

1 JON M. SANDS
Federal Public Defender
2 KEITH J. HILZENDEGER #023685
Assistant Federal Public Defender
3 250 North 7th Avenue, Suite 600
4 Phoenix, Arizona 85007
5 (602) 382-2700 voice
keith_hilzendeger@fd.org
6 *Awaiting Appointment for
Petitioner Salaryzadeh*

7
8 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

9 David Salaryzadeh,
10

11 Petitioner,

12 vs.

13 David R. Rivas, Warden, et al.,

14 Respondents.
15

No. 2:25-cv-3274-PHX-SMB (ASB)

**Motion for Reconsideration of Order
Denying Motion for Appointment of
Counsel**

16 Petitioner David Salaryzadeh respectfully asks the Court to reconsider that aspect of its
17 September 16, 2025, order (Dkt. #7) that denied his motion for appointment of counsel. Mr.
18 Salaryzadeh made at least a substantial showing that he is likely to prevail on his claim under
19 *Zadvydas v. Davis*, 533 U.S. 678 (2001). The urgent nature of his claim for relief—his detention is
20 illegal because he is effectively stateless and thus cannot be deported to any country at all—
21 coupled with the fact that this Court granted his discovery request mean that this Court should
22 have appointed counsel, either as an exercise of its discretion under 18 U.S.C. § 3006A(a)(2)(B)
23 as interpreted in *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (per curiam), or as required
24 for effective discovery under Rules 1(b) and 6(a) of the Rules Governing Section 2254 Cases in
25 light of the potential for law-enforcement sensitive documents to be furnished directly to a
26 detained person pursuant to the Court’s discovery order.
27
28

Background

On August 22, 2025, petitioner David Salaryzadeh contacted the Federal Public Defender's office from his place of detention in San Luis, Arizona. He was seeking assistance litigating a habeas petition based on *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he strongly believes that he is stateless, such that he cannot be deported to either Germany (the country where he was born) or Iran (the country from which his mother fled the year before he was born). Assistant Federal Public Defender Keith Hilzendeger conducted an intake interview and determined that Mr. Salaryzadeh had a valid *Zadvydas* claim. Mr. Hilzendeger prepared a petition for a writ of habeas corpus under 28 U.S.C. § 2241 (Dkt. #1), the necessary summonses (Dkt. #2), a motion for appointment of counsel (Dkt. #3), and a motion for appointment of counsel (Dkt. #4). On September 9, 2025, Mr. Hilzendeger filed these documents with this Court on Mr. Salaryzadeh's behalf. Mr. Hilzendeger filed a motion for a preliminary injunction and a temporary restraining order later that day. (Dkt. #6)

The Federal Public Defender is organized under the Criminal Justice Act of 1964 to provide indigent representation to qualifying litigants in the District of Arizona. *See* 18 U.S.C. § 3006A(g); CJA Plan for the District of Arizona (General Order 25-04). Qualifying litigants include, as relevant here, people seeking relief under 28 U.S.C. § 2241. *See* 18 U.S.C. § 3006A(a)(2)(B). Mr. Hilzendeger prepared these documents on Mr. Salaryzadeh's behalf anticipating that the Court would grant his motion for appointment of counsel—something it has routinely done in motions filed by the Federal Public Defender seeking appointment in cases brought not only under 28 U.S.C. § 2241 but also under §§ 2254 and 2255 for well over a decade. Particularly relevant here, since January 2025 the Federal Public Defender has sought appointment in § 2241 cases on behalf of people detained by immigration officials in 11 cases. In 10 of those cases, the Court has granted appointment of counsel. Two of those cases were assigned to the same district judge to whom Mr. Salaryzadeh's case was assigned.

Deviating from this pattern, this Court denied Mr. Salaryzadeh's motion for appointment of counsel. (Dkt. #7 at 2–3) In doing so the Court did not correctly apply the governing legal

1 standard and overlooked the fact that appointment of counsel is necessary for effective discovery
2 in light of the sensitive nature of the documents that the Court ordered respondents to furnish in
3 response to his discovery request. This Court should grant the motion for appointment of
4 counsel.

5 **Argument for Reconsideration**

6 A motion for reconsideration “should not be used for the purpose of asking a court to
7 rethink what the court had already thought through—rightly or wrongly.” *Harrington v. Cracker*
8 *Barrel Old Country Store, Inc.*, 713 F. Supp. 3d 568, 576 (D. Ariz. 2024) (quoting *Defenders of*
9 *Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995)). Reconsideration is appropriate,
10 however, “if the district court (1) is presented with newly discovered evidence, (2) committed
11 clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in
12 controlling law.” *Id.* at 575 (quoting *School District No. 1J, Multnomah County, Oregon v. ACandS,*
13 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)). For the following reasons, this Court should reconsider its
14 decision to deny Mr. Salaryzadeh appointed counsel.

15 Under 18 U.S.C. § 3006A(a)(2)(B), this Court should appoint counsel if the petitioner
16 can show a likelihood of success on his claim and he would have difficulty articulating his claims
17 without the assistance of counsel. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983) (per
18 curiam). The Court’s reasons for denying Mr. Salaryzadeh the assistance of appointed counsel
19 did not take into account the strong showing that Mr. Salaryzadeh has already made on his
20 *Zadvydas* claim. Although Mr. Salaryzadeh was born in 1980 in Frankfurt, West Germany, he is
21 not a German citizen. His mother was not a German citizen when he was born, and he does not
22 know who his father is or whether he may be a German citizen. There is no indication that his
23 birth was ever registered with the appropriate Iranian officials, such that he might have a claim to
24 Iranian citizenship. He has never had an Iranian passport. At the time the Court denied the
25 motion for appointment of counsel, all indications were that he is stateless, such that his stay in
26 immigration detention has no reasonably foreseeable end to it. His *Zadvydas* claim is highly likely
27 to succeed.
28

1 The Court rested its decision to deny appointment of counsel entirely on its belief that
2 Mr. Salaryzadeh is capable of articulating his claims without the assistance of counsel. The Court
3 rejected the assertion that the facility where he is detained, the San Luis Regional Detention
4 Center, does not have a law library. “That is incorrect,” the Court wrote, “as illegal alien
5 detainees do have access to a law library.” (Dkt. #7 at 2) The Court also concluded that Mr.
6 Salaryzadeh was capable of articulating his claims without the assistance of counsel because
7 “many in custody plaintiffs can successfully litigate complicated civil rights cases.” (Dkt. #7 at 2)
8 Then, in the same order, the Court granted Mr. Salaryzadeh’s request for discovery and set a
9 compressed briefing schedule on the motion for a preliminary injunction, giving the government
10 10 days (rather than the default 14 days) to respond to the motion and Mr. Salaryzadeh 10 days
11 after that to file a reply in support. (Dkt. #7 at 3–4) Notably, the Court set the deadlines for filing
12 the response and reply at 5:00 P.M. on the date the filing is due.

13 After the Court issued its order denying the motion for appointment of counsel, Mr.
14 Hilzendeger spoke with other clients of his who are also detained at the San Luis Regional
15 Detention Center. His clients reported that it does, but also that they are unsure what materials it
16 contains. Mr. Hilzendeger accordingly apologizes for asserting that the facility does not have a
17 law library. LaSalle Corrections, the company that operates the San Luis Regional Detention
18 Center, does not publicly explain what the law library contains. It explains only that individuals
19 “in our care also have the right” to “access law library resources and legal assistance.” ICE
20 policy requires all detention facilities, including contract facilities, to provide a law library to
21 detainees. A list of materials required for the law libraries in ICE detention facilities is found
22 here.

23 For his part, Mr. Salarayzadeh reported that the law library is often out of service due to a
24 poor internet connection at the San Luis Regional Detention Center. He reported that there are
25 no books in the law library, only computers and electronically accessible materials. He also
26 reported that the facility does not have staff who can assist detainees in using the law library, and
27 that the facility does not allow more than one detainee to use the law library at a time, such that
28

1 no detainee can assist another detainee in using the law library. These features of the law library
2 at the San Luis Regional Detention Center appear to be inconsistent with ICE policy.

3 The Court also said that Mr. Salaryzadeh is capable of articulating his claims without the
4 assistance of counsel because “many in custody plaintiffs can successfully litigate complicated
5 civil rights cases.” (Dkt. #7 at 2) This reasoning says nothing about whether Mr. Salaryzadeh
6 himself is capable of articulating his claims for relief without the assistance of counsel. Detainees
7 are not fungible. In any event, because the documents before the Court were prepared with the
8 assistance of Mr. Hilzendeger, who anticipated based on past practice that he would ultimately be
9 appointed to represent Mr. Salaryzadeh, this Court had before it no evidence of Mr.
10 Salaryzadeh’s particular ability to articulate his claims without the assistance of counsel.

11 Moreover, this Court may have inadvertently created obstacles to Mr. Salaryzadeh
12 successfully litigating his *Zadvydas* claim without the assistance of counsel. One such obstacle
13 derives from the urgent nature of his claim for relief. His detention is illegal because there is no
14 significant likelihood of his removal *at all*. In assessing the legality of his detention in immigration
15 custody, this Court must ask whether the particular circumstances surrounding his detention
16 “amounts to detention within, or beyond, a period reasonably necessary to secure removal.”
17 *Zadvydas*, 533 U.S. at 699. And it should “measure reasonableness primarily in terms of the
18 statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.” *Id.*
19 (alluding to 8 U.S.C. § 1231(a)). Thus, if removal is impossible (as Mr. Salaryzadeh alleges in his
20 case), detention meant to facilitate such a removal is illegal.

21 That fact gives rise to an urgent—arguably immediate—need for judicial relief from
22 illegal detention in the form of an order directing Mr. Salaryzadeh’s immediate release from
23 custody. That is why a motion for a preliminary injunction accompanied the petition filed in this
24 case—to ensure prompt action on the legality of detention. But the Court’s decision to leave Mr.
25 Salaryzadeh unrepresented in this matter works against his need for immediate relief from illegal
26 detention. Because he will have to rely on the mail to file documents, this Court cannot rely on
27 the deadlines it set in its order—specific dates and times—to allow the parties to fully brief the
28

1 motion for a preliminary injunction. The filing time and date of Mr. Salaryzadeh's *pro se*
2 submissions to this Court is governed by the date and time he handed those submissions over to
3 officials at the San Luis Regional Detention Center for mailing to the Clerk of this Court. *See*
4 *Houston v. Lack*, 487 U.S. 266 (1988) (creating the prison mailbox rule). This rule remedies the
5 incentive that prison officials have to delay prisoners' court filings and the difficulty that
6 prisoners have in proving that prison officials delayed their filings in order to prevent them from
7 timely filing their documents. *See Huizar v. Carey*, 273 F.3d 1220, 1223 (9th Cir. 2001). "A
8 prisoner's control over the filing of his petition ceases when he delivers it to prison officials.
9 Whether or not the petition is actually placed in the mail, delivered to the court or filed once it
10 arrives there, are all matters beyond the prisoner's control. A prisoner who delivers a document
11 to prison authorities gets the benefit of the prison mailbox rule, so long as he diligently follows up
12 once he has failed to receive a disposition from the court after a reasonable period of time." *Id.*
13 (citing *Houston*, 487 U.S. at 270–71). Furthermore, unlike the facilities under the auspices of the
14 Arizona Department of Corrections, the San Luis Regional Detention Center does not participate
15 in this Court's prisoner electronic filing pilot program. While Mr. Salaryzadeh remains
16 unrepresented in this matter, this Court may prematurely rule on his motion for a preliminary
17 injunction before it receives his final position on the matter. And if it waits to receive his filings
18 through the mail and for the clerk to process the *pro se* filings and upload them to the docket, it
19 will unnecessarily be prolonging the detention from which he is seeking expedited preliminary
20 relief.

21 Another obstacle that arises from the fact that Mr. Salaryzadeh is unrepresented relates to
22 the Court's order granting his request for discovery. The Court has ordered respondents to
23 deliver to him—personally, at the San Luis Regional Detention Center—his entire A-file, which
24 is ordinarily confidential, and sensitive, potentially privileged documents from ICE's internal
25 custody review procedures. If the disclosure the Court ordered is incomplete, Mr. Salaryzadeh
26 may not necessarily know. Respondents may have their own reasons for wanting to keep those
27 documents out of ICE detention facilities. The Court could not have been aware of those reasons
28

1 when it granted the discovery request, because it granted the request before the government had
2 even been served with the petition. Under Rule 6(a) of the Rules Governing Section 2254 Cases,
3 this Court must appoint counsel if doing so is “necessary for effective discovery.” That rule can
4 apply in this proceeding under 28 U.S.C. § 2241. *See* R. Governing Sec. 2254 Cases 1(b). Because
5 the Court granted Mr. Salaryzadeh’s discovery request, and given the sensitive nature of the
6 documents the Court ordered respondents to disclose, this Court should rescind its order
7 denying Mr. Salaryzadeh’s motion for appointment of counsel and grant it.

8 Respectfully submitted:

September 24, 2025.

9 JON M. SANDS
10 Federal Public Defender

11 *s/Keith J. Hilzendege*
12 KEITH J. HILZENDEGER
13 Assistant Federal Public Defender
Awaiting Appointment for
Petitioner Salaryzadeh