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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,

**RESPONSE TO MOTION  
 FOR BAIL (DOC. 3)**

14 v.

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

16 Respondents.  
 17

18 Respondents ask the Court to deny Petitioner’s motion for bail (Doc. 3) because bail  
 19 (or bond) is not available to alien detainees subject to a final order of removal and  
 20 mandatory detention. The cases cited by Petitioner supporting his argument either do not  
 21 concern alien detainees at all, or concern alien detainees challenging a removal order.

22 **I. BACKGROUND**

23 On June 10, 2024, Sofyan Mohamed Abdelmageed Badr (Badr) was detained by  
 24 Border Patrol Agents when he crossed into the United States from Mexico near Sasabe,  
 25 Arizona. Badr was subject to expedited removal as “[a]n alien present in the United States  
 26 without being admitted or paroled, or who arrives in the United States at any time or place  
 27 other than as designated by the Attorney General.” 8 U.S.C. § 1182(a)(6). Badr claimed a  
 28 credible fear of persecution or torture if he was returned to Sudan. An asylum pre-screening

1 officer determined that Badr did not have a credible fear of removal. Badr appealed and  
2 was referred to an Immigration Judge (IJ). On June 28, 2024, an Immigration Judge  
3 affirmed the negative credible fear finding and ordered Badr removed. Because Badr was  
4 in expedited removal proceedings, the IJ's order of removal was final and unappealable,  
5 and Badr was subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(iii). However,  
6 seemingly unaware that the IJ had entered a final order of removal, on July 19, 2024, the  
7 government mistakenly released Badr on parole pending removal proceedings (which had  
8 already concluded) pursuant to 8 U.S.C. § 1226(a)(2)(B).<sup>1</sup> The mistake is reflected in the  
9 parole document which states "You have been released from service custody pending a  
10 final decision in your removal hearing." Doc. 1-1 at 8. Badr's parole could be revoked at  
11 any time at the Attorney General's discretion. 8 U.S.C. § 1226(b).

12 On March 3, 2025, the government re-detained Badr because he is subject to a final  
13 order of removal. On September 2, 2025, a completed travel document request for Sudan  
14 was forwarded to DHS Headquarters' Removal and International Operations (HQ RIO) in  
15 Washington, D.C. and remains pending.

16 Badr was detained for 21 days after his removal order became final before he was  
17 erroneously paroled and has been in custody for 7 months and 4 days since his parole was  
18 revoked on March 3, 2025.

19 **II. LEGAL ARGUMENT**

20 Bail pending adjudication of the habeas petition is not appropriate. In connection  
21 with a habeas corpus petition, the Ninth Circuit "has reserved bail for 'extraordinary cases  
22 involving special circumstances or a high probability of success.'" *United States v. Mett*,  
23 41 F.3d 1281, 1282 (9th Cir. 1994) (quoting, in part, *Land v. Deeds*, 878 F.2d 318 (9th Cir.  
24 1989)). "Special circumstances" have been found to include such things as: (1) "a serious  
25 deterioration of health while incarcerated, and unusual delay in the appeal process",  
26

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,  
as noted by Petitioner. Doc. 1 at 2.

1 *Salerno v. United States*, 878 F.2d 317 (9th Cir. 1987); (2) situations where “the sentence  
2 was so short that if bail were denied and the habeas petition were eventually granted, the  
3 defendant would already have served the sentence”, *Landano v. Rafferty*, 970 F.2d 1230,  
4 1239 (3rd Cir. 1992); and (3) continued immigration detention of an alien for a three year  
5 period without a likelihood of removal, *Tam v. I.N.S.*, 14 F. Supp. 2d 1184 (E.D. Cal. 1998).  
6 Assuming this Court has the authority to grant bail in immigration habeas cases, there are  
7 no special circumstances that would make bail appropriate in this case, because there are  
8 no special circumstances present and there is no indication bail is “necessary to make the  
9 habeas remedy effective.” *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (simplified).

10 Petitioner alleges that this is an extraordinary case with two special circumstances:  
11 (1) he has been held for over six months and his removal is not likely, and (2) his arrest  
12 was “arbitrary.” Doc. 3 at 2-3. The first is not an extraordinary or a special circumstance  
13 at all. It is simply the standard that underpins all immigration habeas petitions alleging  
14 prolonged detention. If detention longer than six months necessarily constitutes an  
15 extraordinary or special situation, then every habeas petition alleging prolonged detention  
16 would be extraordinary. The second alleged special circumstance is just incorrect because  
17 Badr’s arrest was not arbitrary.

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

1 months. To the contrary, an alien may be held in confinement until it has been determined  
2 that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*  
3 The Court should not order a bail hearing prior to resolution of the habeas petition, but if  
4 the Court wishes to entertain the idea, Petitioner must yet show that his habeas petition is  
5 “an extraordinary case involving special circumstances or a high probability of success.”  
6 *In re Roe*, 257 F.3d 1077, 1080 (9th Cir. 2001) (cleaned up).

7 Petitioner asserts that his re-detention was arbitrary because the government’s stated  
8 explanation was that it was done on blanket orders to detain anyone with a final order of  
9 removal. However, Petitioner was not eligible for parole because he was subject to a final  
10 order of removal when he was erroneously paroled. Notwithstanding the error, Petitioner’s  
11 parole was a matter of discretion and subject to revocation. *See* 8 U.S.C. § 1182(d)(5)(A)  
12 (“The Secretary of Homeland Security may ... in his discretion parole into the United  
13 States temporarily under such conditions as he may prescribe.... [W]hen the purposes of  
14 such parole shall, in the opinion of the Secretary of Homeland Security, have been served  
15 the alien shall forthwith return or be returned to the custody from which he was paroled  
16 and thereafter his case shall continue to be dealt with in the same manner as that of any  
17 other applicant for admission to the United States.”) Petitioner’s re-detention is not a  
18 special circumstance sufficient to make his habeas petition extraordinary.

19 Additionally, Petitioner’s habeas petition does not have a high probability of  
20 success. Since he was ordered removed, Petitioner has been detained for about 8 months  
21 total and was erroneously paroled for 7 months. *Zadvydas* places the burden on the alien  
22 to show, after a detention period of six months, that there is “good reason to believe that  
23 there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*, 533  
24 U.S. at 701. If the alien makes that showing, the Government must then introduce evidence  
25 to refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d  
26 832, 839-40 (9th Cir. 2002). The court must “ask whether the detention in question exceeds  
27 a period reasonably necessary to secure removal. It should measure reasonableness  
28 primarily in terms of the statute’s basic purpose, namely, assuring the alien’s presence at

1 the moment of removal. *Zadvydas*, 533 U.S. at 699.

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

8 The current 7-month period of detention following expiration of the 90-day removal  
9 period is not excessive under *Zadvydas*. The government is actively attempting to obtain  
10 travel documents for Badr. The standard for granting bail, if this Court believes it has the  
11 authority to order bail at this juncture, is that the Petitioner has a “high probability of  
12 success” on his habeas petition. Badr has not met that standard. This Court should deny the  
13 motion for bail and resolve the habeas petition when it is fully briefed.

14 RESPECTFULLY SUBMITTED October 7, 2025.

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18 *s/ Brock Heathcotte*  
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21 *Attorneys for the United States*

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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.