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

12 Sofyan Mohamed Abdelmageed Badr,

No. CV-25-03268-PHX-SPL (JFM)

13 Petitioner,

**ANSWER TO PETITION FOR  
 WRIT OF HABEAS CORPUS  
 (DOC. 1)**

14 v.

15 David R. Rivas, *et al.*,

16 Respondents.  
 17

18 Respondents David R. Rivas, Warden, San Luis Regional Detention and Support  
 19 Center; Gregory J. Archambeault, San Diego Field Office Director, U.S. Immigration and  
 20 Customs Enforcement; Kristi Noem, United States Secretary of Homeland Security; and  
 21 Pamela Bondi, Attorney General of the United States (Respondents), through undersigned  
 22 counsel, answer the Petition for Writ of Habeas Corpus (Doc. 1).

23 **I. FACTUAL BACKGROUND**

24 On June 10, 2024, Sofyan Mohamed Abdelmageed Badr (Badr) illegally entered the  
 25 United States from Mexico near Sasabe, Arizona. He was apprehended by a Border Patrol  
 26 agent shortly after effecting his illegal entry into the United States. Exhibit A, Declaration  
 27 of Fernando Valenzuela at ¶ 6. Badr was taken into custody by U.S. Customs and Border  
 28 Protection (CBP) following his June 10, 2024, apprehension. Id. at ¶ 7.

1 On June 11, 2024, Badr was served with a Notice and Order of Expedited Removal  
2 (Form I-860) pursuant to Immigration and Nationality Act (INA) § 235(b)(1), 8 U.S.C. §  
3 1225(b)(1), on June 11, 2024. Id. at ¶ 8 The Notice and Order of Expedited Removal  
4 charged Badr with inadmissibility under Immigration and Nationality Act (INA) §  
5 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant not in possession of a  
6 valid unexpired visa, re-entry permit, border crossing card, or other valid entry document  
7 at the time of an application for admission. Id. at ¶ 9. Based on that determination of  
8 inadmissibility, Badr was ordered removed from the United States pursuant to INA §  
9 235(b)(1), 8 U.S.C. § 1225(b)(1). Id.

10 On June 14, 2024, CBP transferred Badr into the custody of U.S. Immigration and  
11 Customs Enforcement. Id. at ¶ 10. On June 24, 2024, an U.S. Citizenship and Immigration  
12 Services (USCIS) Asylum Officer administered a credible fear interview to Badr pursuant  
13 to INA § 235(b)(1)(B)(i), 8 U.S.C. § 1225(b)(1)(B)(i). Id. at ¶ 11. On June 24, 2024, the  
14 USCIS Asylum Officer determined that Badr did not have a credible fear of persecution or  
15 torture if removed to Sudan, his country of citizenship. Id. at ¶ 12. On or about June 27,  
16 2024, Badr requested that an Immigration Judge review the Asylum Officer's negative  
17 credible fear determination pursuant to INA § 235(b)(1)(B)(iii)(III), 8 U.S.C. §  
18 1225(b)(1)(B)(iii)(III). Id. at ¶ 13. On June 28, 2024, Immigration Judge John Cortes of  
19 the Eloy Immigration Court affirmed the Asylum Officer's negative credible fear  
20 determination and returned Badr's case to DHS for removal. Id. at ¶ 14.

21 On July 17, 2024, Badr was paroled from ICE custody pursuant to INA § 212(d)(5),  
22 8. U.S.C. § 1182(d)(5). A parole notification signed by Badr states that he was being  
23 processed for release from ICE custody "pending a final decision in [his]  
24 exclusion/deportation/removal hearing." Yet, there had already been a final decision in his  
25 (expedited) removal proceedings: the expedited order of removal entered pursuant to INA  
26 § 235(b)(1), 8 U.S.C. § 1235(b)(1). Id. at ¶ 15.<sup>1</sup>

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27  
28 <sup>1</sup> The reason for this mistake is unknown to undersigned counsel. However, it is probably  
connected with the fact that Badr's name was misspelled on some government documents,

1 On March 3, 2025, ICE took Badr into custody on his administratively final order  
2 of removal to Sudan. *Id.* at ¶ 16. On September 2, 2025, a Deportation Officer forwarded  
3 a completed emergency travel document request to the Removal and International  
4 Operations Unit (HQRIO) of ICE ERO Headquarters in Washington, D.C. HQRIO is  
5 responsible for forwarding travel document requests to the alien’s country of citizenship  
6 through its U.S.-based Embassy or a consulate. *Id.* at ¶ 17. As of today’s date, the  
7 emergency travel document request pertaining to Badr remains pending with HQRIO. *Id.*  
8 at ¶ 18. Badr remains detained pursuant to INA § 235(b)(1)(B)(iii)(IV), 8 U.S.C. §  
9 1225(b)(1)(B)(iii)(IV), pending execution of his administratively final order of removal to  
10 Sudan. *Id.* at ¶ 19.

11 Badr was detained for 21 days after his removal order became final before he was  
12 erroneously paroled and has been in custody for 7 months and 11 days since his parole was  
13 revoked on March 3, 2025.

## 14 **II. LEGAL ARGUMENT**

15 Petitioner raises three claims for injunctive relief. Claims 1 and 3 are both claims  
16 based on the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Claim  
17 2 alleges Badr’s re-detention violates the Administrative Procedures Act.

### 18 **A. Badr’s period of detention is not excessive under *Zadvydas*.**

19 Badr’s detention is governed by 8 U.S.C. § 1231(a)(6). After the 90-day removal  
20 period prescribed in 8 U.S.C. § 1231(a)(1)(A) expires, during which time the alien’s  
21 detention is mandatory pursuant to 8 U.S.C. § 1231(a)(2)(A), an alien ordered removed  
22 who is inadmissible under 8 U.S.C. § 1182, like Badr, “may be detained beyond the  
23 removal period.” 8 U.S.C. § 1231(a)(6). Section 1231(a)(6) does not contain a limitation  
24 on the length of detention, but pursuant to the Supreme Court’s decision in *Zadvydas v.*  
25 *Davis*, 533 U.S. 678 (2001), six months is presumptively reasonable. *Id.* at 701. After six  
26 months, an alien may still be detained unless he provides “good reason to believe that there  
27 is no significant likelihood of removal in the reasonably foreseeable future,” in which case,

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as noted by Petitioner. Doc. 1 at 2.

1 the Government must respond with evidence sufficient to rebut that showing.” *Id.* The six-  
2 month presumption does not mean that “every alien not removed must be released after six  
3 months. To the contrary, an alien may be held in confinement until it has been determined  
4 that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

5 Since he was ordered removed, Petitioner has been detained for about 8 months total  
6 and was erroneously paroled for 7 months. *Zadvydas* places the burden on the alien to  
7 show, after a detention period of six months, that there is “good reason to believe that there  
8 is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*, 533 U.S.  
9 at 701. If the alien makes that showing, the Government must then introduce evidence to  
10 refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832,  
11 839-40 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a  
12 period reasonably necessary to secure removal. It should measure reasonableness primarily  
13 in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment  
14 of removal. *Zadvydas*, 533 U.S. at 699.

15 Petitioner’s claim that his removal is not significantly likely rests upon his incorrect  
16 assumption that he was released on parole in July 2024 because government officials  
17 determined he could not be removed.<sup>2</sup> Doc. 1 at 5-6. The only other argument Plaintiff  
18 makes is that Sudan is a dangerous war-torn place. But there is nothing preventing the  
19 government from removing Badr to some country other than Sudan, such as Mexico, the  
20 country from which he entered the United States. *See* 8 U.S.C. § 1231(b)(2)(E).

21 In *Zadvydas*, the Court emphasized that the “basic purpose” of immigration  
22 detention is “assuring the alien’s presence at the moment of removal” and concluded this  
23 purpose was not served by the continued detention of aliens whose removal was not  
24 “reasonably foreseeable.” *Id.* at 699. Removal was not reasonably foreseeable in *Zadvydas*

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26 <sup>2</sup> This incorrect assumption comes from Badr’s former lawyer who “inferred” that he was  
27 paroled because he could not be removed. Doc. 1-1 at 15-16. This inference was deeply  
28 flawed because the parole happened a mere 20 days after the final order of removal, which  
should seem to an experienced immigration lawyer to be a very short time for ICE to  
request and fail to obtain travel documents.

1 because no country would accept the deportees or because the United States lacked an  
2 extradition treaty with their home countries. That is not the case here where there is no  
3 impediment to removing Petitioner to Sudan if travel documents are obtained, or to Mexico  
4 or another country.

5 In *Clark v. Martinez*, 543 U.S. 371, 386 (2005), an alien’s removal to Cuba was not  
6 reasonably foreseeable when the Government conceded “that it is no longer even involved  
7 in repatriation negotiations with Cuba.” *Id.* at 386. And in *Nadarajah v. Gonzales*, 443 F.3d  
8 1069 (9th Cir. 2006), the Ninth Circuit relied on the apparent impossibility of removal in  
9 holding that an alien’s continued detention was not authorized where the BIA had twice  
10 awarded the alien asylum, as well as protection under the Convention Against Torture  
11 (“CAT”), yet his detention continued for over five years while the Government appealed  
12 the decisions. *Id.* at 1081. The Ninth Circuit held that Nadarajah had successfully  
13 demonstrated that, as a result of the asylum and CAT determinations, there was a “powerful  
14 indication of the improbability of his foreseeable removal.” *Id.* This case is distinguishable  
15 from *Zadvydas*, *Clark*, and *Nadarajah* because Petitioner’s detention is not prolonged, and  
16 he is an alien whom the Government lawfully can remove and is in the process of removing.

17 The current 7-month period of detention following expiration of the 90-day removal  
18 period is not excessive under *Zadvydas*. The government is actively attempting to obtain  
19 travel documents for Badr. Uncertainty as to Petitioner’s exact removal date does not  
20 warrant his release. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1064 (9th Cir. 2008).  
21 Petitioner’s continued detention is not constitutionally indefinite as contemplated by  
22 *Zadvydas* and instead remains necessary to ensure his presence at the time of removal.  
23 *Zadvydas*, 533 U.S. at 701. The habeas petition should be denied.

24 **B. Badr may be re-detained because there is a final order of removal.**

25 Petitioner claims his re-detention after being mistakenly paroled violates the  
26 Administrative Procedures Act (APA). The allegations in his Claim 3 mirror the law and  
27 issues raised in the Oregon case, *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL  
28 1898025 (D. Or. July 9, 2025). However, the material facts of Badr’s case do not mirror

1 the facts of *Y-Z-L-H*. In Badr’s case, there is a final order of removal which provides ample  
2 legal basis for him to be re-detained. In *Y-Z-L-H*, there was no order of removal, and the  
3 Court noted that the “Respondents conceded at oral argument that if they unlawfully  
4 terminated Petitioner’s parole, then Respondents do not have a lawful basis for Petitioner’s  
5 detention.” *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*11 (D. Or.  
6 July 9, 2025). The APA claim analysis of *Y-Z-L-H* is not relevant to the facts of this case.  
7 The APA claim is an improper claim for habeas relief.

8 An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody”  
9 under federal authority “in violation of the Constitution or laws or treaties of the United  
10 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality  
11 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);  
12 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*  
13 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically  
14 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The  
15 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas  
16 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the  
17 relevant question is whether, based on the allegations in the petition, release is legally  
18 required irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072; *see also Nettles v.*  
19 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the  
20 petitioner’s claim would “necessarily lead to immediate or speedier release.”).

21 Seeking judicial review under the Administrative Procedure Act (APA) is not  
22 properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133,  
23 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, “judicial review” refers  
24 to petitions for review of agency actions, which are governed by the Administrative  
25 Procedure Act, while habeas corpus refers to habeas petitions brought directly in district  
26 court to challenge illegal confinement.”).

27 Here, Petitioner’s APA attack falls outside the scope of relief provided for in a  
28 habeas petition particularly where it fails to challenge the legality or duration of Petitioner’s

1 confinement. *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at \*3  
2 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s §  
3 2241 habeas petition since it cannot be fairly read as attacking ‘the legality or duration of  
4 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). Much of Badr’s APA claim describes  
5 an ICE Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of*  
6 *Persecution or Torture*. The ICE directive was intended to apply to potential parole  
7 situations where a credible fear was found, and further proceedings were pending. It is  
8 inapplicable to Badr because the Immigration Judge found ***no credible fear*** and ***no further***  
9 ***proceedings are pending***. These facts were known to Badr himself, even before he was  
10 mistakenly paroled.

11 **III. CONCLUSION**

12 In light of the above, Respondents respectfully request the Court deny Petitioner’s  
13 Petition for Writ of Habeas Corpus.

14 RESPECTFULLY SUBMITTED October 14, 2025.

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