

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 25-cv-2059

Hossein Batooei,

Petitioner,

v.

Dawn Ceja,

Warden, Aurora ICE Processing Center,

Robert Guadian,

Field Office Director, U.S. Immigration and Customs Enforcement, U.S.
Department of Homeland Security,

Kristi Noem,

Secretary, U.S. Department of Homeland Security,

Pamela Bondi,

U.S. Attorney General, U.S. Department of Justice,

in their official capacities,

Respondents.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

The Petitioner, Hossein Batooei, is a 60-year-old Christian convert from Iran. He has lived in the U.S. for about 25 years. The Department of Homeland Security detained Mr. Batooei ten days ago for the presumed purpose of removing him to an undesignated country. The statutory authority for the Department to detain and deport Mr. Batooei is unclear due to ambiguities on the face of a 2004 Immigration Judge Order. However, under all possible interpretations, the Department's legal authority to detain and deport Mr. Batooei is unlawful.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Fifth Amendment.
3. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201. This Court may grant declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 2241(a); Fed. R. Civ. P. 57, 65; and based on its inherent authority to grant equitable relief. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971).
4. Petitioner is in custody for purposes of habeas jurisdiction because it is believed that he is detained at the Aurora ICE Processing Center in Aurora, Colorado.

VENUE

5. Venue is proper because Mr. Batooie is believed to be detained at the GEO Group's ICE Processing Center in Aurora, Colorado, which is within the jurisdiction of this District. 28 U.S.C. § 224(a). In addition, venue is proper in this District because a substantial part of the events giving rise to Mr. Batooie's claims occurred in this District, and he resides in this District and no real property is involved in this action. 28 U.S.C. §§ 1391(b)(2) and (e)(1). *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493–94 (1973).

PARTIES

6. Petitioner, Hossein, is a 60-year-old native and citizen of Iran. He was raised as a Muslim. About 25 years ago, he entered the U.S. on a non-immigrant visa. He has lived in the U.S. since that time.

7. Respondent Ceja is sued in her official capacity as the Warden of the GEO Group's ICE Processing Center in Aurora. She has immediate physical custody of Mr. Batooie pursuant to the GEO Group's contract with U.S. Immigration and Customs Enforcement ("ICE") to detain noncitizens. Respondent Ceja is a legal custodian of Mr. Batooie.

8. Respondent Guadian is sued in his official capacity as the Field Office Director of the Denver ICE Office. ICE is a component agency of DHS. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations. Respondent Guadian is a legal custodian of Mr. Batooie and has authority to release him.

9. Respondent Noem is sued in her official capacity as the Secretary of DHS. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103(a). She routinely transacts business in this District and is legally responsible for pursuing any effort to detain and remove the Petitioner, including coordination with ICE. Respondent Noem is a legal custodian of Mr. Batooie.

10. Respondent Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the

Executive Office for Immigration Review ("EOIR"), which administers the Immigration Courts and the Board of Immigration Appeals. Respondent Bondi has the authority to release Mr. Batooei pending a decision on whether he is to be removed from the United States. Respondent Bondi is a legal custodian of Mr. Batooei.

STATEMENT OF FACTS

11. About a year after entering the U.S., Mr. Batooei became interested in Christianity. Initially, he was just investigating—studying the Bible and visiting churches. Eventually, things became more serious, and he was baptized into the United Methodist Church in about 2003. Born into the Muslim faith, his conversion would be considered a crime under Iranian law, punishable by death.¹ Based on his fear of return, he filed an application for asylum; the case was referred to the Immigration Court for review.

12. On November 10, 2004, Mr. Batooei had a removal hearing with an Immigration Judge in Los Angeles. The outcome of that hearing is in doubt. The order issued by the Immigration Judge at the conclusion of the hearing indicates that removal proceedings were terminated. Ex. A (Immigration Judge Order). It also indicated that the Immigration Judge granted withholding of removal to an undesignated country, pursuant to 8 U.S.C. § 1231(b)(3). Ex. A. An order withholding removal would have been based on Mr. Batooei's fears of being persecuted due to his apostasy. The Immigration Judge did not order removal. Ex. A. 097 354 973

¹ See generally 2023 Report on International Religious Freedom: Iran, Section II, Legal Framework, <https://www.state.gov/reports/2023-report-on-international-religious-freedom/iran/#:~:text=The%20only%20recognized%20conversions%20are,a%20crime%20punishable%20by%20death> (last visited on July 2, 2025).

13. On June 22, 2025, the Department of Homeland Security detained Mr. Batooie, informing him that he was subject to a removal order. For some days, he was detained in Aurora at the GEO ICE Processing Center. Without notice or explanation, he was transferred to the Sweetwater County Detention Center in Sweetwater, Wyoming. As of this afternoon, however, had been moved from that facility without prior notice or opportunity to contact counsel. Based on phone calls with the detention center, it is believed that Mr. Batooie is being relocated to the Denver Contract Detention Facility in Aurora, Colorado.

14. Mr. Batooie has been told he will be removed from the United States. He has not been told where he is being deported.

STATEMENT OF LAW

15. Where the Department wishes to deport a person previously admitted to the U.S., it must initiate removal proceedings under 8 U.S.C. §§ 1229 & 1229a. An Immigration Judge shall conduct those proceeding to determine the person's deportability. 8 U.S.C. § 1229a(a)(1). Noncitizens placed in removal proceedings have a right to apply for various forms of relief from removal before an Immigration Judge. 8 U.S.C. § 1229a(c)(4). Certain individuals detained while in removal proceedings can seek release on a bond order issued by the Immigration Judge. 8 U.S.C. § 1226(a)(2), 8 C.F.R. § 1003.19(a).

16. A person may not be removed to a country where an Immigration Judge decides that his life or freedom would be threatened because of his race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3).

17. The Department may, at any time, file a motion to reopen an Immigration Judge's grant of withholding if it believes that the person's life or freedom is no longer at risk in the designated country. 8 C.F.R. § 1003.23(b)(1). The burden would be on the Department to prove that any new evidence is material and was not available and could not have been discovered or presented at the prior hearing. 8 C.F.R. § 1003.23(b)(3).

18. When an Immigration Judge issues a decision granting a person's application for withholding of removal under § 1231(b)(3), without a grant of asylum, the decision must include an explicit order of removal. *Matter of I- S- & C- S-*, 24 I&N Dec. 432 (BIA 2008).

19. The statute and regulations make clear that a grant of withholding does not prevent the Department from removing a person to a country other than the one to which removal has been withheld. 8 U.S.C. § 1231(b)(2)(D, E), 8 C.F.R. §§ 1208.16(f).

20. However, where the Department attempts removal to an alternate country, a withholding grantee must be given an opportunity to pursue a protection claim for that alternate country.

21. 8 U.S.C. § 1231(b)(2) sets out a 4-step process for designating countries of removal.

22. First, in the removal hearing, subject to § 1231(b)(3), the noncitizen is entitled to select a country of removal. 8 U.S.C. § 1231(b)(2)(A).

23. Second, subject to § 1231(b)(3), the Immigration Judge or the Department may disregard a designation if the noncitizen "fails to designate a country promptly," the designated country is nonresponsive or unwilling to accept the person, or removal to the designated country would prejudice U.S. interests. 8 U.S.C. § 1231(b)(2)(C).

24. Third, still subject to § 1231(b)(3), the Immigration Judge may designate, or the Department may select, an alternative country of removal where the person “is a subject, national, or citizen,” unless such country is nonresponsive or unwilling to accept the person. 8 U.S.C. § 1231(b)(2)(D).

25. Fourth, subject to § 1231(b)(3), the Immigration Judge may designate or the Department may select, certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen’s port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States; (iv) where the noncitizen was born; (v) having sovereignty over the noncitizen’s place of birth at the time of birth; or (vi) where the noncitizen’s birthplace is located at the time of the removal order. 8 U.S.C. § 1231(b)(2)(E)(i)-(vi). Only if removal to one of these countries is “impracticable, inadvisable, or impossible” may the Department remove the noncitizen to “another country whose government will accept [the noncitizen].” 8 U.S.C. § 1231(b)(2)(E)(vii).

26. Critically, Congress carved § 1231(b)(3) out from the designation statutes, §§ 1231(b)(1) and (b)(2), providing that both subsections are “subject to paragraph (3).”

27. For persons in removal proceedings, the Immigration Judge must designate countries on the record, with enough notice and time to permit a noncitizen who fears persecution or torture in the designated country or countries to file an application for protection. 8 C.F.R. § 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvise .

. . that he or she may apply for asylum in the United States or withholding of removal to those countries.”).

28. Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States’ obligations under international law. See United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol”).

29. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment.

30. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that “[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or

(b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow the noncitizen to apply for protection. *Id.*

31. For these reasons, if the Department designates a new country of removal after the completion of removal proceedings, the Immigration and Nationality Act, the Due Process Clause, and binding international agreements obligate the Department to provide meaningful notice and an opportunity to present a fear-based claim prior to carrying out the deportation. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country. Likewise, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened.

DISCUSSION

32. Due to the ambiguities of the 2004 Immigration Judge Order, it is unclear on what statutory basis the Department is currently detaining Mr. Batooie in advance of a potentially imminent removal—8 U.S.C. § 1226(a) [for a person awaiting a decision from an Immigration Judge on whether he is to be removed from the U.S.], or 8 U.S.C. § 1231 [for a person with a final order of removal]. However, under either scenario, it would be unlawful for the Department to detain and remove Mr. Batooie without additional, required statutory steps.

33. If the Department is claiming to detain Mr. Batooie under § 1226(a), then he has a right to seek a bond from an Immigration Judge and apply for any available

forms of relief from removal. 8 U.S.C. §§ 1226(a)(2), 1229a(c)(4). He has not been given a chance to do either.

34. If the Department is detaining Mr. Batoorie under § 1231, such action would be unlawful where the 2004 Immigration Judge Order did not include an explicit order of removal.

35. Putting aside the lack of an explicit order of removal, if the Department is operating under a theory that Mr. Batoorie was granted withholding of removal by the Immigration Judge, there is no indication on the 2004 Order stating to which country removal has been withheld. Absent that information, the Department would be barred from detaining Mr. Batoorie and removing him to *any* country.

36. Even if the Immigration Judge withheld removal to Iran, and the Department has detained Mr. Batoorie with the intent of deporting him to Iran, it must first reopen proceedings and prove to the satisfaction of an Immigration Judge that his life and freedom is no longer at risk. It has not done so.

37. And even if the Immigration Judge withheld removal to Iran, but it is the Department's intent to remove Mr. Batoorie to an alternate country, the Department must first provide meaningful notice and an opportunity to present a fear-based claim prior to carrying out the deportation. It has not done so.

REQUIREMENTS OF 28 U.S.C. § 2243

38. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional

time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

39. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

40. The allegations in the above paragraphs are realleged and incorporated herein.

41. The Respondents' detention of Mr. Batooie with the presumed intent of deporting him to an unnamed country violate the Due Process Clause. He has not been provided a meaningful opportunity to present a claim for protection from future persecution on account of his religion.

COUNT TWO

Violation of 8 U.S.C. §§ 1226(a) & 1229a and Implementing Regulations

42. The allegations in the above paragraphs are realleged and incorporated herein.

43. To the extent that Respondents are detaining Mr. Batooie under 8 U.S.C. § 1226(a) with the intent of deporting him to an unnamed country, their actions are unlawful because they are depriving him of the opportunity to apply for bond and for relief from removal.

COUNT THREE

Violation of 8 U.S.C. § 1231(b) and Implementing Regulations

44. The allegations in the above paragraphs are realleged and incorporated herein.

45. To the extent that Respondents are detaining Mr. Batoorie under 8 U.S.C. § 1231 with the intent of deporting him to an unnamed country, their actions are unlawful where:

- a. The Immigration Judge's 2004 Order does not contain an order of removal.
- b. The Immigration Judge's 2004 Order indicates that removal proceedings were terminated.
- c. The Immigration Judge's 2004 Order does not designate a country of removal.
- d. The Immigration Judge's 2004 order does not limit the country for which withholding was granted.
- e. Assuming Iran to be the designated country of removal, and the Department intends removal to Iran, the Respondents have not successfully moved to reopen the Immigration Judge's 2004 Order.
- f. Assuming Iran to be the designated country of removal, and that the Department intends removal to a different country, the Respondents have not provided Mr. Batoorie an opportunity to seek protection from removal to that alternate country.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare that Petitioner's detention and removal to an unnamed country violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), 8 U.S.C. § 1229a, and/or 8 U.S.C. § 1231(b).
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately or schedule a bond hearing before an Immigration Judge.
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law.
- (6) Grant any further relief this Court deems just and proper.

Dated: July 2, 2025

Respectfully submitted,

/s/ Mark Robert Barr

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Hossein Batoorie, and submit this verification on his behalf.

I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 2nd day of July 2005

/s/ Mark Robert Barr
Counsel for Petitioner
Mark Robert Barr