

1 JON M. SANDS
Federal Public Defender
2 DANIEL L. KAPLAN #021158
Assistant Federal Public Defender
3 250 North 7th Avenue, Suite 600
4 Phoenix, Arizona 85007
5 (602) 382-2700
dan_kaplan@fd.org
6 *Counsel for Petitioner*

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

9 Sofyan Mohamed Abdelmageed Badr,

10 Petitioner,

11 vs.

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

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

16 Kristi Noem, United States Secretary of
17 Homeland Security; and

18 Pamela Bondi, Attorney General of the
United States,

19 Respondents.

No. 2:25-cv-03268-SPL--JFM

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

20 On September 8, 2025, Petitioner Sofyan Mohamed Abdelmageed Badr filed his Petition
21 for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Doc. 1.) In his petition, Mr. Badr
22 demonstrated that Respondents' detention of him for more than six months following the entry
23 of a final removal order in his immigration case was unlawful and unconstitutional under the
24 Immigration and Nationality Act, the Administrative Procedure Act, and the Fifth Amendment
25 to the United States Constitution. Rather than undermining this showing, Respondents' October
26 14, 2025 answer (Doc. 14) bolsters it, by providing powerful confirmation that there is no
27 "significant likelihood" of Mr. Badr's removal in the "reasonably foreseeable future." *Zadvvydas*
28

1 *v. Davis*, 533 U.S. 678, 701 (2001). Mr. Badr now files this reply in support of his petition, and
2 respectfully asks the Court to grant the petition and order his immediate release from unlawful
3 custody.

4 **Respondents’ answer fails to undermine Mr. Badr’s entitlement to immediate release.**

5 In his petition, Mr. Badr demonstrated that he is entitled to immediate release pursuant
6 to 28 U.S.C. § 2241 for each or all of the following reasons: (1) his prolonged detention following
7 the entry of a final order of removal violates the Immigration and Nationality Act as interpreted
8 in *Zadvydas*; (2) his arbitrary re-detention violated the Administrative Procedure Act, 5 U.S.C.
9 § 706(2); and/or (3) his arbitrary re-detention violated the Fifth Amendment to the United
10 States Constitution. (Doc. 1 at 4–10.) Respondents’ answer fails to undermine Mr. Badr’s
11 entitlement to relief on any of these grounds.

12 (1) Respondents assert that Mr. Badr’s first claim rests upon his “assumption that he was
13 released on parole in July 2024 because government officials determined he could not be
14 removed.” (Doc. 14 at 4.) Respondents are mistaken. Although Mr. Badr’s immigration lawyer
15 did reach a well-founded conclusion that he was released after immigration officials determined
16 that he could not be removed (Doc. 1-1 at 15–16), this conclusion is not essential to his first claim
17 for relief. Under *Zadvydas*, Mr. Badr is not required to show that government officials *determined*
18 that he could not be removed—he is required instead to make an *objective* showing that there is
19 “good reason to believe that there is no significant likelihood of removal in the reasonably
20 foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). Mr. Badr has made this
21 showing. He has demonstrated that his removal order has been final for sixteen months, and that
22 no material progress toward his removal has occurred. (Doc. 1 at 2–7.) He has also shown that the
23 prospect of his removal to his native country of Sudan remains highly unlikely in light of the
24 ongoing civil war and extreme instability of that country, and that there is no indication that his
25 removal to an alternative country is in process or likely. (*Id.*)

26 This showing shifted the burden to Respondents to demonstrate that there is a
27 “significant likelihood” of Mr. Badr’s removal in the “reasonably foreseeable future.” *Zadvydas*,

1 533 U.S. at 701. But rather than carrying this burden, Respondents have proffered evidence
2 confirming that there is *no* such “reasonable likelihood.” Respondents produce the declaration of
3 an ICE Assistant Field Office Director who attests that “[o]n September 2, 2025, a Deportation
4 Officer forwarded a completed emergency travel document request to the Removal and
5 International Operations Unit (HQRIO) of ICE ERO Headquarters in Washington, D.C,” and
6 that this request “remains pending with HQRIO.” (Doc. 14-1 at 5.) Respondents also assert that
7 there is “no impediment” to removing Mr. Badr to “Mexico or another country,” and that they
8 are “actively attempting” to obtain travel documents for him. (Doc. 14 at 5.)

9 When the best Respondents can do to try to prove a “significant likelihood” of Mr.
10 Badr’s removal in the “reasonably foreseeable future” is to assert that a request is “pending” at
11 ICE headquarters, and that there is “no impediment” to removing him to “Mexico or another
12 country” — with no indication that the request has even been delivered to Sudan, that Mr. Badr
13 has designated “Mexico or another country” to which he wants to be removed, or that “Mexico
14 or another country” has indicated its willingness to accept him (8 U.S.C. § 1231(b)(2)) — the
15 game is effectively up. *See Andreatsyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash.
16 2006) (government failed to carry its burden under *Zadvydas* where they reported foreign
17 consular officer’s statement that noncitizen’s case was “still under review and pending a
18 decision”); *Nibkakhsh-Tali v. Mukasey*, No. CV 07-1526 PHX-NVW, 2008 WL 2328354, at *8
19 (D. Ariz. June 4, 2008) (foreign official’s “inability to even speculate as to when travel
20 documents might be forthcoming” confirmed government’s failure to carry its burden under
21 *Zadvydas*). Respondents have had *sixteen months* since Mr. Badr’s removal order became final
22 (Doc. 1 at 2–3) to remove him, and all they can do is cite a “pending” internal memo, vague
23 speculation, and an amorphous reference to “activ[e] attempt[s].” The Supreme Court requires
24 the government to produce “*evidence*” — not speculation and platitudes — to carry its burden
25 (*Zadvydas*, 533 U.S. at 701 (emphasis added)), and it has made plain that assurances of “good
26 faith efforts” are not sufficient. *Id.* at 702.

1 In sum, Respondents' answer effectively confirms that Mr. Badr is entitled to relief on
2 Claim 1 of his petition.

3 (2) Claim 2 of Mr. Badr's petition alleges that his arbitrary re-detention violated the
4 Administrative Procedure Act, 5 U.S.C. § 706(2) (APA), because instead of resting on the
5 individualized, case-by-case analysis mandated by that Act, as well as by the governing statute
6 and ICE Directive, it rested on unlawful blanket "orders to detain anyone who has a final order of
7 removal." (Doc. 1 at 7-9.)

8 Respondents assert that this claim lacks merit because Mr. Badr's final order of removal
9 supplied a "legal basis" for his re-detention. (Doc. 14 at 6.) But Respondents miss the point: Mr.
10 Badr's Claim 2 does not rest on the premise that Respondents lack any legal authority to detain
11 noncitizens in the removal process; it rests on the fact that Respondents have *exercised* that
12 authority with respect to him in a manner that violates the APA. (Doc. 1 at 7-9.) Respondents'
13 general authority to detain noncitizens in the removal process does not carry with it the power to
14 do so in a manner that violates the APA.

15 Respondents' assertion that Mr. Badr's APA claim "falls outside the scope of relief
16 provided for in a habeas petition" because it "fails to challenge the legality or duration of [his]
17 confinement" (Doc. 14 at 6-7) is equally meritless. Mr. Badr's APA claim alleges that
18 Respondents acted unlawfully in returning him to their custody. (Doc. 1 at 7-9.) If this claim has
19 merit, the proper remedy is the reversal of Respondents' unlawful conduct—meaning that Mr.
20 Badr's immediate release from custody would be "legally required." *Pinson v. Carvajal*, 69 F.4th
21 1059, 1072 (9th Cir.), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024) (emphasis
22 removed); *see Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *14 (D. Or. July 9,
23 2025) (granting immediate release on APA claim raised in § 2241 petition). Thus, contrary to
24 Respondents' assertion, Mr. Badr's APA claim *does* "challenge the legality [and] duration of
25 [his] confinement." (Doc. 14 at 6-7 (internal quotation marks omitted).)

26 Finally, Respondents criticize Mr. Badr's reliance on ICE Directive 11002.1 in connection
27 with this claim. As Mr. Badr observed in his petition, this Directive defines the term "public
28

1 interest” as used in the regulation governing parole determinations, and specifies that such
2 determinations must be made on a “case-by-case” basis. (Doc. 1 at 9.) Respondents’ critique of
3 Mr. Badr’s reliance on the Directive is immaterial, because the governing statute and regulation
4 *also* require “case-by-case” parole determinations (*id.*), and Respondents do not challenge Mr.
5 Badr’s reliance on those authorities. In any case, Respondents’ critique is meritless. They posit
6 that the Directive is inapplicable because the entry of a final removal order rendered Mr. Badr
7 ineligible for parole. (Doc. 14 at 7.) But regardless of whether this was the case, the record
8 shows—and Respondents concede—that Mr. Badr *was granted* parole pursuant to 8 U.S.C.
9 § 1182(d)(5)(A). (Doc. 1-1 at 9; Doc. 14 at 2 (“On July 17, 2024, Badr was paroled from ICE
10 custody pursuant to INA § 212(d)(5), 8[] U.S.C. § 1182(d)(5).”)) Respondents cite no support
11 for the proposition that their unlawful exercise of a statutory authority is immunized from legal
12 scrutiny where they concede that they categorically erred in exercising that authority.

13 In short, Respondents fail to refute Mr. Badr’s showing that he is entitled to relief on
14 Claim 2 of his petition.

15 (3) Mr. Badr’s third claim asserts that Respondents’ arbitrary and capricious
16 extinguishment of his liberty violated his Fifth Amendment right to due process. (Doc. 1 at 9–10.)
17 Respondents’ answer fails to address this claim at all—apparently on the premise that because
18 this claim cites *Zadvydas*, it is indistinguishable from Claim 1. (Doc. 14 at 3 (“Claims 1 and 3 are
19 both claims based on the Supreme Court’s decision in [*Zadvydas*].”)) This is incorrect. Mr.
20 Badr’s first claim relies on *Zadvydas*’ core holding that the Immigration and Nationality Act bars
21 the government from continuing to detain a noncitizen for more than six months after the entry
22 of a final removal order where there is no significant likelihood that it will be able to remove him
23 in the reasonably foreseeable future. (Doc. 1 at 4–7.) Mr. Badr’s third claim, by contrast, alleges
24 that Respondents’ arbitrary and capricious re-detention of him deprived him of a constitutionally
25 protected liberty interest in violation of the Fifth Amendment to the United States Constitution.
26 (*Id.* at 9–10.) Thus, while this claim cites *Zadvydas* (as well as three other cases), it is
27 fundamentally distinct from Claim 1.
28

1 Respondents' failure to address this distinct, separate claim effectively forfeits any
2 argument that relief is not proper on this claim. *Cf.* Rule 5(b), Rules Governing Section 2254 and
3 Section 2255 Cases in the United States District Courts (Dec. 1, 2019) ("The answer must
4 address the allegations in the petition."); *United States v. Castillo-Marin*, 684 F.3d 914, 919 (9th
5 Cir. 2012) (government conceded point not challenged in its answering brief).

6 **Conclusion**

7 For the reasons set forth above and in Mr. Badr's petition for habeas corpus, the Court
8 should grant the petition and order his immediate release from detention.

9 Respectfully submitted:

October 29, 2025

10 JON M. SANDS
11 Federal Public Defender

12 *s/Daniel L. Kaplan*
13 DANIEL L. KAPLAN
14 Assistant Federal Public Defender
15 *Counsel for Petitioner*
16
17
18
19
20
21
22
23
24
25
26
27
28