

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

Civil Action No.: 25-cv-02059-DDD-STV

HOSSEIN BATOUIE,

Petitioner,

v.

JUAN BALTAZAR,

Acting 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.

PETITIONER'S OPPOSED MOTION FOR RELEASE FROM DETENTION

I. INTRODUCTION

Petitioner, Hossein Batooei, moves this Court to order his release from detention during the pendency habeas proceedings. Petitioner has appealed the August 21, 2025 Immigration Judge (IJ) decision regarding an alleged 2004 removal order¹ which forms the basis for the Respondents' assertion of authority to detain him. As explained in Petitioner's Reply to Respondents' Supplemental Response to OSC, ECF No. 41 at p. 5, that appeal renders the IJ decision nonfinal, thus DHS may not rely on the recent decision to support their detention of Petitioner.

Petitioner submits that resolution of that agency appeal (including the likelihood of remand² to the IJ) should precede any decision on Petitioner's habeas. Petitioner's continued detention during the pendency of the administrative appeal (and any further IJ proceedings), is unwarranted where Petitioner is neither a flight risk nor a danger.


¹ The 2004 summary order does not contain a removal order, rather it indicates that proceedings were *terminated*. Similarly, the recording of the 2004 hearing does not contain or even refer to a removal order. *See attached* Transcript, Ex. A. The original cassette recording of the November 10, 2004 hearing—recently made available for review by EOIR—confirms that Petitioner's grant of withholding of removal, withdrawal of his applications for asylum and protection under the Convention Against Torture (CAT), and waiver of his appeal were the result of an agreement with DHS. The agreement did not include acceptance of a removal order. *Id.*

² The August 21, 2025 IJ decision was made without the benefit of Petitioner's opposition or argument as the result of Respondent DHS's violation of this Court's July 31, 2025 order, ECF No. 29, requiring that "respondents must keep the petitioner fully informed ... of any current proceedings in immigration court involving the petitioner." Magistrate Judge Varholak found "that the discovery dispute contemplated during [the October 27, 2025] proceedings has been resolved by way of stipulation between the Parties." That stipulation led to the production of a joint statement regarding the discovery violation which will be filed with the Board of Immigration Appeals (BIA). *See attached* Joint Statement, Ex. B. Petitioner anticipates filing a motion to remand at the BIA based on the discovery violation, as reflected in the Joint Statement. Ex. B.

Petitioner has now been detained for *over four months* without a mandated custody review, much less a clear basis for detention. Even if this Court believes that waiting on a final ruling from the agency is unnecessary, release during the pendency of the habeas petition is still warranted where Respondents have failed to follow agency procedures for identifying a country of removal, or for assessing the continued need for discretionary detention.

In support of this motion for release, Petitioner states as follows:

II. RELEVANT PROCEDURAL HISTORY

Hossein Batoorie is a 60-year-old  convert from Iran who was detained by DHS on June 22, 2025. He has challenged the legality of his detention to the extent that it was based on a facially defective 2004 written summary order, issued by IJ Anderson in Los Angeles, which: (1) granted withholding of removal but did not order removal, (2) did not indicate to which countries removal would be withheld, and (3) terminated proceedings. ECF No.1-1.

Respondents have acknowledged the ambiguities on the face of the written summary order. ECF No. 16 at 2. According to Respondents, contemporaneous DHS notes—never produced by Respondents—indicate Petitioner withdrew his asylum application and the IJ granted withholding of removal to an unspecified country. ECF No. 24-1, ¶ 19. Those notes, however, do not indicate the entry of a removal order, or that termination was ordered erroneously. *Id.* No contemporaneous immigration court notes have been provided to Petitioner that contradict or further explain the summary order. While a court-produced *copy* of the audio recording of the hearing was found to be “essentially blank, containing only hissing or white noise,” ECF No. 24-1, ¶ 25, the recently produced *original* cassette recording of Petitioner’s 2004 proceedings does contain recognizable audio. Ex. A.

In the face of this apparent ambiguity, and without benefit of the original recording, on July 9, 2025, and again on July 23, 2025, DHS counsel filed a motion with the immigration court, asking it to “clarify” the 2004 termination/withholding order.³ ECF No. 35; Ex. B.

On August 21, 2025, IJ Rooyani granted the DHS motion. Noting that she had “reviewed the record,” but without specifying what documents or materials she considered, she held that:

- (1) IJ Anderson, had, in fact, not ordered removal in 2004, but that failure was allegedly justifiable because it occurred prior to the Board’s decision in *I-S- & C-S-*, 24 I&N 432 (BIA 2008), and that a removal order to Iran would be entered now, *nunc pro tunc* to 2004;
- (2) IJ Anderson had, in fact, ordered termination in 2004, but because “the termination of proceedings will no longer be necessary,” that termination order would be “stricken” as of 2025;
- (3) the parties agreed in 2004 that Petitioner’s application for asylum would be withdrawn; and
- (4) IJ Anderson granted withholding of removal in 2004.

ECF No. 37-1.

On September 19, 2025, Petitioner timely filed an administrative appeal of IJ Rooyani’s order with the BIA. His opening brief is due on October 30, 2025, as is the DHS response brief. *See attached* Briefing Schedule, Ex. C. Briefing may be delayed while an anticipated remand motion is under review.

³ The actual history of the DHS motion is more complicated, as reflected in Petitioner’s Letter Brief to the Court regarding Respondents’ violation of this court’s discovery order, ECF No. 35, and the parties’ Joint Statement, Ex. B. Respondents’ failure to keep Petitioner fully informed of their pending motion to clarify before the immigration court prevented the IJ from hearing Petitioner’s opposition to the motion.

III. DISCUSSION

A federal district court has “inherent power” to release a petitioner pending a hearing and decision on his habeas application. *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981). To obtain interim release, a habeas petitioner must “make a showing of exceptional circumstances *or* demonstrate a clear case on the merits of his habeas petition.” *United States v. Palermo*, 191 F. App’x 812, 813 (10th Cir. 2006) (citing *Pfaff*, 648 F.2d at 693). Petitioner can satisfy either factor.

A. Exceptional Circumstances

Petitioner can demonstrate exceptional circumstances where: (1) the putative removal order that Respondents rely on as the source of their detention authority is the subject of a pending administrative appeal; (2) even assuming the current existence of a final removal order—which cannot be established by any contemporaneous record—Respondents have failed to follow their own procedures for carrying out a third-country removal; and (3) Respondents have failed to follow their own regulations for assessing the need for continued discretionary detention pending removal.

1. *Pending BIA Appeal Regarding Disputed Removal Order*

A person adversely impacted by an IJ decision has the right to appeal that decision. 8 C.F.R. §§ 1003.1(b)(3), 1003.38, 1240.15. “Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first.” 8 C.F.R. § 1003.39. Accordingly, where the right to appeal *is* exercised, an IJ decision does not become final until review by the BIA. *Id.*

Petitioner exercised this right by filing an appeal notice, challenging the IJ’s decision to grant the DHS motion to clarify, striking the termination order as no longer necessary, and

ordering removal to Iran, *nunc pro tunc* to 2004, in violation of Respondent's settled expectations and detrimental reliance on his 2004 agreement with DHS. Exs. A, C. Should the Board sustain his appeal and agree that proceedings were terminated in 2004, Respondents would have no basis on which to detain Petitioner. Accordingly, it would be prudent for this Court to wait for a decision from the Board before rendering a final decision on the habeas.

Respondents contend that Petitioner cannot appeal because both parties waived appeal in 2004 (without acknowledging the underlying agreement that formed the basis for that waiver, Ex. A). ECF No. 39 at 4. But this is putting the cart before the horse. Petitioner is challenging the IJ's 2025 decision to order removal *nunc pro tunc* and to strike the agreed-upon 2004 termination order. If the Board affirms the IJ, then it might be too late to file an appeal of a 2004 order.⁵ Regardless, until the Board rules on the appeal and any motion to remand, it remains an open question whether Petitioner even has a removal order, and if so, what is the date of that order.

Also, the recent availability of the audio recording from the 2004 hearing clearly shows that Petitioner (though counsel) and DHS entered into an agreement that he would accept a grant of withholding, in exchange for withdrawing his applications for asylum and CAT protection. In the explicit discussion of the agreement before the IJ, there is no indication that Petitioner agreed to accept an order of removal to Iran, nor was an order of removal entered by the IJ. Ex. A. Instead, then-counsel for Petitioner, Hossein Varzandeh, noted that the agreement was entered

⁵ Or it might not. Given that Petitioner's waiver of his appeal rights was explicitly conditioned upon the agreement with DHS to grant withholding and terminate proceedings, any disturbance of the original terms would likely void the waiver and allow for a late-filed appeal. Ex. A, p. 4 at ln 1-3; *see also Matter of Morales-Morales*, 28 I&N Dec. 714 (BIA 2023) (BIA may equitably toll the appeal deadline where a party can show that extraordinary circumstances prevented timely filing).

into “in the totality of the circumstances.” Presumably, those circumstances included the termination of proceedings and the lack of a removal order. Further, Petitioner waiver of appeal was explicitly conditioned on DHS’s agreement. Ex. A, p. 4, ln. 3 (“[...] we waive appeal by our agreement with the government.”).

2. *Respondents’ Failure to Follow Procedures for Third-Country Removal*

Even if this Court decides *not* to wait for the Board to rule on Petitioner’s challenge to the IJ’s 2025 decision striking the prior termination order and issuing a *nunc pro tunc* removal order, another exceptional circumstance warranting release is the Respondents’ failure to follow its own procedures for carrying out a third-country removal.

Claiming there is a valid removal order, with removal withheld only to Iran, Respondents have indicated their intention to remove Petitioner to a third country. ECF #24-1, ¶ 27. That process is governed by a March 30, 2025, DHS policy memorandum entitled ‘Guidance Regarding Third Country Removals,’ outlining DHS policy and procedure on third-country removals for individuals with final removal orders. *See attached* March 30 Memo, Ex. D. Under the memo, the following steps are to be taken:

If the State Department receives credible diplomatic assurances from the third country that a person will not be persecuted or tortured, no further process is provided. If no such assurances are received, DHS will inform the person of the third country to which they will be removed. DHS will then refer the person for a screening interview before U.S. Citizenship and Immigration Services (USCIS) if the person affirmatively states a fear of persecution or torture in that country. The interview will generally take place within 24 hours of referral. At the interview, the person must establish it is “more likely than not” that they will be persecuted on a statutory ground or tortured in the third country. Ex. D.

If USCIS finds the noncitizen meets this standard and the person was previously in immigration court proceedings, DHS will refer the matter to Immigration and Customs Enforcement (ICE) to determine whether it will elect to file a motion to reopen or simply designate an additional country of removal. If USCIS finds the noncitizen does not meet the screening standard, they will be immediately removed to the third country. Ex. D.

To date, Respondents have provided no information to this Court or to Petitioner about their attempts to identify a third country or about their compliance with the March 30 Memo. Absent any evidence of compliance with the third-country removal process, it must be assumed that Respondents have done nothing and the Court may infer that Respondents' detention of Petitioner was without legitimate purpose and essentially punitive, after having targeted Petitioner for his national origin.⁴ Petitioner should not remain detained if the Respondents have not taken any required steps to affect a third-country removal.

3. *Respondents' Failure to Conduct a Post-Order Custody Review*

Assuming, for the sake of argument, that Respondents are currently relying on a valid removal order, the governing regulations do not allow for continued detention beyond a 90-day removal period without agency review of the propriety of continued discretionary detention. Respondents have never afforded Petitioner that minimum process. Had they done so, he would have been able to demonstrate that he is neither a flight risk nor a danger.

⁴ See, e.g., *Arrested for being Iranian: How a war in the Middle East gave ICE new targets at home*, PRISM (October 8, 2025), available at: <https://prismreports.org/2025/10/08/iranian-immigrants-deportation-iran/>; *Texas Civil Rights Project challenges ICE detention of Iranian nationals after US strikes*, Texas Public Radio (October 23, 2025), available at: <https://www.tpr.org/border-immigration/2025-10-23/texas-civil-rights-project-challenges-ice-detention-of-iranian-nationals-after-us-strikes>.

The Department's authority to detain a non-citizen pending his deportation is limited to a 90-day "removal period" which starts with the issuance of an administratively final order of removal. 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien."); 8 U.S.C. § 1231(a)(1)(A)(i) ("The removal period begins ... on ... [t]he date the order of removal becomes administratively final.") Assuming the Respondents are correct, that there is a valid removal order now in the record, issued *nunc pro tunc* to 2004, then Petitioner's current detention would be more than two decades outside the statutory removal period for mandatory detention.⁵

After the expiration of the 90-day removal period, the Respondents only have discretionary authority to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(6), as an alien (allegedly) ordered removed who is removable under 8 U.S.C. § 1227(a)(1)(C) for having violated the terms of his prior nonimmigrant status. However, it would also have the statutory permission to release him, subject to supervision and restrictions on his conduct and activities. 8 U.S.C. § 1231(a)(3).

Under the regulations, Respondents' discretionary authority to continue detention beyond the 90-day removal period is subject to periodic, mandatory agency review. The ICE District Director is required to conduct a post-order custody review (POCR) before the 90-day removal period expires if the person's removal cannot be accomplished during the removal period. 8 C.F.R. § 241.4(k)(1)(i). In conducting the POCR, officials must review the person's records and

⁵ Respondents detained Petitioner over four months ago, on June 22, 2025. ECF No. 1. Therefore, he would be outside the removal period *even if* that period is only deemed to begin at the start of detention (an interpretation contrary to the plain language of the detention statute), rather than the moment when a removal order became administratively final.

all documents submitted by the person and must inform the person of the decision. 8 C.F.R. § 241.4(h)(1).

The 90-day POOCR considers three criteria: (1) flight risk; (2) danger to the community; and (3) likelihood of obtaining travel documents. 8 C.F.R. § 241.4(e) & (f). The District Director or Director of the Detention and Removal Field Office decides whether the person is released from custody or continued in detention pending removal or further review of his custody status. 8 C.F.R. § 241.4(k)(1)(i).

In Petitioner's case, Respondents never conducted a 90-day POOCR (or, if they did, they did so without informing him of his right to present materials and testimony in support of release, in violation of 8 C.F.R. § 241.4(h)(1)). Had Respondents conducted a POOCR, Petitioner's lack of any criminal record, his compliance with all check-in requirements, the lack of any indicia of dangerousness, and the Respondents' own failure to start the third-country removal process all would have militated strongly in favor of release. The Respondents' failure to follow the rules regarding agency review of continued detention call for judicial intervention.

B. Clear Case on the Merits of the Habeas Petition

Petitioner has presented a strong habeas petition, with at least two legal issues strongly in his favor.

1. *Purposeful Termination Order from 2004*

Petitioner cited the existence of a termination order as a fatal defect in his 2004 proceedings, rendering him not subject to detention under 8 U.S.C. § 1231. ECF No. 34 at 6. He previously acknowledged that record evidence might show the termination order to have been a clerical mistake. *Id.* However, the August 21st order now makes clear that IJ Anderson *did*, in fact, purposefully enter a termination order in 2004. The checked box on the summary order was

not a clerical error. According to IJ Rooyani, IJ Anderson purposefully included a termination order due to an apparent belief that it was necessary to comply with 8 C.F.R. § 1240.12(c). ECF No. 37-1 at 2. This is further corroborated by the discussion on the record during Petitioner’s 2004 hearing. Ex. A.

This means that Petitioner’s case was terminated in November 2004. The government could have appealed termination, but did not, having entered into an explicit agreement with Petitioner to accept the order as final. Ex. A; ECF No. 37-1. If the government believed that termination was incorrect, DHS could have filed a motion to reconsider, stating the errors of facts and law in IJ Anderson’s order, or a motion to reopen, with any new, previously unavailable evidence about why termination was inappropriate. 8 C.F.R. §§ 1003.23(b). It did not. Finally, if DHS later regretted termination—regardless of their 2004 agreement—it could have initiated new removal proceedings against Petitioner. 8 U.S.C. § 1229. It did not.

Absent those remedies, proceedings that were terminated for 21 years can’t be revived, revised or reconstituted with the granting of a motion to “clarify.” Once the termination order became final in 2004—with DHS waiving appeal—IJ Rooyani lacked jurisdiction to unring that bell.

2. *Third-Country Removal without Due Process*

Petitioner has challenged his deportation to an unnamed alternate country without a meaningful opportunity to present a claim for withholding of removal from persecution in that country. ECF No. 1.

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

1208.16(f). However, where DHS attempts removal to an alternate country, a withholding grantee must be given an opportunity to pursue a protection claim for that alternate country.

8 U.S.C. § 1231(b)(2) sets out a 4-step process for designating countries of removal. 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). Second, *subject to § 1231(b)(3)*, the IJ or DHS 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). Third, still *subject to § 1231(b)(3)*, the IJ may designate, or DHS 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). Fourth, *subject to § 1231(b)(3)*, the IJ may designate or DHS 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 DHS remove the noncitizen to “another country whose government will accept [the noncitizen].” 8 U.S.C. § 1231(b)(2)(E)(vii).

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).” For persons in removal proceedings, the IJ must designate countries on the record, with enough notice to permit a noncitizen who fears persecution in the designated country 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]dvice . . . that he or she may apply for asylum in the United States or withholding of removal to those countries.”).

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”).

Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution are also fundamental due process protections under the Fifth Amendment. In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the DOJ and DHS 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). 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.*

Accordingly, if DHS designates a new country of removal after the completion of removal proceedings, the INA, the Due Process Clause, and international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim prior to 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 to permit the filing of a motion to reopen proceedings if the person claims a fear of removal to the third country. Likewise, an opportunity to present withholding claim is only meaningful if the noncitizen is not deported before proceedings are reopened.

The current procedure created by DHS for third-country removals, as detailed in its March 30th Memo, violates these minimal due process protections.

C. Petitioner Merits Release

Should the Court recognize its “inherent power” to release Petitioner pending a decision on his habeas petition and further determine that his case presents either exceptional circumstances *or* a clear case on the merits, then he will be able to show he merits release as a matter of discretion. He has no criminal history. He has no history of fraud. He is a practicing Christian and well-respected in the community of Christian Iranian expatriates. He has complied with DHS requests to appear for check-ins. There are no indications that he is either a flight risk or a danger.

D. Respondents’ Position

Respondents oppose release.

IV. PRAYER FOR RELIEF

WHEREFORE Petitioner moves for immediate release.

Dated: October 28, 2025

Respectfully submitted,

/s/ Laura L. Lichter
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CERTIFICATE OF COMPLIANCE

Counsel for Petitioner hereby certifies that the foregoing motion complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

/s/ Mark Robert Barr

CERTIFICATE OF SERVICE

I certify that on October 28, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorneys for Respondents by email

V. William Scarpato III
Nick Deuschle

/s/ Mark Robert Barr