

JON M. SANDS
Federal Public Defender
KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
250 North 7th Avenue, Suite 600
Phoenix, Arizona 85007
(602) 382-2700 voice
keith_hilzendeger@fd.org
Attorneys for Petitioner Salaryzadeh

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

David Salaryzadeh,

Petitioner,

vs.

David R. Rivas, Warden, San Luis Regional
Detention Center;

Gregory J. Archambeault, San Diego Field
Office Director, U.S. Immigration and
Customs Enforcement;

Pamela Jo Bondi, Attorney General of the
United States; and


Kristi Noem, Secretary of Homeland
Security,

Respondents.

No.

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

Technical Data

1. Mr. Salaryzadeh is challenging the validity of his detention in immigration custody. His A-number is 
2. Mr. Salaryzadeh is challenging the decision made by U.S. Immigration and Customs Enforcement to revoke a prior release order issued in approximately 2024 and that he be detained pending removal from the United States.

3. Mr. Salaryzadeh is presently detained at the San Luis Regional Detention Center in San Luis, Arizona. Upon information and belief, an immigration judge denied him a bond hearing for lack of jurisdiction under *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Accordingly, Mr. Salaryzadeh is exempt from any exhaustion requirement that may apply to him.

Parties, Jurisdiction, and Venue

4. Petitioner David Salaryzadeh is, according to respondents Noem and Bondi, a citizen of Iran. He was ordered removed from the United States in 2004, and is presently detained based on that order at the San Luis Regional Detention Center.
5. Respondent David R. Rivas is the Warden of San Luis Regional Detention Center, where Mr. Salaryzadeh is being detained. He is Mr. Salaryzadeh's immediate legal custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
6. Respondent Gregory J. Archambeault is the San Diego Field Office Director for U.S. Immigration and Customs Enforcement. He is responsible for Mr. Salaryzadeh's detention, and thus a legal custodian of Mr. Salaryzadeh.
7. Respondents Kristi Noem and Pamela J. Bondi are, respectively, the Secretary of Homeland Security and the Attorney General of the United States. As such, they are responsible for maintaining the immigration detention system. They are thus legal custodians of Mr. Salaryzadeh.
8. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.
9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) and (e)(1)(B) because a substantial part of the events or omissions giving rise to the claims set forth herein occurred in this district.

Background

10. Mr. Salaryzadeh was born in 1980 in a hospital in Frankfurt, Germany. His mother is Iranian; she fled that country for West Germany after the revolution in 1979. She became a nurse when she moved to West Germany. Mr. Salaryzadeh does not know whether his father is also Iranian or instead German, or indeed of some other nationality.
11. When he was a child, Mr. Salaryzadeh and his mother moved to the United States. They settled in the area of Newport Beach, California. His mother later became a naturalized U.S. citizen.
12. Mr. Salaryzadeh has a lengthy criminal history. This list comes from publicly available court records available over the internet. Mr. Salaryzadeh was charged and/or convicted in these cases under the name Davis Salary. Some of these convictions were entered on the same date, and others appear to have been entered while Mr. Salaryzadeh was serving a previously imposed sentence. The publicly available court records that counsel reviewed do not generally indicate whether these sentences were imposed to run concurrently or otherwise.
 - a. On July 20, 2002, Mr. Salaryzadeh was charged in Orange County Superior Court with one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), and one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). These charges were dismissed on August 2, 2002.
 - b. On March 19, 2004, Mr. Salaryzadeh pleaded no contest in Orange County Superior Court to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a). He was given a deferred judgment for 18 months.
 - c. On March 13, 2007, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), and one count of possession of drug

paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to three years' probation.

- d. On January 18, 2011, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of assault with a deadly weapon, in violation of Cal. Penal Code § 245(a)(1), and one count of participating in a criminal street gang, in violation of Cal. Penal Code § 186.22(a). He was sentenced to a total of two years and two and two-thirds months in state prison.
- e. Also on January 18, 2011, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of being under the influence of a controlled substance, in violation of Cal. Health & Safety Code § 11550(a). He was sentenced to 180 days in jail.
- f. On June 4, 2012, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of forgery, in violation of Cal. Penal Code § 475(a), one count of receiving stolen property, in violation of Cal. Penal Code § 496(a), and one count of identity theft of one person, in violation of Cal. Penal Code § 530.5(c)(1). Sentencing information is not available on the court's online database.
- g. On February 21, 2013, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of petty theft, in violation of Cal. Penal Code §§ 484(a) and 488. He was sentenced to 32 days in jail.
- h. On May 29, 2013, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), one count of possession of an opium pipe or other kind of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364.1(a), and one count of being under the influence of a controlled substance, in violation of Cal. Health & Safety Code § 11550(a). The court imposed a sentence of six years in state prison followed by five years of probation on the first count, and suspended the sentences on the other two counts.

- i. Also on May 29, 2013, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of petty theft, in violation of Cal. Penal Code §§ 484(a) and 488, and one count of possession of an opium pipe or other kind of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364.1(a). He was sentenced to 156 days in jail.
- j. On June 17, 2013, Mr. Salaryzadeh pleaded guilty to one count of second-degree burglary, in violation of Cal. Penal Code §§ 459 and 460(b), one count of receiving stolen property, in violation of Cal. Penal Code § 496(a), and one count of tampering with a motor vehicle, in violation of Cal. Veh. Code § 10852. He was sentenced to 16 months in state prison, to run concurrent with the sentence imposed in the drug-possession case set forth in the previous subparagraph.
- k. On October 22, 2015, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of second-degree burglary, in violation of Cal. Penal Code §§ 459 and 460(b), and one count of possession of burglary tools, in violation of Cal. Penal Code § 466. He was sentenced to 180 days in jail.
- l. Also on October 22, 2015, Mr. Salaryzadeh pleaded guilty to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11350(a), and one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to 180 days in jail.
- m. Also on October 22, 2015, Mr. Salaryzadeh pleaded guilty to one count of being under the influence of a controlled substance, in violation of Cal. Health & Safety Code § 11550(a). He was sentenced to 180 days in jail.
- n. Also on October 22, 2015, Mr. Salaryzadeh pleaded guilty to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), and one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to 180 days in jail.

- o. On December 31, 2015, Mr. Salaryzadeh pleaded guilty to one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). Sentencing information is not available on the court's online database.
- p. Also on December 31, 2015, Mr. Salaryzadeh pleaded guilty in Orange County Superior Court to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11350(a), one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), and one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to 180 days in jail.
- q. On June 30, 2016, Mr. Salaryzadeh pleaded guilty to one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to 10 days in jail.
- r. On October 18, 2016, Mr. Salaryzadeh pleaded guilty in three separate cases to one count of possession of a controlled substance, in violation of Cal. Health & Safety Code § 11377(a), and one count of possession of drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was sentenced to 30 days in jail.
- s. On June 1, 2017, a jury in Orange County Superior Court found Mr. Salaryzadeh guilty of one count of assault with a deadly weapon, in violation of Cal. Penal Code § 245(a)(1), and one count of battery with infliction of serious bodily injury, in violation of Cal. Penal Code § 243(d). He was sentenced to a total of 12 years in prison. The California Court of Appeal affirmed his convictions and sentences. *See People v. Salary*, No. G055407, 2018 WL 3062554 (Cal. Ct. App. Jun. 21, 2018). The court later remanded the case for resentencing in light of a new law allowing dismissal of prior-conviction sentencing enhancements. *See People v. Salary*, No. G055407, 2019 WL 395739 (Cal. Ct. App. Jan. 31, 2019). The trial

1 court declined to disturb the sentence, and the Court of Appeal affirmed. *See*
2 *People v. Salary*, No. G058342, 2020 WL 2898858 (Cal. Ct. App. Jun. 3, 2020).

- 3 t. On November 9, 2018, a jury in Orange County Superior Court found Mr.
4 Salaryzadeh guilty of one count of possession of a controlled substance, in
5 violation of Cal. Health & Safety Code § 11350(a), and one count of possession of
6 drug paraphernalia, in violation of Cal. Health & Safety Code § 11364(a). He was
7 sentenced to 365 days in jail on the first count and 180 days in jail on the second.
8
9 u. On May 15, 2025, Mr. Salaryzadeh was arrested and charged in Orange County,
10 California, Superior Court with possession of hard drugs with two or more prior
11 convictions, in violation of Cal. Health & Safety Code § 11395(b)(1), and
12 possession of drug paraphernalia, in violation of Cal. Health & Safety Code
13 § 11364(a). He was released from the Orange County Jail on bond, but was taken
14 into ICE custody pursuant to a detainer. Court records reflect that a hearing was
15 held on June 13, 2025, regarding his failure to appear. Upon information and
16 belief, the reason he did not appear in superior court was that he was made
17 unavailable by ICE.

- 18 13. On August 16, 2004, an immigration judge in San Diego, California, ordered Mr.
19 Salaryzadeh removed from the United States.
20
21 a. The criminal history and removal date suggest that Mr. Salaryzadeh may have
22 been ordered removed because he was determined to have become a drug addict.
23 *See* 8 U.S.C. § 1227(a)(2)(B)(ii).
24
25 b. Upon information and belief, the immigration judge ordered him removed to
26 Germany. This assertion is based on the fact that the Automated Case
27 Information database offered by the Executive Office of Immigration Review will
28 return this result in Mr. Salaryzadeh's case after entering his A-number and his
nationality as German. But Germany is not the only plausible candidate for
removal. In order to look up Mr. Salaryzadeh's location in ICE detention, the

detainee locator will only return a valid result if the user inputs his country of birth as Iran. Counsel does not have specific information regarding the country that Mr. Salaryzadeh requested during his 2004 removal proceedings, if he made such a request at all. *See* 8 U.S.C. § 1231(b)(2)(A)(i) (“any alien” who is not an arriving alien “may designate one country to which the alien wants to be removed”). In order to clarify this aspect of Mr. Salaryzadeh’s case, he is filing a motion for limited discovery.

c. Upon information and belief, he has previously been released from ICE detention on orders of supervision in 2004, 2010, and 2016.

14. In 2024, Mr. Salaryzadeh was released from a California state prison. Upon information and belief, he was either not taken into ICE custody at that time, or was taken into custody and released shortly thereafter on another order of supervision.

15. Assuming that the Orange County court records roughly align with the date on which Mr. Salaryzadeh was taken into ICE custody, he was arrested by ICE officials based on a detainer lodged with the Orange County Sheriff on or about June 13, 2025. He was ultimately transferred to the San Luis Detention Center in San Luis, Arizona.

16. There is no significant likelihood that Mr. Salaryzadeh can be returned to Germany at all. Although Mr. Salaryzadeh was born in West Germany in 1980, it is likely he is not a German citizen today because before January 1, 2000, German law did not recognize birthright citizenship.

a. After World War II, Germany was divided into two countries—the German Democratic Republic, commonly known as East Germany, and the Federal Republic of Germany, commonly known as West Germany. *See Schubarth v. Federal Republic of Germany*, 891 F.3d 392, 395 (D.C. Cir. 2018). Upon reunification of West and East Germany in 1990, the country took the formal name “Federal Republic of Germany.” *See Hirsh v. Israel*, 962 F. Supp. 377, 379 (S.D.N.Y. 1997).

- b. “Numerous free countries do not practice birthright citizenship, or practice it with significant restrictions, including Australia, France, and Germany.” *Fitisemanu v. United States*, 1 F.4th 862, 878 (10th Cir. 2021). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court observed that one petitioner, who had been born to Lithuanian parents in 1948 in a prisoner of war camp in Germany, was not recognized in 1994 as a citizen by the Federal Republic of Germany. *See id.* at 684.
 - c. “Children born in the [Federal Republic of Germany] to alien parents do not automatically gain German citizenship.” Gerald L. Neuman, *Immigration and Judicial Review in the Federal Republic of Germany*, 23 N.Y.U. J. Int’l L. & Politics 35, 44 (1990). The Federal Republic of Germany only grants citizenship to all persons born in Germany, regardless of the nationality of their parents, if the person was born after January 1, 2000. Because Mr. Salaryzadeh was born in Germany in 1980 to a non-citizen mother, he did not gain German citizenship unless his father was a German citizen.
 - d. Because Mr. Salaryzadeh does not know the citizenship of his father, it is unclear whether he has a valid claim to German citizenship. Assuming that in 2004 he was ordered removed to Germany, upon information and belief he cannot obtain travel documents to return to Germany because the German government cannot verify that he is a citizen under the law as it existed before the year 2000, such that he is not in fact a German citizen.
 - e. If that is the case, there is no significant likelihood that he can be removed to Germany in the reasonably foreseeable future.
17. There is also no significant likelihood that Mr. Salaryzadeh can be removed to Iran in the reasonably foreseeable future.
 - a. If ICE has requested travel documents for Mr. Salaryzadeh in order to remove him to Iran, this request was likely directed at the Office for the Protection of the Interests of the Islamic Republic of Iran. This office is hosted by the Pakistani

Embassy in Washington, DC. *See Nibkakhsh-Tali v. Mukasey*, No. 2:07-cv-1526-PHX-NVW, 2008 WL 2328354, at *3 (D. Ariz. Jun. 4, 2008) (report and recommendation of Velasco, M.J.). Another judge of this Court concluded, in 2008, that in light of Iran's lack of cooperation (through the Pakistani Embassy) with a request for travel documents, an immigration detainee's removal to Iran was not significantly likely in the reasonably foreseeable future. *Id.* at *8.

- b. Whether or not ICE has in fact requested travel documents to facilitate Mr. Salaryzadeh's return to Iran, ICE has concluded that there is no significant likelihood that he can be removed to that country in the reasonably foreseeable future. In November 2024, ICE issued a report (which is attached to this filing as an exhibit) explaining that Iran is one of 15 countries that it classifies as "uncooperative" with what ICE believes as Iran's "obligat[ion] to accept the return of its citizens and nationals who are ineligible to remain in the United States."

Grounds for Relief

Ground One: Mr. Salaryzadeh's continued detention in immigration custody violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution because there is no significant likelihood that he will be removed in the reasonably foreseeable future.

18. Mr. Salaryzadeh cannot presently be returned to Iran, because Iran has indicated it will not accept him for return and it does not cooperate with ICE's efforts to obtain travel documents on behalf of its nationals. And he cannot be returned to Germany, because he is likely not a German citizen.
19. Moreover, it does not appear that either Iran or Germany are countries to which Mr. Salaryzadeh may lawfully be removed.
 - a. Section 241(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2), sets forth "the procedure by which the Attorney General select[s]" an alien's "destination after removal [is] ordered." *Jama v. ICE*, 543 U.S. 335, 338 (2005)

(footnote omitted explaining that this role has been transferred to the Secretary of Homeland Security). It “provides four consecutive removal countries.” *Id.* at 341.

- i. The country of the alien’s choice, “unless one of the conditions eliminating that command is satisfied.” *Id.*
 - ii. The country of which the alien is a citizen, “unless one of the conditions eliminating that command have been satisfied.” *Id.*
 - iii. One of the countries to which the alien “has a lesser connection.” *Id.*
 - iv. Any other country that will accept the alien for removal. *Id.*
- b. Assuming Mr. Salaryzadeh chose Germany as his country of removal at his 2004 removal hearing, the conditions allowing ICE to disregard that choice have not been met. He designated that country promptly, at the removal hearing. 8 U.S.C. § 1231(b)(2)(C)(i). If ICE has communicated with German officials, they likely explained that Germany will not accept him for removal because he lacks German citizenship. 8 U.S.C. § 1231(b)(2)(C)(ii)–(iii). And upon information and belief, the Secretary has not decided that removing Mr. Salaryzadeh to Germany would be “prejudicial to the United States.” 8 U.S.C. § 1231(b)(2)(C)(iv).
- c. If the Secretary cannot accomplish removal to Germany based on Mr. Salaryzadeh’s choice, then Mr. Salaryzadeh is likely stateless. As previously explained, he likely is not a German citizen. And Mr. Salaryzadeh has no reason to believe that he has any claim to Iranian citizenship. In any event, ICE already knows that Iran will not respond to any inquiry about whether it will accept Mr. Salaryzadeh for removal. *See* 8 U.S.C. § 1231(b)(2)(D)(i)–(ii).
- d. Finally, there is no country other than Germany that is an eligible alternative removal country under 8 U.S.C. § 1231(b)(2)(E).
- i. Germany is the country from which Mr. Salaryzadeh was admitted to the United States. 8 U.S.C. § 1231(b)(2)(E)(i).

- ii. Germany is the country “in which is located the foreign port from which the alien left for the United States.” 8 U.S.C. § 1231(b)(2)(E)(ii).
- iii. Germany is the county in which Mr. Salaryzadeh resided before he entered the United States, and is the country in which he was born. 8 U.S.C. § 1231(b)(2)(E)(iii)–(iv).
- iv. No other country had sovereignty over West Germany when Mr. Salaryzadeh was born. 8 U.S.C. § 1231(b)(2)(E)(v).
- v. Germany is the country in which Mr. Salaryzadeh’s birthplace was located in 2004. 8 U.S.C. § 1231(b)(2)(E)(vi).
- vi. Upon information and belief, there is no other country that has indicated it will accept Mr. Salaryzadeh for removal. 8 U.S.C. § 1231(b)(2)(E)(vii).

20. Mr. Salaryzadeh’s present detention is purportedly authorized under 8 U.S.C. § 1231.

- a. Detention of aliens who have been ordered removed is mandatory during the so-called 90-day “removal period.” 8 U.S.C. § 1231(a)(1)(A). This period begins, as relevant here, on the “date the order of removal becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). Because Mr. Salaryzadeh’s removal order became final in 2004, the removal period has long since expired and detention is no longer required under § 1231.
- b. Aliens like Mr. Salaryzadeh who have been ordered removed because they have been determined to be a drug addict, *see* 8 U.S.C. § 1227(a)(2)(B)(ii), may be kept in detention after the removal period expires. *See* 8 U.S.C. § 1231(a)(6). If they are released, they “shall be subject to the terms of supervision” in § 1231(a)(3). 8 U.S.C. § 1231(a)(6). Those terms include periodic appearances before an immigration officer and other conditions prescribed by regulation. 8 U.S.C. § 1231(a)(3)(A), (D).
- c. The government has previously argued that the statutory text of § 1231 authorizes indefinite detention. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

- d. But the Supreme Court has interpreted § 1231 *not* to authorize indefinite detention in order to avoid a serious constitutional problem. *Zadvydas*, 533 U.S. at 689. The Due Process Clause of the Fifth Amendment limits an alien’s “detention to a period reasonably necessary to bring about that alien’s removal from the United States.” *Id.* Because of this constitutional limitation, § 1231 “does not permit indefinite detention.” *Id.* After six months of detention, there arises a presumption that the alien can “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” such that “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701.
- e. ICE has already concluded that there is no significant likelihood of removing anyone to Iran in the reasonably foreseeable future. The government cannot therefore rebut the presumption that

21. Thus Mr. Salaryzadeh’s continued detention in ICE custody violates the Due Process Clause of the Fifth Amendment as described in *Zadvydas*.

Ground Two: Mr. Salaryzadeh’s detention in immigration custody pending removal to any third country violates the Due Process Clause of the Fifth Amendment because ICE has not given him sufficient notice of the proposed third country and an opportunity to request relief from removal to that country, either from an immigration officer, an immigration judge, or a federal court.

22. “It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Mr. Salaryzadeh thus is entitled to “notice and an opportunity to be heard appropriate to the nature of the case.” *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As relevant here, this means that Mr. Salaryzadeh is entitled to notice that he is to be removed to a third country “within a reasonable time and in such a manner as will allow [him] to actually seek habeas relief in the proper venue before such removal occurs.” *Id.*

23. Mr. Salaryzadeh has not been formally ordered removed to any country other than Germany. As such, he has never had an opportunity to contest removal to any third country on the ground that he may face persecution or torture if he is removed to that country.
24. To the extent that Mr. Salaryzadeh's detention is meant to facilitate his removal to a third country, *see generally Zadvydas*, 533 U.S. at 690 (suggesting that detention following a removal order is intended to facilitate removal), if such a removal is accomplished in violation of his due-process rights, then his detention is illegal. This due-process claim "necessarily impl[ies] the invalidity of [his] confinement and removal" to a third country not yet named in any removal order. *J.G.G.*, 145 S. Ct. at 1005. Thus his due-process claim is properly brought in a habeas petition, and a court order that he be released from detention is a proper remedy for such a violation.

Prayer for Relief

25. Mr. Salaryzadeh is being illegally detained, in violation of the Due Process Clause of the Fifth Amendment. He respectfully asks the Court to:
- a. order respondents to answer this petition;
 - b. permit him to file a reply in support;
 - c. allow him to conduct discovery in order to support his claims for relief;
 - d. convene an evidentiary hearing, if needed to resolve disputed facts;
 - e. order respondents to release him from their custody under supervision; and
 - f. grant any other relief that is just and practicable.

Respectfully submitted:

September 9, 2025.

JON M. SANDS
Federal Public Defender

s/Keith J. Hilzendeger
KEITH J. HILZENDEGER
Assistant Federal Public Defender
Attorney for Petitioner Salaryzadeh