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

David Salaryzadeh,
Petitioner,
v.
David R. Rivas, et al.,
Respondents.

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

ORDER

On September 9, 2025, Petitioner filed a habeas corpus petition under 28 U.S.C. § 2241 seeking release from immigration detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001), on the ground that he is effectively stateless, a Motion for Limited Discovery, a Motion for Appointment of Counsel, and a Motion for Preliminary Injunction or Temporary Restraining Order. (Docs. 1, 3, 4, 6). By Order dated September 16, 2025, the Court denied the Motion for Appointment of Counsel, granted in part the Motion for Discovery, and ordered Respondents to answer the Petition and respond to the motion on an expedited basis. (Doc. 7). Both the Petition and injunctive motion are now fully briefed. (Docs. 16, 23, 25).¹ For the reasons that follow, the court will grant the Petition and order that Petitioner be immediately released from custody.

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¹ Petitioner has also filed a Motion for Reconsideration of the denial of the Motion for Appointment of Counsel (Doc. 10), a Motion for Hardship Consideration (Doc. 21), and a Motion for Status (Doc. 27). The Court will grant the Motion for Status to the extent this Order informs him of the present status of this case, and deny the remaining motions as moot.

1 **I. Background**

2 Petitioner was born in 1980 in what was then West Germany to an Iranian mother
3 who had fled Iran after the 1979 revolution. (Doc. 1 at 3). In 1983, Petitioner and his
4 mother were admitted into the United States. (Doc. 23-1 at 3). In 2003, after travelling to
5 Mexico with friends, Petitioner attempted to re-enter the United States. (*Id.*) When
6 questioned by border patrol agents, Petitioner stated that he was a citizen of Germany and
7 that he had an I-94 work authorization (which he claimed to have lost) to be in the United
8 States. (*Id.*) Petitioner was deemed inadmissible to the United States, taken into ICE
9 custody, and issued an expedited order of removal. (*Id.*) On September 11, 2003,
10 Petitioner claimed fear of returning to Germany, and was given a credible fear interview;
11 the asylum officer determined that Petitioner had a credible fear of returning to Germany,
12 and initiated removal proceedings with an immigration judge (IJ). (*Id.*) However, on
13 August 16, 2004, the IJ denied Petitioner's application for withholding of removal, and
14 ordered him removed to Germany or, in the alternative, to Iran; Petitioner did not appeal
15 the IJ's ruling, and it became final that same day. (*Id.*) "Around November 2004,"
16 Petitioner was released from ICE custody on an order of supervision. (*Id.*) Over the next
17 20 years, Petitioner accumulated a lengthy criminal record, and was incarcerated numerous
18 times. (Doc. 1 at 3-7; Doc. 23-1 at 4-5). On July 8, 2025, after his release from state prison
19 in California, Petitioner was taken back into ICE custody. (Doc. 23-1 a 5). As of the date
20 of this Order, Petitioner remains detained in ICE custody.

21 **II. Legal Standard**

22 Petitioner's continued detention is governed by 8 U.S.C. § 1231 and *Zadvydas v.*
23 *Davis*, 533 U.S. 678 (2001). Under § 1231(a)(1), the Government has 90 days in which to
24 remove an alien once a removal order becomes final. Detention during this removal period
25 is mandatory. 8 U.S.C. § 1231(a)(2). If the Government is unable to effect removal within
26 the 90-day removal period, however, continued detention of aliens such as Petitioner
27 becomes discretionary. 8 U.S.C. § 1231(a)(6). That discretion, however, is not unfettered,
28 and indefinite detention is not permitted. *Zadvydas*, 533 U.S. at 689 (8 U.S.C. § 1231(a)(6))

1 “does not permit indefinite detention.”). This is not to say that every alien like Petitioner
2 must be released once the 90-day removal period has expired. 533 U.S. at 701. Rather,
3 the Supreme Court in *Zadvydas* recognized an implicit post-§ 1231(a)(2) period in which
4 continued detention is “presumptively reasonable” and does not violate the Fifth
5 Amendment. *Id.* The *Zadvydas* Court concluded that this “presumptively reasonable”
6 period extends for no more than six months once an order of removal becomes final
7 (including the 90-day mandatory detention period under § 1231(a)(2)). *Id.* Thereafter,
8 “once the alien provides good reason to believe that there is no significant likelihood of
9 removal in the reasonably foreseeable future, the Government must respond with evidence
10 sufficient to rebut that showing.” *Id.* If, after considering the evidence, the court finds that
11 “removal is not reasonably foreseeable, the court should hold continued detention
12 unreasonable and no longer authorized by statute.” *Id.* at 699.

13 **III. Discussion**

14 Respondents’ principal argument is that the Petition is premature because
15 Petitioner’s detention is “well within the six-month presumptive mark.” (Doc. 23 at 6-7)
16 (“It is premature whether there is a significant likelihood that Petitioner’s removal to any
17 country is reasonably foreseeable at this juncture.”) (*See also* Doc. 16 at 7) (“Petitioner
18 was apprehended into ICE custody on July 8, 2025, less than 90 days ago [as of September
19 26, 2025]. Thus, he is still well-within the mandatory [detention] period authorized under
20 8 U.S.C. § 1231.”). This argument is incorrect.

21 As noted, detention during the § 1231(a)(1) removal period is mandatory. 8 U.S.C.
22 § 1231(a)(2). However, the § 1231(a)(1) removal period “begins on the latest of the
23 following: (i) the date the order of removal becomes administratively final[;] (ii) If the
24 order is judicially reviewed and if a court orders a stay of the removal of the alien, the date
25 of the court’s final order[; or] (iii) If the alien is detained or confined (except under an
26 immigration process), the date the alien is released from detention or confinement.” 8
27 U.S.C. § 1231(a)(1)(B).²

28 _____
² The § 1231(a)(1) detention period may also be suspended and extended beyond

1 Here, Petitioner's order of removal was issued on August 16, 2004. (Doc. 23-1 at
2 3). Petitioner did not appeal that Order, and it thus became final that same day. (*Id.*).
3 Additionally, at the time the order of removal became final, Petitioner was detained by
4 ICE. (*Id.*). As such, the "latest" date for § 1231(a)(1)(B) purposes was the date his order
5 of removal became final because he did not appeal the IJ's decision (i.e. § 1231(a)(1)(B)(ii)
6 does not apply) and he was in ICE custody at the time (i.e. detention as part of the
7 "immigration process," so § 1231(a)(1)(B)(iii) also does not apply). Accordingly, the §
8 1231(a)(1) mandatory detention period began to run on August 16, 2004, and ended 90
9 days later (approximately the time Petitioner was released from ICE custody in November
10 2004). Thus, at best, the post-§ 1231(a)(1) *Zadvydas* period began to run when ICE re-
11 detained Petitioner on July 8, 2025, but that period expired no more than 90 days later
12 (approximately October 8, 2025).³ Accordingly, as of the date of this Order, Petitioner has
13 been detained beyond the "presumptively reasonable" period articulated in *Zadvydas*. As
14 such, to obtain relief Petitioner must first provide "good reason to believe that there is no
15 significant likelihood of removal in the reasonably foreseeable future," and, if he does so,
16 Respondents "must respond with evidence sufficient to rebut that showing." 533 U.S. at
17 701.

18 Petitioner's order of removal directs that he be removed to Germany or, in the
19 alternative, to Iran. (Doc. 23-1 at 3). However, Petitioner argues that because he was not
20 born in Iran (and is thus not an Iranian citizen) but was instead born to a non-citizen mother

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22 90-days if the alien "fails or refuses to make timely application in good faith for travel or
23 other documents necessary to the alien's departure or conspires or acts to prevent the
24 alien's removal subject to an order of removal. 8 U.S.C. § 1231(a)(1)(C). There is no
25 suggestion that Petitioner has acted in such a way so as to trigger § 1231(a)(1)(C).

26
27 ³ Records provided by Petitioner suggest that ICE also detained Petitioner
28 subsequent to his 2004 order of removal but *prior* to his present detention. *See* Doc. 25-1
at 18, 15 (March 24, 2011 "Notice of Revocation of Release" indicating that "it has been
determined that you will be kept in the custody of [ICE] at this time," and June 13, 2011
"Release Notification" stating that Petitioner was being "released from ICE custody"); *see*
also Doc. 25-1 at 13 (indicating that Petitioner was "released from [state prison] on
02/20/2009, and entered the custody of the US ICE Sub Office in San Bernardino
California and will be put in removal proceedings"). Although the exact dates of any
previous detention cannot be determined with certainty, it appears likely that a significant
portion, and possibly all, of the post-§ 1231(a)(1) *Zadvydas* period had already expired by
the time Petitioner was re-detained on July 8, 2025.

1 in what was then West Germany (which no longer exists), he is effectively stateless.
2 Respondents respond that “German authorities confirmed Petitioner’s birth in Germany on
3 September 25, 2025,” and that they are “waiting on German Authorities to provide a copy
4 of Petitioner’s birth certificate to complete the request for a Travel Document.” (Doc. 23
5 at 7).

6 This misses the point. There is no question that Petitioner was born in what is today
7 called the Federal Republic of Germany (hereafter simply “Germany”). The issue is
8 whether Petitioner is a *citizen* of Germany. Prior to January 1, 2000, Germany did not
9 recognize birthright citizenship.⁴ See *The Evolution of Citizenship: Economic and*
10 *Institutional Determinants*, 53 J.L. & Econ. 95, 102 (2010); see also *Immigration and*
11 *Judicial Review in the Federal Republic of Germany*, 23 N.Y.U.J. Int’l L. & Politics 35,
12 44 (1990) (“Children born in the [Federal Republic of Germany] to alien parents do not
13 automatically gain German citizenship.”). Indeed, Petitioner provides an ICE document
14 dated October 16, 2004, stating that

15 A formal letter was mailed to the Consulate General of the Federal Republic
16 of Germany on August 31, 2004, requesting travel documents for
17 [Petitioner]. A German official mailed a response letter, stating: ‘the
18 documents provided indicate that [Petitioner] was born and has lived in
19 Germany. There is, however, no proof that he is a German citizen or that he
20 has any status in Germany.’ Therefore, the German government has also
21 denied travel documents.

22 (Doc. 25-1 at 5). The same document also states that

23 A formal letter was mailed to the Embassy of Pakistan, Interest Section of
24 the Islamic Republic of Iran on September 30, 2004, requesting travel
25 documents for [Petitioner]. An Iranian official mailed a response letter, in
26 which he states that the Iranian government will not be able to issue a travel
27 document for anyone without an Iranian birth certificate.

28 (*Id.*). No evidence has been provided to support that the positions of the governments of

26 ⁴ In his Petition, Petitioner noted that he might be able to obtain German citizenship
27 if his father was a German citizen. (Doc. 1 at 9). However, Petitioner does not know who
28 his father is, or whether he was a German citizen (*id.*), and no evidence has been provided
to support that Petitioner’s father was a German citizen. Indeed, what evidence has been
provided supports that the German government has concluded that there is “no proof” that
Petitioner has a claim to German citizenship *vis a vis* his father. (See Doc. 25-1 at 5).

1 Germany and Iran have subsequently changed. Indeed, from the evidence provided it
2 appears that Germany has continued to stand firm in its refusal to accept Petitioner. (*See*
3 Doc. 25-1 at 3) (ICE memorandum dated December 9, 2016 stating “On November 15,
4 2016, ICE received a letter from Christine Keough from the German consulate in Los
5 Angeles indicating that the German government will still not issue a travel document for
6 [Petitioner].”). As such, the fact that Germany has recently “confirmed”—for the second
7 time—“Petitioner’s birth in Germany” is separate from whether he is a *citizen* of Germany,
8 such that Germany will issue travel documents for him.

9 Based on the foregoing, no evidence has been provided to support that Petitioner is
10 a citizen of either Germany or Iran, or that either government is likely to issue travel
11 documents to him. (*See* Doc. 25-1 at 7) (July 9, 2025 Form I-213 indicating that “EARM
12 comments state Germany and Iranian governments have both refused to issue a Travel
13 Document (TD) to effect [Petitioner’s] removal from the United States.”). Accordingly,
14 the Court finds that Petitioner has shown “good reason” to believe that his removal to either
15 Germany or Iran is not significantly likely to occur in the reasonably foreseeable future.
16 Put simply, it has been more than 20 years since Petitioner’s order of removal became final
17 and, in all that time and despite repeated efforts (*see* Doc. 25-1 at 3, 5, 9, 13, 15, 17),
18 Respondents have been unable to effect his removal. The burden thus shifts to Respondents
19 to rebut that showing with sufficient evidence. 533 U.S. at 701.

20 The only evidence Respondents provide is a Declaration from ICE Deportation
21 Officer Victor Ayala, and the only information Mr. Ayala provides about efforts to effect
22 Petitioner’s removal since he was re-detained by ICE on July 8, 2025 is that “[o]n
23 September 25, 2025, the German government confirmed Petitioner’s birth in Germany”
24 and that Respondents are “waiting on German Authorities to provide a copy of Petitioner’s
25 birth certificate to complete the request for a Travel Document.” (Doc. 23-1 at 5).

26 This evidence is insufficient to rebut Petitioner’s showing. The question of where
27 Petitioner was born is separate from the question of where, if anywhere, he is a citizen.
28 The government of Germany has indicated that, despite being born is what is today

1 Germany, there is “no proof [Petitioner] is a German citizen or that he has any status in
2 Germany,” and has repeatedly declined to issue travel documents as a result. (Doc. 25-1
3 at 3, 5). Respondents provide no evidence to support that the German government has
4 reconsidered this position. Similarly, Mr. Ayala does not attest that any efforts have been
5 made to obtain an Iranian birth certificate (even assuming *arguendo* that one could be
6 theoretically be issued given that Petitioner was not born in Iran), the government of Iran
7 has indicated that it will not issue travel documents for Petitioner without an Iranian birth
8 certificate (*id.* at 5), and Respondents provide no evidence to support that the Iranian
9 government has reconsidered this position. Nor does Mr. Ayala attest that any efforts to
10 remove Petitioner to a third country have been considered, let alone that they are
11 significantly likely to occur in the reasonably foreseeable future.

12 The Supreme Court held in *Zadvydas* that as the period of detention grows, “what
13 counts as the ‘reasonably foreseeable future’ would have to shrink.” 533 U.S. at 701. As
14 noted, Petitioner has now been detained well beyond the presumptively reasonable period
15 identified in *Zadvydas*, and having provided “good reason” to support that his removal to
16 Germany or Iran is not significantly likely to occur in the reasonably foreseeable future,
17 the burden shifts to Respondents to rebut that showing with sufficient evidence. *Id.*
18 Respondents have failed to do so. Respondents have had more than 20 years to effect
19 Petitioner’s removal but have been unable to do so despite repeated efforts, and no evidence
20 has been provided to support that removal to Germany, Iran, or a third country is
21 significantly likely to occur in the reasonably foreseeable future. Accordingly, the Court
22 finds that Petitioner’s continued detention is in violation of the Fifth Amendment, and will
23 thus grant Ground One of the Petition.⁵

24 **IT IS ORDERED:**

25
26 ⁵ In the Petition, Petitioner also raised a challenge to the possibility he might be
27 removed to a third country. (Doc. 1 at 13-14). No evidence has been provided to support
28 that Respondents are seeking to remove Petitioner to a third country, and his claim is thus
speculative. For purposes of standing, an injury must be “‘concrete and particularized,’ as
well as ‘actual or imminent,’” and cannot be ‘conjectural or hypothetical.’” *Carney v.*
Adams, 592 U.S. 53, 58 (2020) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
(1992)). Accordingly, Ground Two will be dismissed without prejudice.

1 (1) Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is **granted** as to
2 Ground One only. Ground Two of the Petition is **dismissed** without prejudice.

3 (2) Respondents must **IMMEDIATELY RELEASE** Petitioner from custody
4 but may be subject to an Order of Supervision.

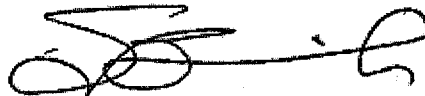
5 (3) No more than **48 HOURS** from the time of this Order, Respondents must file
6 a notice of compliance.

7 (4) Petitioner's Motion for Preliminary Injunction or Temporary Restraining
8 Order (Doc. 6), Motion for Reconsideration (Doc. 10), and Motion for Hardship
9 Consideration (Doc. 21) are **denied as moot**.

10 (5) Petitioner's Motion for Status (Doc. 27) is **granted** to the extent this Order
11 informs him of the present status of this case.

12 (6) The Clerk of Court must enter judgment accordingly, and close this case.

13 Dated this 11th day of December, 2025.

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Honorable Susan M. Brnovich
United States District Judge

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