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14 **IN THE UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF ARIZONA**

16 John Gatwich Dak,

17 Petitioner,

18 v.

19 Luis Rosa, Jr., *et al.*,

20 Respondents.

No. CV-25-04215-MTL (ESW)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

21 **I. INTRODUCTION**

22 Respondents, by and through counsel, respond to the Petition for a Writ of Habeas
23 Corpus (Doc. 1). Petitioner John Gatwich Dak is a citizen and national of Sudan and a
24 criminal alien convicted of numerous offenses, including drug possession and aggravated
25 driving while under the influence (“DUI”). After his first few convictions, an immigration
26 judge ordered him removed to Sudan. Petitioner was most recently detained by U.S.
27 Immigration and Customs Enforcement (“ICE”) on March 25, 2025. In this habeas petition,
28 Petitioner seeks a Court order directing ICE to immediately release him from immigration
detention. Respondents respectfully request that this Court deny the Petition and Motion
because Petitioner has not been unconstitutionally detained, and he cannot establish that
his removal is not likely to occur in the reasonably foreseeable future.

1 **II. FACTUAL BACKGROUND**

2 Petitioner entered the United States on April 12, 2005. Declaration of Nellie
3 Martinez, Deportation Officer, Enforcement and Removal Operations, attached as Exhibit
4 A, at ¶ 5. Petitioner was subsequently convicted in state court of various offenses,
5 including DUI (2006) and criminal trespass (2006 and 2009). *Id.* at ¶¶ 7–8. ICE began
6 removal proceedings against Petitioner on January 22, 2010, under Immigration and
7 Nationality Act (“INA”) sections 212(a)(2)(A)(i)(I) and 241(a)(7)(A)(i)(I). *Id.* at ¶ 13, 21.
8 While his removal proceedings were pending, Petitioner was convicted of more crimes,
9 including aggravated DUI (2010), criminal trespass (twice in 2010), and possession of
10 marijuana (2010). *Id.* at ¶¶ 15–16, 23. On August 24, 2011, an immigration judge ordered
11 Petitioner removed to Sudan. *Id.* at ¶ 28. Petitioner was granted supervised release on
12 November 23, 2011. *Id.* at ¶ 29. Petitioner was convicted of four counts of aggravated DUI
13 on August 12, 2012. *Id.* at ¶ 32. After he was released from prison, ICE detained Petitioner
14 again on June 3, 2022. *Id.* at ¶ 35. On July 18, 2022, ICE determined that Petitioner was
15 not likely to be removed in the reasonably foreseeable future, and it recommended that
16 Petitioner be released after 90 days in detention. *Id.* at ¶ 35. Accordingly, ICE granted
17 Petitioner supervised release on August 2, 2022. *Id.* at ¶ 38. The Sudanese government
18 denied ICE’s request for travel documents shortly thereafter. *Id.* at ¶ 39. Petitioner
19 immediately violated the conditions of his supervised release by failing to check in with
20 ICE. *Id.* at ¶ 41. Petitioner was most recently placed into immigration custody on March
21 25, 2025. *Id.* at ¶ 43. ICE is waiting for a response to its request for travel documents from
22 South Sudan. *Id.* at ¶ 50.

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

24 **A. Legal Standard.**

25 Petitioner argues that his detention is unlawful under *Zadvydas v. Davis*, 533 U.S.
26 678 (2001) because his removal is not “reasonably foreseeable.” An alien who is ordered
27 removed must be detained for 90 days once their removal order becomes administratively
28 final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien has not left the United States

1 voluntarily or been removed during this 90-day period, the alien will generally be granted
2 supervised release. 8 U.S.C. § 1231(a)(3). However, an alien ordered removed under INA
3 § 241(a)(2) may be detained for a longer period. 8 U.S.C. § 1231(a)(6). The INA does not
4 authorize indefinite detention. *Zadvydas*, 533 U.S. at 689. An alien may be detained for up
5 to six months pursuant to a final order of removal, after which, the alien may be released
6 if they can “provide[] good reason to believe that there is no significant likelihood of
7 removal in the reasonably foreseeable future” and the government fails to show otherwise.
8 *Id.* at 701. At that time, an alien is not presumed to be entitled to release; the alien must
9 show that their detention is “indefinite—i.e., that there is good reason to believe that there
10 is no significant likelihood of removal in the reasonably foreseeable future.” *Diouf v.*
11 *Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701)
12 (internal quotation marks removed). This six-month period includes the initial 90-day
13 mandatory detention period and three months thereafter. *Ma v. Ashcroft*, 257 F.3d 1095,
14 1102 n.5 (9th Cir. 2001).

15 Petitioner may only be granted release from detention if he can show “good reason
16 to believe that there is no significant likelihood of removal in the reasonably foreseeable
17 future.” *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar
18 when no country would agree to accept the alien or when the alien’s home country had no
19 repatriation treaty with the United States, *id.* at 686, when the government “concede[d] that
20 it [was] no longer even involved in repatriation negotiations” with the alien’s home
21 country, *Clark v. Suarez Martinez*, 543 U.S. 371, 386 (2005), and when the alien had been
22 detained for five years and had “won relief at every administrative level.” *Nadarajah v.*
23 *Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its
24 holding in *Zadvydas* was concerned with detention that is “indefinite and potentially
25 permanent,” and for aliens whose removal is “no longer practically attainable.” *See*
26 *Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact
27 that an alien’s detention “lacks a certain end date” does not render their detention
28 unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008). The

1 “likelihood of successful future negotiations” to repatriate an alien may justify continued
2 detention. *See Zadvydas*, 533 U.S. at 702. Further, “mere delay in the issuance of a travel
3 document is insufficient” to justify relief under *Zadvydas* “particularly where . . . efforts to
4 obtain the travel document are ongoing.” *Nasr v. Larocca*, 2016 U.S. Dist. LEXIS 90343
5 at *11–12 (C.D. Cal. June 1, 2016); *see also Roe v. Oddo*, 2025 U.S. Dist. LEXIS 214463
6 at *20–26. (W.D. Pa. Oct. 30, 2025); *Chen v. Banike*, 2015 U.S. Dist. LEXIS 105145 (D.
7 Minn. July 14, 2025) at *10–11, *R&R adopted at* 2015 U.S. Dist. LEXIS 104914 (Aug. 11,
8 2015) (“For there to be no significant likelihood of removal in the reasonably foreseeable
9 future, there must be some indication that the government is either unwilling to remove an
10 alien or incapable of doing so due to seemingly insurmountable barriers[.]”); *Smith v.*
11 *Simon*, 2019 U.S. Dist. LEXIS 148526 at *10–11 (N.D. Ohio July 17, 2019) (holding that
12 *Zadvydas* requires a petitioner to show “something more than the mere passage of time”
13 and “something more than speculation and conjecture”) (internal quotation marks omitted);
14 *Ahmed v. Brott*, 2015 U.S. Dist. LEXIS 45346 at *12–13 (D. Minn. Mar. 17, 2015)
15 (collecting cases).

16 A petitioner entitled to release under *Zadvydas* “may and should be conditioned on
17 any of the various forms of supervised release that are appropriate in the circumstances.”
18 *Zadvydas*, 533 U.S. at 700. If a petitioner is granted supervised release and violates a
19 condition of release, the petitioner “may no doubt be returned to custody[.]” *Id.* Further,
20 “if removal is reasonably foreseeable, the habeas court should consider the risk of the
21 alien’s committing further crimes” as a factor that may justify continued detention. *Id.*

22 Respondents have recently requested travel documents from the government of
23 South Sudan. Exhibit A at ¶ 50. In order to provide “good reason” to believe his detention
24 is unconstitutionally indefinite under *Zadvydas*, Petitioner must show that something
25 actively impedes his removal, since neither “the mere passage of time” nor “speculation
26 and conjecture” can justify release under *Zadvydas*. *Smith*, 2019 U.S. Dist. LEXIS 148526
27 at *10–11. Petitioner has provided no particular reason to believe that he is unremovable,
28 and his entire argument rests on the fact that he has been detained for almost nine months

1 and has been under a final removal order since 2011. Petition at 2, ¶ 24. However, because
2 Petitioner has provided no reason to assume that South Sudan will not issue travel
3 documents, he has not provided “good reason” to doubt his removability, and hence, he
4 has not carried his preliminary burden under *Zadvydas*. The Court should therefore deny
5 the Petition.

6 **IV. CONCLUSION**

7 The Court should deny the Petition for a Writ of Habeas Corpus (Doc. 1).

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9 Respectfully submitted on December 15, 2025.

10 TIMOTHY COURCHAINE
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13 *s/Brooks Chupp*
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of December, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Beickert
United States Attorney's Office