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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. 2:25-cv-03268-SPL--JFM

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

In his Motion for Bail Pending Adjudication of Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 3), petitioner Sofyan Mohamed Abdelmageed Badr demonstrated that the factors supporting the release of a habeas corpus petitioner pending the adjudication of his petition are present here. Rather than undermining this showing, Respondents' response (Doc. 12) bolsters it, by providing powerful confirmation that there is *no* "significant likelihood" of Mr. Badr's removal in the "reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). This Court should grant Mr. Badr's motion.

Respondents fail to undermine Mr. Badr's showing that the factors supporting bail are present.

As Mr. Badr noted in his motion, the Ninth Circuit has indicated that the release of a habeas petitioner pending the adjudication of his petition may be appropriate in the face of "special circumstances" and a "high probability of success." *In re Roe*, 257 F.3d 1077, 1080 (9th Cir. 2001). (Doc. 3 at 2.) Mr. Badr showed that both of these factors are present here. (*Id.* at 2–3.) Respondents begin their response by asserting that bail "is not available to alien detainees subject to a final order of removal and mandatory detention" (Doc. 12 at 1)—but they make effort to support this assertion with legal authority or reasoning, and in fact they refute it by citing caselaw showing it to be false. (*Id.* at 3 (*citing Tam v. INS*, 14 F. Supp. 2d 1184 (E.D. Cal. 1998).) Respondents' effort to show that the pertinent factors do not support the grant of bail are equally unconvincing.

A. "Special circumstances" are present.

Mr. Badr noted in his motion that two "special circumstances" are present here. First, he has been held in custody beyond the six-month period deemed presumptively lawful in *Zadvydas*—meaning that, unless the government can carry its burden to demonstrate a "significant likelihood of removal in the reasonably foreseeable future," *Zadvydas*, 533 U.S. at 701, he is being detained without lawful authority. Second, as he demonstrated in his petition, this case involves an arbitrary extinguishment of his liberty based on blanket "orders to detain anyone who has a final order of removal" (Doc. 1-1 at 16) that defy the requirement of case-by-case analysis and specific findings set out in the governing statute, regulation, and ICE Directive. (Doc. 3 at 2–3; Doc. 1 at 2–10.)

Respondents posit that Mr. Badr's prolonged detention is not a "special circumstance" because it is "the standard that underpins all immigration habeas petitions alleging prolonged detention." (Doc. 12 at 3.) Respondents' point is unclear. The "special circumstance" standard was not articulated solely for "immigration habeas petitions alleging prolonged detention"—it was articulated for *all* habeas cases. *Roe*, 257 F.3d at 1079–80; *Land v. Deeds*, 878 F.2d 318, 318–

19 (9th Cir. 1989). Recognizing as "special" the government's unlawful prolonged detention of a noncitizen with no foreseeable prospect of removal hardly opens the floodgates to the release on bail of all habeas petitioners. And Respondents' assertion that there is "no indication bail is necessary to make the habeas remedy effective" for Mr. Badr (Doc. 12 at 3 (internal quotation marks omitted)) is equally misguided. Mr. Badr is not serving a criminal sentence that would continue to run even if he wins his habeas case; he is being unlawfully detained with no significant likelihood of removal in the reasonably foreseeable future—meaning that *every day* of his continued detention is unlawful. *Zadvydas*, 533 U.S. at 701. In order for the habeas remedy to be fully "effective" for Mr. Badr, he must be released from this continuously unlawful custody while his case proceeds.

Moreover, the particular circumstances of Mr. Badr's detention present a compelling "special circumstance" as compared to the cases that the government cites: Unlike the habeas petitioners in every one of the government's cases, Mr. Badr has not been convicted of any crime. Notably, in *Aronson v. May*, 85 S. Ct. 3 (1964)—the seminal opinion in this context, involving a habeas petitioner who had been convicted of mail fraud and conspiracy—Justice Douglas found it "obvious" that "a greater showing of special reasons for admission to bail pending review should be required in this kind of case" than would be required in a case involving an incarceration "not resulting from a judicial determination of guilt." *Id.* at *5; *cf. Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (quoting district court's finding that habeas petitioner's situation was "extraordinary" when compared to "typical habeas corpus proceedings," because "in most habeas petitions challenging criminal convictions, the presumption of innocence is no longer available") (internal quotation marks and brackets omitted); *cf. Roe*, 257 F.3d at 1081 (noting that habeas petitioner convicted of capital offense came to the Court with a "strong—and in the vast majority of the cases conclusive—presumption of guilt") (internal quotation marks omitted).

Mr. Badr also observed that he was returned to custody pursuant to arbitrary and unlawful "orders to detain anyone who has a final order of removal." (Doc. 3 at 3; Doc. 1-1 at 16.)

Respondents counter that their re-detention of Mr. Badr was not arbitrary because he was "not eligible for parole because he was subject to a final order of removal when he was erroneously paroled." (Doc. 12 at 4.) But Mr. Badr produced the supervising ICE officer's statement, as reported in the sworn declaration of an attorney who was on the scene, that his arrest was motivated by "orders to detain anyone who has a final order of removal" (Doc. 1-1 at 16)—*not* by ICE's determination that it technically erred in releasing him on parole. Respondents neither challenge the credibility of this declaration, nor produce contrary evidence of their own. Moreover, the attorney's declaration further reports that *all* of the noncitizens attempting to check in at the same time as Mr. Badr received notices directing them to report to an ICE agent. (*Id.*) It is hardly plausible that *all* of them had been erroneously released on parole, and were being simultaneously re-detained because ICE had decided it made a mistake.

Respondents also note that Mr. Badr's parole "was a matter of discretion and subject to revocation." (Doc. 12 at 4.) This is true but irrelevant. Mr. Badr has shown that his arrest was not undertaken pursuant to any exercise of "discretion," but rather pursuant to unlawful blanket orders to detain "*anyone* who has a final order of removal." (Doc. 1-1 at 16 (emphasis added).) *See United States v. Miller*, 722 F.2d 562, 565 (9th Cir. 1983) ("When a court establishes a broad policy based on events unrelated to the individual case before it, no discretion has been exercised."); *INS v. St. Cyr*, 533 U.S. 289, 307 (2001) (noting the "strong tradition in habeas corpus law . . . that subjects the legally erroneous failure to exercise discretion, unlike a substantively unwise exercise of discretion, to inquiry on the writ") (internal quotation marks omitted). Respondents' failure to challenge or contradict Mr. Badr's evidence, as well as its effective concession discussed below, show that his petition raises "substantial claims" that carry a "high probability of success"—and the raising of such claims qualifies as a "special circumstance" supporting the grant of bail. *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989).

In short, Respondents' effort to show that no "special circumstances" are present is unconvincing.

B. Respondents' response effectively confirms the "high probability" that Mr. Badr's claims will succeed.

Mr. Badr also showed in his motion, citing rulings in similar cases, that there is a "high probability" that his claims will succeed. (Doc. 3 at 3.) Respondents' response, while purporting to dispute this point, actually confirms it.

In order to defeat Mr. Badr's *Zadvydas* claim, Respondents would have to produce evidence proving that there is a "significant likelihood" that they could effectuate his removal "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Rather than producing any such evidence, Respondents offer only the following assertions:

> "On September 2, 2025, a completed travel document request for Sudan was forwarded to DHS Headquarters' Removal and International Operations (HQ RIO) in Washington, D.C. and remains pending." (Doc. 12 at 2);
>
> "[T]here is nothing preventing the government from removing Badr to some country other than Sudan, such as Mexico, the country from which he entered the United States." (*id.* at 5);
>
> "The government is actively attempting to obtain travel documents for Badr." (*Id.*).

When the best Respondents can do to try to prove a "significant likelihood" that they will be able to remove Mr. Badr in the "reasonably foreseeable future" (*Zadvydas*, 533 U.S. at 701) is to assert that a request is "pending" at DHS headquarters, and that nothing would "prevent[]" them from trying to remove him to "some" other country—with no indication that the request has even been delivered to Sudan, that Mr. Badr has designated "some" other country to which he wants to be removed, or that "some" other country has indicated its willingness to accept him (8 U.S.C. § 1231(b)(2))—the game is effectively up. *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (government failed to carry its burden under *Zadvydas* where they reported foreign consular officer's statement that noncitizen's case was "still under review and pending a decision"); *Nibkakhsh-Tali v. Mukasey*, No. CV 07-1526 PHX-NVW, 2008 WL 2328354, at *8 (D. Ariz. June 4, 2008) (foreign official's "inability to even speculate as to when

travel documents might be forthcoming" for noncitizen confirmed government's failure to carry its burden under *Zadvydas*). Respondents have had *sixteen months* since Mr. Badr's removal order became final (Doc. 1 at 2–3) to remove him, and all they can do is cite a "pending" internal memo, vague speculation, and a broad reference to "activ[e] attempt[s]." The Supreme Court requires the government to produce "*evidence*"—not speculation and platitudes—to carry its burden, *Zadvydas*, 533 U.S. at 701 (emphasis added), and it expressly held that assurances of "good faith efforts" are not sufficient, *id.* at 702.

In short, Respondents' response strongly bolsters the conclusion that they cannot carry their burden under *Zadvydas*, and that Mr. Badr's claims will succeed.

Conclusion

Because "special circumstances" are present and there is a "high probability" that Mr. Badr's claims will succeed, this Court should release him pending the final adjudication of his habeas corpus petition.

Respectfully submitted: October 10, 2025

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