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

Mehrad Asadieidivand,

Petitioner,

vs.

Ghulam Rasool, ICE Enforcement and
Removal Operations Phoenix Supervisory
Detention and Deportation Officer;
Justin Smith, ICE Enforcement and Removal
Operations Phoenix Assistant Field Office
Director;
John Cantu, ICE Enforcement and Removal
Operations Phoenix Field Office Director;
Marcos Charles, ICE Acting Executive
Associate Director, Enforcement and
Removal Operations;
Kristi Noem, United States Secretary of
Homeland Security; and
Pamela Bondi, Attorney General of the
United States,
Respondents.

No. CV-25-02475-PHX-KML (JFM)

**Petitioner's Motion to Reconsider
Denial of Bail Pending Adjudication of
Habeas Corpus Petition**

On July 15, 2025, together with his petition for habeas corpus, petitioner Mehrad Asadieidivand filed a Motion for Bail Pending Adjudication of Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241. (Doc. 2.) In this motion, Mehrad argued that bail is appropriate because this case involves both "special circumstances" and a "high probability of success." (*Id.*

1 at 2–4 (*quoting In re Roe*, 257 F.3d 1077, 1080 (9th Cir. 2001) (internal quotation marks omitted;
2 *quoting Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989)); *see also United States v. Dade*, 959 F.3d
3 1136, 1138 (9th Cir. 2020) (holding that *Land* intended to require both factors to justify bail).) On
4 August 26, 2025, the Court entered an Order denying the motion. (Doc. 27.) The Court reasoned
5 that “special circumstances” are not present, because Mehrad “has been detained for a relatively
6 brief period and there is currently no indication bail is ‘necessary to make the habeas remedy
7 effective.’” (Doc. 27 at 1 (*quoting Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001).)

8 Mehrad now respectfully moves, pursuant to LRCiv 7.2(g), for reconsideration of that
9 Order. In support of this motion, stressing evidence and circumstances that were not present at
10 the time of his original bail motion, Mehrad demonstrates below that his bail motion implicates
11 both “special circumstances” and a “high probability of success.”

12 A. Special Circumstances

13 Mehrad respectfully submits that a “special circumstance” is now present, because there
14 is a clear indication that bail is “necessary to make the habeas remedy effective.” (Doc. 27 at 1
15 (internal quotation marks omitted).) Specifically, the initial merits hearing in Mehrad’s asylum
16 case took place on August 26, 2025, the same day this Court denied his bail motion. The hearing
17 was not completed, and is scheduled to resume—and likely conclude—on September 16, 2025.

18 In the meantime, in the instant case, the Court and parties are addressing issues
19 surrounding the discovery the Court has ordered produced. (Doc. 18 at 4.) The Court found that
20 the discovery “is necessary to determine the merits of the [habeas] petition.” (Doc. 27 at 1.)
21 Pursuant to the Court’s Order (Doc. 23 at 2), the parties’ counsel have conferred in good faith in
22 an attempt to reach agreement regarding the scope of the discovery requests. Unfortunately,
23 while some matters have been clarified, counsel were unable to reach full agreement as to the
24 scope of the discovery. In addition, Respondents’ counsel maintains that collecting some of the
25 discovery will be burdensome and complex, and has expressed an intention to resist producing
26 some responsive material on grounds of privilege and national security.

Pursuant to the Court's Order (*id.*), the parties' counsel are working on a draft joint statement outlining their positions with respect to the discovery, which Respondents' counsel is expected to file by the current discovery deadline of September 11, 2025. (Doc. 23 at 2.) On September 3, 2025, Respondents' counsel asked undersigned counsel via email for his position with respect to a further extension of the deadline for the second and third categories of discovery. Undersigned counsel responded that he would support a further extension only on the condition that Mehrad is released from detention while the discovery process moves forward. Respondents' counsel replied that Respondents were not "agreeable" to that approach. Resolving these disputes, securing the discovery, and completing supplemental briefing incorporating it per the Court's Order (Doc. 27 at 2) is likely to take a substantial period of time. In short, it appears likely that Mehrad's asylum case will be completed before these matters are finally resolved, which could cause this case to become moot before the Court has ruled on the merits of Mehrad's habeas claims.

In light of these developments, the danger that Mehrad's habeas corpus remedy for his unlawful detention will be rendered "[in]effective" (*Mapp*, 241 F.3d at 226 (internal quotation marks omitted)) constitutes a "special circumstance" supporting the granting of bail.

B. High probability of success

Because it found that no "special circumstances" were present, the Court in its Order denying bail did not reach the question of whether Mehrad had demonstrated a "high probability of success." (Doc. 27 at 1.) Mehrad respectfully submits that he has demonstrated such a "high probability." This is especially evident with respect to his first claim for relief, which rests on Respondents' violations of the Administrative Procedure Act, 5 U.S.C. § 706(2) (APA), in respect to their actions re-detaining and refusing to release him. (Doc. 1 at 12–14.) As Mehrad demonstrated in his reply in support of his habeas petition, Respondents' response to his petition rests on two defenses—a jurisdiction-stripping statute, 8 U.S.C. § 1252(a)(2)(B)(ii), that has no application to non-discretionary questions of law, *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001), and the "entry fiction"—a doctrine that has no application to claims brought under the APA.

(Doc. 17 at 8–9.) Respondents’ failure to articulate any viable defense to Mehrad’s APA claim—a claim very similar to one that was recently held to be meritorious under very similar circumstances, *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025 (D. Or. July 9, 2025), demonstrates his high likelihood of success on this claim.

Accordingly, in light of the presence of a “special circumstance” as outlined above, the Court should address the “high probability of success” prong of the bail standard, find it satisfied with respect to Mehrad’s APA claim (and/or other claims), and grant him bail pending the resolution of his habeas corpus petition.

Respectfully submitted:

September 3, 2025

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s/Daniel L. Kaplan
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