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

12 David Salaryzadeh,

13 Petitioner,

14 v.

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

16 Respondents.  
 17

No. CV-25-03274-PHX-SMB (ASB)

**ANSWER TO PETITION FOR A  
 WRIT OF HABEAS CORPUS  
 PURSUANT TO 28 U.S.C. § 2241**

18 Respondents David R. Rivas, Warden, San Luis Regional Detention Center;  
 19 Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs  
 20 Enforcement, Kristi Noem, Secretary of Department of Homeland Security (DHS), and  
 21 Pam Bondi, Attorney General of the United States (Respondents), through undersigned  
 22 counsel, answers the Petition for Writ of Habeas Corpus. Doc. 1. The Court should deny  
 23 the petition because Petitioner is mandatorily detained under 8 U.S.C. § 1231(a)(1)(A). He  
 24 was apprehended in ICE custody on July 8, 2025, following a recent criminal arrest. To  
 25 date, his detainment is well-within the six-month presumptively reasonable period as  
 26 outlined under *Zadvydas*. Finally, the German government recently confirmed Petitioner’s  
 27 birth in Germany, and ICE is waiting on German authorities to provide a copy of  
 28 Petitioner’s birth certificate to compete the request for a travel document. This Response

1 is supported by the following Memorandum of Points and Authorities and declaration.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. BACKGROUND.**

4 Petitioner David Salaryzadeh (Petitioner) is neither stateless nor is there any  
5 impediment to his removal to Germany, his birth country, due to the fact that when he  
6 entered the United States, Germany was divided into two countries, or Iran. Petitioner was  
7 born in Germany on November 28, 1980. *See* Declaration of Victor Ayala, Deportation  
8 Officer, attached as Exhibit A, at ¶ 4. Records indicate that he was admitted into the United  
9 States on March 28, 1983, in New York. *Id.* at ¶ 5. On April 10, 2001, he was convicted  
10 for violating Section 11357(a) of California Health and Safety Code, possession of  
11 concentrated cannabis. *Id.* at ¶ 6. On September 3, 2003, he left the United States for  
12 Mexico, and he applied for admission via the San Ysidro Port of Entry in Mexico. *Id.* at ¶  
13 8. He was deemed inadmissible pursuant to sections 212(a)(6)(C)(ii) and 212(a)(7)(A)(i)(I)  
14 of the INA. *Id.* at ¶ 9. As an arriving alien, he was subsequently served with a Notice to  
15 Appear (NTA), Form I-862, on June 20, 2001, and an Immigration Judge (IJ) in San Diego  
16 ordered him removed to Germany, or in the alternative, Iran, on August 16, 2004. *Id.* at ¶¶  
17 8-10. His final order of removal is thus dated August 16, 2004. Around November 2004,  
18 he was released from ICE custody on an Order of Supervision subject to certain written  
19 conditions, which included an agreement not to crimes any crimes.<sup>1</sup> *Id.* at ¶ 12.

20 Petitioner did not abide by those conditions, as he has a lengthy criminal history,  
21 beginning on January 18, 2011, when he was sentenced to 8 months in prison for  
22 participating in a criminal street gang. *Id.* at ¶ 13. After that, he continued to participate in  
23 criminal activity from June 4, 2012, through January 6, 2017, and violated his terms of  
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25 <sup>1</sup> The plain language of the statute at 8 U.S.C. § 1231(a)(3)(D) allows the Attorney General  
26 to set conditions for supervised release from immigration detention such as “to obey  
27 reasonable written restrictions on the alien’s conduct or activities that the Attorney  
28 prescribes for the alien.” *Id.* In this regard, the statute gives the Attorney General wide  
discretion to set restrictions on an alien’s behavior once granted supervised release. *See*  
*Zavala v. Prendes*, No. 3-10-CV-1601-K-BD, 2010 WL 4454055, at \*1 (N.D. Tex. Oct. 5,  
2010), *report and recommendation adopted*, No. 3:10-CV-1601-K, 2010 WL 4627736  
(N.D. Tex. Nov. 1, 2010).

1 supervision several times. *Id.* On June 4, 2012, he was convicted of Receiving Known  
2 Stolen Property and sentenced to 16 months in prison and convicted of Burglary in the  
3 Second Degree and sentenced to 16 months in prison a year later on June 17, 2013. *Id.* at  
4 ¶¶ 14-15. He was convicted of violating the terms of his post-release community  
5 supervision and sentenced to 2 years in prison on June 12, 2013. *Id.* at ¶ 16. He was again  
6 convicted of violating the terms of his post-release community supervision and sentenced  
7 to 2 years in prison on July 30, 2014. *Id.* at ¶ 17. On July 22, 2014, he was convicted of  
8 Receiving Known Stolen Property and sentenced to 90 days in jail. *Id.* at ¶ 18.

9 The severity of his crimes increased on January 6, 2017, when he was convicted of  
10 Assault with a Deadly Weapon, a felony, and sentenced to several years in prison in  
11 California. *Id.* at ¶ 19. That same day, he was also convicted of Personally Inflicting Great  
12 Bodily Injury, a felony, and convicted of 5 years in prison. *Id.* He was served with a Notice  
13 of Revocation of Release on October 31, 2016, due to his above criminal convictions. *Id.*  
14 at ¶ 20. He was issued an Order of Supervision, Form I-220B, on December 16, 2016. *Id.*  
15 at ¶ 21. In violation of that order, Petitioner was arrested on September 19, 2024, and taken  
16 into custody subsequently to serving him an Assumption of Custody Modification, Form  
17 71-075, at the Correctional Training Facility, in Soledad, California. *Id.* at ¶ 22. He was  
18 served with an Order of Supervision on September 19, 2024, requiring him to meet  
19 reporting requirements and assisting U.S. Immigration and Customs  
20 Enforcement/Enforcement and Removal Operations (ICE/ERO) in obtaining any necessary  
21 travel documents. *Id.* at ¶ 23. On May 15, 2025, he was arrested with possession of hard  
22 drugs in violation of Cal. Pen. Code § 11395(b)(1), with priors, and charged in Orange  
23 County, California, Superior Court. *Id.* at ¶ 24.

24 On July 8, 2025, ERO apprehended the Petitioner at the Orange County Sheriff's  
25 Department, Theo Lacy Facility in Orange, CA, after notification of his release. *Id.*  
26 Following his release from criminal custody, he was transported to the ICE/ERO office in  
27 Santa Ana, CA, he was taken into ICE custody on July 8, 2025. *Id.* at ¶ 25. He was Served  
28 with a Notice of Revocation of Release, on July 9, 2025. *Id.* at ¶ 26. Finally, on September

1 25, 2025, the German government confirmed Petitioner's birth in Germany. *Id.* at ¶ 27.  
2 ICE/ERO is waiting on German Authorities to provide a copy of Petitioner's birth  
3 certificate to complete the request for a Travel Document. *Id.*

4 The U.S. Attorneys' Office for the District of Arizona was served with a copy of the  
5 Petition on September 19, 2025, making the Respondents' 20-day deadline to respond to  
6 the petition as October 9, 2025. Petitioner raises two claims for relief: (1) his detention  
7 violates his due process rights under the Fifth Amendment claiming that his removal is not  
8 reasonably foreseeable, and (2) his removal to any third country violates his due process  
9 rights. Doc. 1 at 10-14. He requests supervised release.<sup>2</sup> *Id.* at 14.

## 10 II. LEGAL STANDARD.

11 Under Federal Rule of Civil Procedure 12(b)(1), a court may grant a motion to  
12 dismiss for lack of subject matter jurisdiction. *Tosco Corp. v. Cmty. for a Better Env't*,  
13 236 F.3d 495, 499 (9th Cir. 2001). When subject matter jurisdiction is challenged under  
14 Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction to survive the motion. *Id.*  
15 (citing *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989)).

16 A court may grant a motion to dismiss pursuant to Federal Rule of Civil Procedure  
17 12(b)(6) for failure to state a claim upon which relief may be granted. To survive a motion  
18 to dismiss for failure to state a claim, the plaintiff must plead facts sufficient to "raise a  
19 right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
20 (2007). On a motion to dismiss, courts "are not bound to accept as true a legal conclusion  
21 couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286, (1986). "Threadbare  
22 recitals of the elements of a cause of action, supported by mere conclusory statements, do  
23 not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

## 24 III. LEGAL FRAMEWORK.

25 The detention, release, and removal of aliens subject to a final order of removal is  
26 governed by § 241 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231.

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27  
28 <sup>2</sup> As noted above, Petitioner has a history of violating his release conditions. Ex. A at ¶¶  
16-17, 26.

1 Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the  
2 United States after an order of removal becomes final. During this “removal period,”  
3 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been  
4 removed and remains in the United States, his detention may be continued, or he may be  
5 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. §§ 1231(a)(3)  
6 and (6). Under this section, ICE may detain an alien for a “reasonable time” necessary to  
7 effectuate the alien’s deportation. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite  
8 detention is not authorized. *Id.* The Immigration and Nationality Act (INA) further  
9 provides that aliens who are inadmissible under 8 U.S.C. § 1182 may be detained beyond  
10 the 90-day period pending removal. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(1), (4).

11 To be entitled to release from detention, Petitioner has the burden to show that his  
12 removal is not likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at  
13 701. Only then does the burden shift to the Government to show that removal is  
14 significantly likely to occur in the reasonably foreseeable future. *Id.* Petitioner has not met  
15 his burden to show that his removal is unlikely in the reasonably foreseeable future and,  
16 even if he could, the Government can overcome that with evidence showing that his  
17 removal is likely. In *Zadvydas*, the Supreme Court designated six months as a  
18 presumptively reasonable length of time to allow the Government to remove an alien  
19 detained under 8 U.S.C. § 1231(a), but an alien is not automatically entitled to release after  
20 six months of detention. *Id.* at 701 (“This 6-month presumption, of course, *does not mean*  
21 *that every alien not removed must be released after six months.* To the contrary, an alien  
22 may be held in confinement until it has been determined that there is no significant  
23 likelihood of removal in the reasonably foreseeable future.”) (emphasis added). The  
24 passage of time alone is insufficient to establish that no significant likelihood of removal  
25 exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118  
26 (W.D. Wash. 2002). In *Lema*, where the alien had been detained for more than a year, the  
27 district court held that the passage of time was only the first step in the analysis, and that  
28 the alien must then provide good reason to believe that no significant likelihood of removal

1 exists in the reasonably foreseeable future. *Id.*

2 **IV. The Habeas Petition Should Be Denied.**

3 Petitioner claims that his detention violates his due process rights under the Fifth  
4 Amendment because (1) his removal is not reasonably foreseeable, claiming that he cannot  
5 lawfully be removed to either Germany or Iran, and (2) that removal to any third country  
6 without sufficient notice would violate his rights. Doc. 1 at 10-14.

7 The detention of aliens subject to a final order of removal is governed by § 241 of  
8 the INA, 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to  
9 remove an alien from the United States after an order of removal becomes final. During  
10 this “removal period,” detention of the alien is mandatory. *Id.* That time period applies to  
11 this case. The analysis governing reasonable likelihood of removal as outlined under  
12 *Zadvydas* only applies when the alien has been detained past the six-month presumptive  
13 mark. *Zadvydas* places the burden on the alien to show, after a detention period of six  
14 months, that there is “good reason to believe that there is no significant likelihood of  
15 removal in the reasonably foreseeable future.” *Id.* at 701. Only then, if the alien makes that  
16 showing, which Petitioner cannot, the Government must then introduce evidence to refute  
17 that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-  
18 40 (9th Cir. 2002). The Court must “ask whether the detention in question exceeds a period  
19 reasonably necessary to secure removal. It should measure reasonableness primarily in  
20 terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment  
21 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued  
22 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

23 It is premature whether there is a significant likelihood that Petitioner’s removal to  
24 any country is reasonably foreseeable at this juncture. As noted above, the analysis  
25 governing reasonable likelihood of removal as outlined under *Zadvydas* only applies when  
26 the alien has been detained past the six-month presumptive mark, which is not the case  
27 here. *Zadvydas* places the burden on the alien to show, after a detention period of six  
28 months, that there is “good reason to believe that there is no significant likelihood of

1 removal in the reasonably foreseeable future.” *Id.* at 701. First, Petitioner is lawfully and  
2 constitutionally detained pursuant to a valid final order of removal dated August 16, 2004.  
3 Ex. A at ¶ 11. Second, Petitioner was apprehended into ICE custody on July 8, 2025, now  
4 just three-days past the 90-days mandatory detention period, but well within the six-month  
5 presumptive mark. *Id.* at ¶ 25. Petitioner’s three-month confinement is neither illegal nor  
6 unconstitutional. *Zadvydas*, 533 U.S. at 701. Thus, the *Zadvydas* analysis governing  
7 likelihood of removal is premature, and thus, inapplicable, at this juncture.

8 To the extent the Court considers otherwise, Petitioner has failed to show that he is  
9 “likely stateless.” Doc. 1 at 11. An IJ ordered him removed to Germany, or in the  
10 alternative, Iran, on August 16, 2004. Ex. A at ¶¶ 8-10. German authorities confirmed  
11 Petitioner’s birth in Germany on September 25, 2025. *Id.* at ¶ 27. He has also failed to  
12 meet his burden that there is no significant likelihood of removal in the reasonably  
13 foreseeable future. ICE/ERO is waiting on German Authorities to provide a copy of  
14 Petitioner’s birth certificate to complete the request for a Travel Document. *Id.*

15 **V. CONCLUSION.**

16 For the reasons explained above, Respondents respectfully request this Court deny  
17 the Petition for Writ of Habeas Corpus.

18 Respectfully submitted on October 9, 2025.


19 TIMOTHY COURCHINE  
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21 District of Arizona

22 s/ Lindsey E. Gilman  
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24 Assistant United States Attorney  
25 *Attorneys for Respondents*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 9, 2025, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and mailed the attached to the following individuals who are not registered participants of the CM/ECF System:

David Salaryzadeh  
  
San Luis Regional Detention Center  
406 N. Avenue D  
San Luis, Arizona 85349

s/M. Finlon  
United States Attorney’s Office