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

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

4 **II. FACTUAL BACKGROUND**

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

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

21 **A. Legal Standard.**

22 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
23 678 (2001) because his removal is not “reasonably foreseeable.” An alien who is ordered
24 removed must be detained for 90 days once their removal order becomes administratively
25 final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien has not left the United States
26 voluntarily or been removed during this 90-day period, the alien will generally be granted
27 supervised release. 8 U.S.C. § 1231(a)(3). However, an alien ordered removed under INA
28 § 237(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not

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

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

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

25 **IV. CONCLUSION**

26 For the foregoing reasons, Respondents respectfully request that this Court deny
27 the Amended Motion for a Writ of Habeas Corpus (Doc. 6).

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Respectfully submitted on December 2, 2025.

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s/ Brooks Chupp
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Assistant United States Attorney
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Finlon
United States Attorney's Office