

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

**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.

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

Sofyan Mohamed Abdelmageed Badr respectfully moves this Court to release him on bail pending the adjudication of his Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 filed herewith. The reasons in support of this Motion are set forth in the following Memorandum of Points and Authorities.

Memorandum of Points and Authorities

I. Introduction

As explained more fully in the habeas corpus petition filed herewith, Mr. Badr is a citizen of the Republic of the Sudan who came to this country seeking refuge from war and torture in

Sudan. After being ordered removed, he was released on parole and lived freely, following all of the rules and requirements placed on him, for seven-and-a-half months. Then in early March of this year, ICE re-detained him pursuant to blanket orders to detain anyone with a final order of removal. Mr. Badr explains in his Petition why his arrest and continued detention violate the Immigration and Nationality Act (INA), the Fifth Amendment to the United States Constitution, and the Administrative Procedure Act (APA). Mr. Badr incorporates the substance of his habeas corpus petition by this reference. He seeks an Order directing that he be released from detention, subject to any necessary and appropriate conditions, pending the final resolution of his habeas corpus petition.

II. Argument

The Ninth Circuit has not definitively decided whether a district court may order a habeas corpus petitioner released on bail pending adjudication of his habeas petition, *In re Roe*, 257 F.3d 1077, 1080 (9th Cir. 2001), but many of its sister circuits have recognized that district courts have this authority. *See, e.g., Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992); *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990); *Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986); *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974); *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972); *Baker v. Sard*, 420 F.2d 1342, 1343–44 (D.C. Cir. 1969). The Ninth Circuit has, however, indicated that the exercise of this authority would call for an inquiry into whether the petitioner has demonstrated that his case presents “special circumstances” and “high probability of success.” *Roe*, 257 F.3d at 1080 (quoting *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989)); *United States v. Dade*, 959 F.3d 1136, 1138 (9th Cir. 2020) (holding that *Land* intended to require both factors to justify bail). Mr. Badr can make both showings here.

Two extraordinary characteristics of this habeas corpus case amount to “special” circumstances. First, as Mr. Badr demonstrates in his petition, he has been held beyond the six-month grace period deemed presumptively lawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001),

with no significant likelihood of his removal to chronically war-torn Sudan occurring in the reasonably foreseeable future. Second, this case involves an arbitrary extinguishment of Mr. Badr's liberty based on blanket orders to detain anyone with a final order of removal that arbitrarily defy the requirement of case-by-case analysis and specific findings set out in the governing statute, regulation, and ICE Directive.

Mr. Badr's high probability of success is demonstrated in his habeas corpus petition filed herewith, which illustrates how ICE's actions violate the INA, the Fifth Amendment's Due Process Clause, and the APA. Recent decisions finding merit in similar claims confirm the high probability that the Court will find merit in one or more of these claims. *See Y-Z-L-H v. Bostock* et al., No. 3:25-CV-965-SI, 2025 WL 1898025 (D. Or. July 9, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163 (W.D. Wash. 2023); *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018).

III. Conclusion

For the reasons set forth above and in his habeas corpus petition filed herewith, Mr. Badr respectfully requests that the Court order him released on bail pending the adjudication of the petition, subject to any necessary and appropriate conditions.

Respectfully submitted:

September 8, 2025

JON M. SANDS
Federal Public Defender

s/Daniel L. Kaplan
DANIEL L. KAPLAN
Assistant Federal Public Defender
Prospective Counsel for Petitioner