-law  
20 understanding" of the purpose of a return of the writ. *Townsend v. Sain*, 372 U.S. 293, 311 (1963).  
21 Thus the rules of civil procedure that govern the contents of pleadings apply to habeas corpus  
22 proceedings like this one.

23 The rules of civil procedure impose a consequence on a respondent's failure to deny a  
24 factual allegation in a habeas petition, because that consequence was a feature of the prior  
25 practice. "An allegation—other than one relating to the amount of damages—is admitted if a  
26 responsive pleading is required and the allegation is not denied." Fed. R. Civ. P. 8(b)(6).  
27 Respondents' return was required by statute, and it did not deny the factual allegations in Mr.

1 Malemba's amended petition. Indeed, it denied having at the time respondents filed their answer  
2 "particular information... about the status of travel document requests related to Petitioner."  
3 (Dkt. #14 at 3) This does not amount to a denial of Mr. Malemba's assertion that Belize, Mexico,  
4 and Panama have refused to issue travel documents. This is instead a denial of having the  
5 information they might need to assess whether Mr. Malemba's assertion is true. But that denial is  
6 false, because the relevant documents have been in respondents' possession the entire time. *Cf.*  
7 Fed. R. Civ. P. 8(b)(5) ("A party that lacks knowledge or information sufficient to form a belief  
8 about the truth of an allegation must so state, and the statement has the effect of a denial.").  
9 Thus, having failed to deny that Belize, Mexico, and Panama have refused to accept Mr.  
10 Malemba for removal, respondents have admitted that fact. At the very least, they have failed to  
11 certify that these refusals are not the true cause of his present detention in immigration custody.

12 **2. In any event, because Mr. Malemba cannot be returned to the Democratic Republic**  
13 **of the Congo, and there is no evidence that any other country will accept him, the**  
14 **Court should grant relief on his *Zadvydas* claim.**

15 In any event, Mr. Malemba should prevail on the merits of his *Zadvydas* claim. First,  
16 there is good reason to believe that Mr. Malemba's removal is not likely in the reasonably  
17 foreseeable future. The statutory removal period ended 11 years ago, in 2014, without any  
18 indication that ICE had tried to remove him to any country other than the Democratic Republic  
19 of the Congo. And he cannot be removed to that country, because an immigration judge has  
20 forbidden it under the Convention Against Torture. There is no evidence that, during the 11  
21 years that Mr. Malemba was allowed to remain at liberty, he ever failed to cooperate with any  
22 effort on ICE's part to obtain travel documents for whatever country ICE might identify. Nor is  
23 there any evidence that he has failed to cooperate with those efforts since he was arrested on June  
24 20, 2025. *Cf. Lema v. INS*, 341 F.3d 853, 856 (9th Cir. 2003) (holding that "when an alien refuses  
25 to cooperate fully and honestly with officials to secure travel documents from a foreign  
26 government, the alien cannot meet his or her burden to show there is no significant likelihood of  
27 removal in the reasonably foreseeable future"); *Pelich v. INS*, 329 F.3d 1057, 1059-60 (9th Cir.  
28 2003). Since his arrest this summer, three countries have refused to accept Mr. Malemba for

1 removal. All of these facts easily satisfy Mr. Malemba's initial burden under *Zadvydas* to show  
2 that his removal is not significantly likely in the reasonably foreseeable future.

3 Second, the government has not even tried to rebut the notion that there is no significant  
4 likelihood of Mr. Malemba's removal in the reasonably foreseeable future. Respondents' legal  
5 argument relies entirely on their contention that their obligation to rebut that notion did not arise,  
6 because Mr. Malemba made only "bare factual assertions" about the reason why he is being  
7 illegally detained. Nor does the discovery help the respondents to rebut Mr. Malemba's showing.  
8 The email trails in the discovery, and the included copies of forms intended for use by diplomatic  
9 officials, appear to reflect mainly internal communications between ICE officials in the field and  
10 ICE officials in Washington.<sup>4</sup> The consular forms are unsigned. There is thus no evidence that  
11 ICE has even *asked* officials of Belize, Mexico, Panama, or any other country to accept Mr.  
12 Malemba for removal—a statutory prerequisite for removing him to a country other than the  
13 Democratic Republic of the Congo. *See* 8 U.S.C. § 1231(b)(2)(E)(vii). In other words, there is no  
14 evidence that ICE is doing anything beyond preparatory, internal discussions to facilitate the  
15 receipt of the travel documents that would allow Mr. Malemba to be removed. *Cf. Senor v. Barr*,  
16 401 F. Supp. 3d 420, 431 (W.D.N.Y. 2019) (explaining that the government had failed to rebut a  
17 detainee's initial burden under *Zadvydas* when there was "nothing in the record suggesting that  
18 the government has taken or is taking any further action to facilitate Senor's receipt of the  
19  
20

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21 <sup>4</sup> Respondents' counsel has informed Mr. Malemba's counsel that the redacted portions of these  
22 email trails reflect that ICE officials sent email to diplomatic representatives of Mexico and  
23 Panama. Respondents otherwise claim an unspecified privilege with respect to the redacted  
24 portions of these emails. Mr. Malemba will not speculate about the privilege on which  
25 respondents may be relying. A "party asserting an evidentiary privilege has the burden to  
26 demonstrate that the privilege applies to the given information." *Lambright v. Ryan*, 698 F.3d  
27 808, 822 (9th Cir. 2012) (quoting *United States v. Gray*, 876 F.2d 1411, 1415 (9th Cir. 1989)).  
28 Because respondents have failed to identify the privilege on which they are relying, let alone  
explain how the privilege applies to the redacted portions of these emails, this Court should deny  
their claim of privilege, treat the redacted portions as not complying with the Court's discovery  
order, and draw inferences adverse to the government with respect to the information they have  
withheld.

1 necessary travel documents”). For this reason, Mr. Malemba’s continued detention is illegal  
2 under 8 U.S.C. § 1231(a)(6) as interpreted in *Zadvydas*.

3 **3. The government has failed to explain why this Court should not grant relief now, at  
4 the preliminary-injunction stage.**

5 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
7 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*  
8 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the  
9 merits is the most important factor; if a movant fails to meet this threshold inquiry, we need not  
10 consider the other factors.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quoting *Disney*  
11 *Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017)). And when the “government  
12 is a party,” the factors relating to the balance of equities and the public interest “merge.” *Drakes*  
13 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (quoting *Nken v. Holder*, 556 U.S.  
14 418, 435 (2009)).

15 As Mr. Malemba has shown, and the government has not refuted, there is no significant  
16 likelihood of his being removed in the reasonably foreseeable future. He cannot be removed to  
17 the Democratic Republic of the Congo, and respondents do not appear to be any closer to  
18 identifying a third country for his removal than they were in 2014, when the removal period  
19 ended. Mr. Malemba thus is exceedingly likely to succeed on his *Zadvydas* claim. Illegal detention  
20 is quintessential irreparable harm, because “the deprivation of constitutional rights  
21 unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
22 2012). And the risk of harm to Mr. Malemba far outweighs the government’s interest in illegally  
23 detaining him, for it is “always in the public interest to prevent the violation of a party’s  
24 constitutional rights.” *Id.*

25 Mr. Malemba has already explained why he is likely to prevail on the merits, and why  
26 respondents are wrong that he cannot. Respondents’ argument that Mr. Malemba is not suffering  
27 any irreparable harm—because he is “lawfully and constitutionally detained pursuant to a final  
28 executable removal order” (Dkt. #14 at 5)—depends entirely on their belief that his claim lacks

1 merit. Respondents further contend that an “adverse decision here would negatively impact the  
2 public interest by jeopardizing the orderly and efficient administration of this country’s  
3 immigration laws.” (Dkt. #14 at 5 (quoting *Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla.  
4 1990))) Not so. In *Zadvydas* the Court observed that the “plenary power” that Congress has “to  
5 create immigration law” “is subject to important constitutional limitations.” 533 U.S. at 695  
6 (citing *INS v. Chadha*, 462 U.S. 919, 942–43 (1983)). The statute that authorizes Mr. Malemba’s  
7 detention here, 8 U.S.C. § 1231, contains “no clear indication of congressional intent to grant the  
8 Attorney General the power to hold indefinitely in confinement an alien ordered removed.” *Id.* at  
9 697. The public has no interest in continuing to imprison a person like Mr. Malemba, whom the  
10 government cannot remove from the United States because no country will apparently accept  
11 him for removal. The Supreme Court has already said that such imprisonment is unauthorized by  
12 statute. The public has no interest in seeing its government act unlawfully.

### 13 Conclusion

14 Mr. Malemba’s motion for a preliminary injunction should be granted. Furthermore, this  
15 Court should exercise its discretion under Fed. R. Civ. P. 65(a) to consolidate proceedings on  
16 that motion with a trial on the merits of his habeas petition and grant relief on his *Zadvydas* claim.

17 Respectfully submitted:

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