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

Sofyan Mohamed Abdelmageed Badr,

Petitioner,

vs.

David R. Rivas, Warden, San Luis Regional
Detention and Support Center;

Gregory J. Archambeault, San Diego Field
Office Director, U.S. Immigration and
Customs Enforcement;

Kristi Noem, United States Secretary of
Homeland Security; and


Pamela Bondi, Attorney General of the
United States,

Respondents.

No.

**Petition for a Writ of Habeas Corpus
Under 28 U.S.C. § 2241**

Parties, Jurisdiction, and Venue

1. Petitioner Sofyan Mohamed Abdelmageed Badr is a citizen of the Republic of the Sudan. He is being detained at the San Luis Regional Detention and Support Center, 406 N Ave D, San Luis, AZ 85349. His Alien Registration Number is .
2. Respondent David R. Rivas is the Warden of San Luis Regional Detention and Support Center. His address is San Luis Regional Detention and Support Center, 406 N Ave D, San Luis, AZ 85349.

3. Respondent Gregory J. Archambeault is the San Diego Field Office Director for U.S. Immigration and Customs Enforcement. His address is Bureau of Immigration and Customs Enforcement, 880 Front Street, Suite 2242, San Diego, CA 92101.
4. Respondent Kristi Noem is the United States Secretary of Homeland Security. Her address is Office of the Secretary, MS 0525 Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, DC 20528-0525.
5. Respondent Pamela Bondi is the Attorney General of the United States. Her address is Office of the Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.
6. By virtue of their positions, all of the Respondents have the authority to release Mr. Badr from detention, and thus are his legal custodians and proper respondents in this case.
7. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.
8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

Background

9. Mr. Badr is a citizen of the Republic of the Sudan. (Ex. A (Declaration of Sofyan Mohamed Abdelmageed Badr) at 1.) Although his name appears as “Bad” in some United States documents, this is incorrect. (*Id.*)
10. For years a civil war has been raging in Sudan. One of the factions in this war tried to force Mr. Badr to fight for their side. When he resisted, they tortured him. (*Id.*)
11. Mr. Badr came to the United States in June of 2024 seeking asylum, and received a credible fear interview. (Ex. B (Order of the Immigration Judge) at 1.) A border patrol agent found that he did not have the sort of credible fear that qualified him for asylum. (*Id.*) He appealed to an immigration judge. (*Id.*) On June 28, 2024, the immigration judge

affirmed the negative credible fear determination. (*Id.* at 2.) At that point, Mr. Badr's removal order became final.

12. Weeks passed. Mr. Badr was not removed. On July 19, 2024, ICE released him on parole to the care of a friend. (Ex. C (Parole Notice) at 1; Ex. A at 2.) For the next seven-and-a-half months, Mr. Badr abided by all conditions of his release. (Ex. A at 2.) That included attending check-ins with his deportation officer. (Ex. D (September 2024 Reporting Notice); Ex. E (December 2024 Reporting Notice).)
13. During that time, Mr. Badr contacted an immigration attorney from the Southern California Immigration Project named Megan Smith. (Ex. F (Declaration of Megan Smith) at 1.) Ms. Smith agreed to help him apply for work authorization. (*Id.* at 1-2.) Upon reviewing his immigration history, Ms. Smith believed she understood why ICE had released Mr. Badr. In her experience, ICE releases immigrants with final removal orders in two situations: when they have serious health conditions not suited to detention, and when ICE knows that they cannot be removed any time soon. (*Id.* at 1-2.) Mr. Badr had no serious health issues (*id.*; Ex. A at 2), so it was apparent to her that he had been released because he could not be removed. (Ex. F at 1-2.) This made sense, because Mr. Badr's nation of Sudan was suffering extreme instability, making the coordination of removal flights into Sudan infeasible. (*Id.*) Ms. Smith inferred that ICE had paroled Mr. Badr to avoid subjecting him to unlawful indefinite detention. (*Id.* at 2.)
14. In February 2025, Mr. Badr received notice that U.S. Citizenship and Immigration Services ("USCIS") had received his work permit application. (Ex. G (Notice of Action).) He was ordered to report to USCIS's San Diego office on March 6, 2025 to provide supporting biometrics. (*Id.* at 3.)
15. Ms. Smith accompanied Mr. Badr to the appointment. (Ex. F at 2.) As she looked on, Mr. Badr used an electronic kiosk to provide his biometrics. (*Id.*) But something out of the ordinary happened: A notice popped up on the screen, telling Mr. Badr to proceed into

- the office to talk to an ICE agent. (*Id.*) Ms. Smith noticed that the other applicants at the other kiosks received the same notice. (*Id.*)
16. Ms. Smith and Mr. Badr followed the kiosk's directions to an interior office. (*Id.*) Three ICE agents waited there. (*Id.*) Two of the agents immediately placed Mr. Badr under arrest, while the third supervised. (*Id.*)
 17. Ms. Smith asked the supervising agent why Mr. Badr was being arrested. (*Id.*) He told her, "Well, we have orders to detain anyone who has a final order of removal." (*Id.*) Ms. Smith observed that Mr. Badr had been detained and released, that his 90-day removal period had passed, and that Sudan was still embroiled in civil war. (*Id.*) The agent said something like, "Well, I don't know about that. I don't know anything about Sudan. We were just told to take anyone in who has a final removal orders." (*Id.*) Ms. Smith then asked for clarification that no determination had been made that Mr. Badr could actually be removed. (*Id.*) The supervisor confirmed, repeating that it was just that Mr. Badr had a final order, and ICE was detaining everyone with final removal orders. (*Id.*)
 18. Mr. Badr was placed in a holding cell. (*Id.*) He has been detained ever since.

Grounds for Relief

Claim 1: Mr. Badr's continued detention is unlawful pursuant to *Zadvydas v. Davis*.

19. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered a problem affecting people like Mr. Badr: Federal law requires ICE to detain an immigrant during the "removal period," which typically spans the first 90 days after the immigrant is ordered removed. Immigration and Nationality Act (INA), § 241(a)(1)–(2), *codified at* 8 U.S.C. § 1231(a)(1)–(2). After that 90-day removal period expires, detention becomes discretionary—ICE *may* detain the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily this scheme would not lead to excessive detention, as removal happens within days or weeks. But some detainees cannot be removed quickly. Perhaps their removal "simply require[s] more time for processing," or they are "ordered removed to countries with whom the United States does not have a repatriation

agreement,” or their countries “refuse to take them,” or they are “effectively ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained immigrants can find themselves trapped in detention for months or years.

20. If federal law were understood to allow for “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional threat.” *Zadvydas*, 533 U.S. at 699. The Court avoided this constitutional concern by interpreting the federal detention statute to incorporate implicit limits. *Id.* at 689. The Court held that detention is “presumptively reasonable” for six months following the entry of a final removal order. *Id.* at 701. This acts as a kind of grace period for effectuating removals.
21. Following the six-month grace period, courts must use a burden-shifting framework to decide whether detention remains authorized. *First*, the petitioner must make a prima facie case for relief: He must prove that there is “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* *Second*, if he does so, the burden shifts to “the Government [to] respond with evidence sufficient to rebut that showing.” *Id.* Ultimately, then, the burden of proof rests with the government, which must prove that there is a “significant likelihood of removal in the reasonably foreseeable future.” If the government cannot carry this burden, the immigrant must be released. *Id.*
22. Mr. Badr has been detained beyond the six-month *Zadvydas* grace period. Even if his initial post-removal-order period of detention, prior to his release on parole, is disregarded, he has been continuously detained since March 6, 2025—over six months ago. (Ex. F at 2.)
23. There is “good reason to believe that there is no significant likelihood of [Mr. Badr’s] removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. ICE has been unsuccessfully trying to remove Mr. Badr for over a year. Throughout that time, he has had an assigned deportation officer devoted to furthering his removal. (Exs. D, E.) Even

when released, Mr. Badr had to meet that deportation officer, at which time the officer could get any information or assistance needed to effectuate the removal. (*Id.*) Mr. Badr fully complied with the officer's requests. (Ex. A at 2.)

24. By releasing Mr. Badr in July 2024, ICE implicitly confirmed that it expected not to be able to remove him in the foreseeable future. Indeed, Ms. Smith attests that she has never seen ICE release someone with a final removal order unless (1) they have serious medical issues not suited to detention, or (2) they cannot be removed. (Ex. F at 1.) Mr. Badr did not develop any serious medical issues since being initially detained. (Ex. A at 2.) Thus, ICE presumably released him because he cannot be removed. Indeed, ICE's regulations require findings to this effect: Before recommending release, an official must conclude (among other things) that "[t]ravel documents for the alien are not available or, in the opinion of [ICE], immediate removal, while proper, is otherwise not practicable or not in the public interest." 8 C.F.R. § 241.4(e)(1).
25. Nothing changed during Mr. Badr's release to challenge that assessment. (Ex. A at 2; Exs. D, E.) To the contrary, the assessment was reinforced, inasmuch as a year's worth of efforts bore no fruit. ICE re-detained Mr. Badr, not because it made progress on his removal, but because of an across-the-board policy mandating the arrest of everyone with a final removal order. (Ex. F at 2.)
26. There is an obvious reason why ICE has not been able to remove Mr. Badr: Due to a brutal civil war, Sudan is currently one of the most dangerous and inaccessible places on earth. According to the State Department, "[a]rmed conflict is ongoing throughout Sudan and includes heavy fighting between various political and security groups. The situation is violent, volatile, and extremely unpredictable, particularly in the capital city Khartoum. . . . Khartoum International Airport and Sudan's border with Chad are currently closed." Bureau of Consular Affairs, U.S. Department of State, *Sudan Travel Advisory* (available at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/sudan->

travel-advisory.html (last visited Sep. 8, 2025) (*Sudan Travel Advisory*)). On January 25, 2025, DHS designated Sudan for Temporary Protected Status for 18 months “due to ongoing armed conflict and extraordinary and temporary conditions that continue to prevent individuals from safely returning.” Dept. of Homeland Security, *DHS to Extend Temporary Protected Status for Sudan* (Jan. 10, 2025) (available at <https://www.dhs.gov/archive/news/2025/01/10/dhs-extend-temporary-protected-status-sudan> (last visited Sep. 8, 2025)).

27. This instability makes travel either impossible or extremely hazardous. Even the military airport at Port Sudan has recently come under attack. Jessica Rawnsley, *Paramilitaries strike Port Sudan for first time, army says*, BBC News (May 4, 2025) (available at <https://www.bbc.com/news/articles/c20xwyj843do> (last visited Sep. 8, 2025)). Even if a flight could land, “there is continuous risk to aviation due to potential misidentification, miscalculation or collateral damage by the parties engaged, when using anti-aircraft weaponry.” European Union Aviation Safety Agency, *Airspace of Sudan* (Jan. 1, 2025) (available at <https://www.easa.europa.eu/en/domains/air-operations/czibs/czib-2023-01r5> (last visited Sep. 8, 2025)).
28. In light of these circumstances, there is very good reason to think that Badr cannot be removed in the reasonably foreseeable future. Mr. Badr has thus met his initial burden. Unless the government can prove a “significant likelihood of removal in the reasonably foreseeable future,” he must be released. *Zadvydas*, 533 U.S. at 701.

**Claim 2: Mr. Badr’s arbitrary re-detention violated the
Administrative Procedure Act, 5 U.S.C. § 706(2)**

29. Mr. Badr restates and realleges all preceding paragraphs as if fully set forth here.
30. The Administrative Procedure Act, 5 U.S.C. § 706(2) (APA), requires the Court to “hold unlawful and set aside agency action” that is (*inter alia*): “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction,

authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law[.]”

31. “[T]he touchstone of arbitrary and capricious review under the APA is reasoned decisionmaking.” *Y-Z-L-H v. Bostock et al.*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *11 (D. Or. July 9, 2025) (*quoting Altera Corp. & Subsidiaries v. Comm’r*, 926 F.3d 1061, 1080 (9th Cir. 2019) (internal quotation marks omitted)). “[A]n agency’s action can only survive arbitrary or capricious review where it has articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Id.* (*quoting All. for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023)). “A court ‘may not infer an agency’s reasoning from mere silence,’” *id.* (*quoting Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008)), “because ‘it makes no difference what [an agency] may have had in mind but failed to express; an administrative agency is not allowed to change direction without some explanation of what it is doing and why.’” *Id.* (*quoting Int’l Union, UAW v. NLRB*, 802 F.2d 969, 973–74 (7th Cir. 1986)). “An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). In addition, an agency’s failure to “‘adhere firmly to self-adopted rules by which the interests of others are to be regulated,’” is “unlawful and thus actionable under [the APA].” *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336–37 (D.D.C. 2018) (*quoting Mass. Fair Share v. Law Enf’t Assistance Admin.*, 758 F.2d 708, 711 (D.C. Cir. 1985)).
32. ICE’s re-detention of Mr. Badr flies in the face of these principles.
33. In July of 2024, ICE determined that Mr. Badr’s release on parole was appropriate. (Ex. C.) ICE’s notice identified the release as being granted pursuant to § 212(d)(5)(A) of the INA (Ex. C at 2)—the parole provision codified at 8 U.S.C. § 1182(d)(5)(A).
34. Release on parole pursuant to § 1182(d)(5)(A) is governed by the statute, the regulation codified at 8 C.F.R. § 212.5(a), and ICE Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* par. 4.4 (Dec. 8, 2009) (ICE Dir. 11002.1)

(available at

https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf
(last visited Sep. 8, 2025)).

35. The statute specifies that release on parole is proper “only on a case-by-case basis” for “urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).
36. The regulation provides that release is generally justified “only on a case-by-case basis,” for aliens who present neither a security risk nor a risk of absconding, and whose continued detention is “not in the public interest.” 8 C.F.R. § 212.5(a).
37. ICE Directive 11002.1 fleshes out the meaning of the term “public interest” as used in the regulation, specifying that parole is generally in the “public interest” when an asylum-seeker establishes his identity and that he presents neither a flight risk nor a danger. ICE Dir. 11002.1 par. 6.2. In addition, echoing the “case-by-case” language in the statute and regulation, the ICE Directive notes that each parole determination “should be considered and analyzed on its own merits and based on the facts of the individual alien’s case.” *Id.*
38. In 2025, the agency suddenly reversed its parole determination in defiance of the applicable statutes, regulations, and directive. Rather than conducting the mandatory case-by-case analysis and making the necessary individualized findings, the agency confirmed that it was rescinding its parole determination on the basis of a blanket policy—“orders to detain anyone who has a final order of removal.” (Ex. F at 2.)
39. This is arbitrary and unlawful agency action. Pursuant to the APA, it must be set aside. *See Y-Z-L-H*, 2025 WL 1898025, at *14 (granting habeas corpus petition pursuant to APA and barring detention of asylum-seeker whose release was summarily revoked via mass DHS email).

**Claim 3: Mr. Badr’s arbitrary re-detention
violated the Fifth Amendment.**

40. Mr. Badr restates and realleges all preceding paragraphs as if fully set forth here.

41. The Fifth Amendment’s Due Process Clause provides that “[n]o person shall be . . . deprived of life, liberty, or property without due process of law.” Mr. Badr is a “person,” and the Due Process Clause “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. By physically detaining him, Respondents are depriving Mr. Badr of bodily “liberty.” *United States v. Salerno*, 481 U.S. 739, 748–51 (1987). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Indeed, even the dissenters in *Zadvydas*—who refused to join the majority’s holding construing the pertinent section of the INA to require bond hearings—confirmed that “removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious.” *Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting, joined by Rehnquist, C.J.).
42. Once he was released, Mr. Badr had a constitutionally protected liberty interest in remaining out of custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019). This is not, of course, to suggest that Respondents lost the ability to re-detain him—only that they could not extinguish his liberty in an “arbitrary or capricious” manner. *Zadvydas*, 533 U.S. at 721 (Kennedy, J., dissenting). The role of discretion in the decision to release Mr. Badr did not nullify this obligation. “[T]he fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest.” *Ortega*, 415 F. Supp. 3d at 969.
43. It follows that Respondents’ arbitrary and capricious extinguishment of Mr. Badr’s liberty violated his Fifth Amendment right to due process.

Prayer for Relief

In light of the facts and law set forth above, Mr. Badr respectfully asks the Court to:

- a. order Respondents to file an answer to this petition;
- b. permit him to file a reply to the answer;

- c. order Respondents to release him from detention, subject to any necessary and appropriate conditions; and
- d. grant any other and further relief as is just and practicable.

Respectfully submitted:

September 8, 2025

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