

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

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

HOSSEIN BATOOIE,

Petitioner,

v.

JUAN BALTAZAR,

Acting Warden, Aurora ICE Processing Center,

ROBERT HAGAN,

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.

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**PETITIONER'S REPLY  
TO RESPONDENTS' RESPONSE IN OPPOSITION (ECF No. 53)  
TO PETITIONER'S MOTION FOR RELEASE FROM DETENTION (ECF NO. 51)**

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Two days after the summer solstice, Respondents detained Mr. Batooe. ECF No. 53, pg. 3. Mr. Batooe, in turn, immediately asked this court for habeas relief, with his petition filed on July 2nd. ECF No. 1. With the winter solstice looming less than three weeks away, Respondents continue to deprive Mr. Batooe of his liberty, with the habeas petition still unadjudicated.

Resolution of the habeas is stalled, and will presumably remain stalled, by an unresolved ambiguity about the statutory basis for the Respondents' detention authority. The government points to 8 U.S.C. § 1231, which gives the government the authority to detain people with

administratively final orders of removal. ECF No. 53, pg. 3. But whether Mr. Batoioe has an administratively final order of removal from 2004 is the subject of an on-going agency appeal which may take several months to resolve. ECF No. 51, pgs. 5-6. And even if the agency finds there to be such an order, Mr. Batoioe would have the right to seek judicial review before the circuit court. 8 U.S.C. § 1252(b)(2) (limiting judicial review of a removal order to the court of appeals); *Riley v. Bondi*, 145 S. Ct. 2190 (2025) (holding that the 30-day filing deadline is a non-jurisdictional claim-processing rule subject to equitable exceptions including waiver and forfeiture, and possibly equitable tolling). In the meantime, while waiting for final agency or judicial clarification regarding the alleged 2004 removal order and, in turn, resolution of his habeas petition, Mr. Batoioe has been harmed by the Respondents' willful failure to follow its own regulations for periodically reviewing the propriety of continued detention.

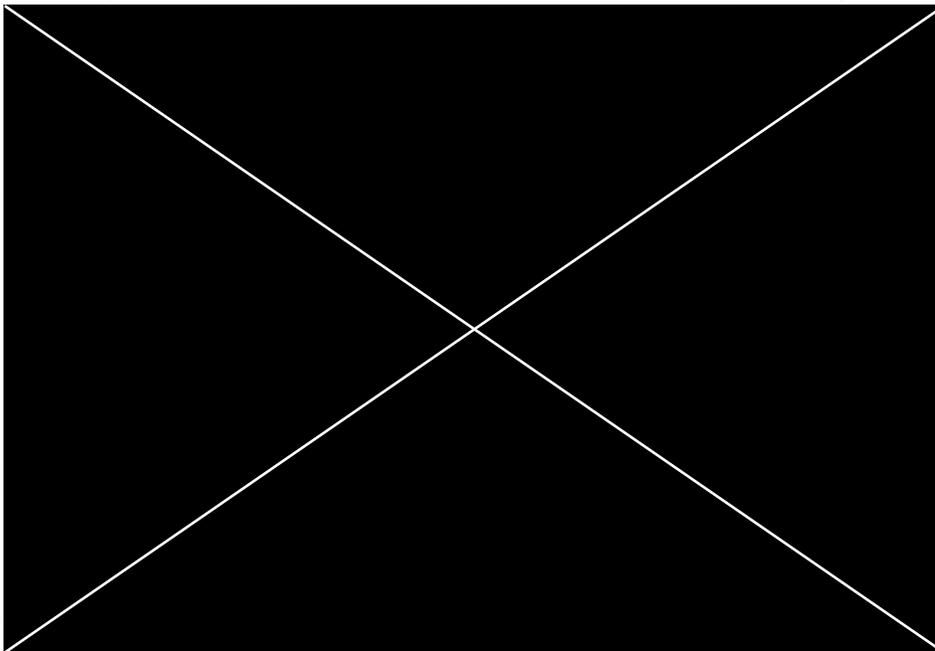
Given the likelihood of protracted administrative and judicial review of the threshold question of whether the record contains a valid removal order, Mr. Batoioe has moved this Court for release during the pendency of his habeas petition. ECF No. 51. Petitioner's request should be approved because this Court has the inherent authority to order his release during the pendency of a habeas petition, and this case presents exceptional circumstances or a clear case on the merits of the petition. Even if analyzed under the rubric for issuing a preliminary injunction, the same compelling circumstances militate in favor of release.

**I. Notes on the Respondent's Recitation of Facts**

While the procedural history outlined by the Respondents is generally accurate (ECF No. 53, pgs. 2-5), Petitioner notes the following additional clarifications.

The final disposition reached at Mr. Batoioe's removal proceedings in November 2004 was the product of a negotiated settlement between counsel for DHS and counsel for Mr.

Batooie, in which Mr. Batooie agreed to an offer of withholding of removal in exchange for a withdrawal of his bona fide asylum claim. ECF No. 51, Ex. A. The parties did not discuss whether a removal order would also be issued with the grant of withholding. *Id.* The summary decision memorializing the agreement of the parties did not indicate the issuance of a removal order but instead noted that proceedings had been terminated. ECF No. 1, Ex. 1. DHS waived an appeal of the termination order and did not otherwise contest the lack of a removal order. *Id.* An EOIR database entry prepared two years later indicated that the final disposition of the case was “NOT R/O,” indicating the lack of a removal order.



On August 21, 2025, the Immigration Judge in Los Angeles granted a DHS motion to clarify. In addition to entering a removal order to Iran for the first time, *nunc pro tunc* to 2004 (ECF No. 53, pg. 4), the Immigration Judge also determined that the issuance of a termination order in 2004 was *not* a clerical error but a purposeful entry. ECF No. 51, Ex. B (JOINT STATEMENT OF FACTS).

After detaining Mr. Batoioe on June 22, 2025, Respondents did not initiate a post-order custody review (POCR) for nearly five months. ECF No. 53, pg. 5. Even after allegedly initiating a POCR on November 18th (the same day the Respondents filed its response to Mr. Batoioe's motion for release during the pendency of his habeas petition), the Respondents make no claim to having notified Mr. Batoioe of the custody review. ECF No. 53-1. Respondents make no claim to having scheduled Mr. Batoioe for an interview in connection with the POCR. *Id.*

Respondents make no claim to having pursued a third country removal beyond submitting removal requests to Azerbaijan, Kuwait, and Turkmenistan over five months ago, with two of those requests being denied and the third still unanswered. ECF No. 53-1.

## **II. Discussion**

### **A. Federal case law provides persuasive evidence that this Court has inherent authority to order Mr. Batoioe's release pending resolution of his habeas claim.**

Mr. Batoioe has argued that a federal district court has "inherent power" to release a petitioner pending a hearing and decision on his habeas application. ECF No. 51, pg. 5. The Tenth Circuit has explicitly recognized the availability of a bond in the context of a pending habeas petition. *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *see also United States v. Zander*, 669 F. App'x 955, 956 (10th Cir. 2016); *Lucas v. Hadden*, 790 F.2d 365, 367 (3d Cir. 1986); *Baker v. Sard*, 420 F.2d 1342, 1343 (D.C. Cir. 1969) ("Release is available in a habeas corpus action, which is a civil collateral attack").

Respondents note that "the Tenth Circuit has never applied this doctrine in the context of an immigration habeas." ECF No. 53, pg. 10. This is correct. In *Pfaff*, the circuit court examined a habeas corpus petition brought by petitioners with pending warrants for their arrest pursuant to criminal charges who challenged their extradition to another state. The court found that

“[d]espite the lack of specific statutory authority, it is within the inherent power of a federal district court to enlarge a state prisoner on bond, pending hearing and decision on a petition for habeas relief.” *Id.* at 693 (citing *In re Wainright*, 518 F.2d 173, 174 (5th Cir. 1975)). In so doing, the Tenth Circuit set forth the test for such considerations, requiring “a showing of exceptional circumstances . . . for such relief, or a demonstration of a clear case on the merits of the habeas petition.” *Id.* A showing of one, or the other, is sufficient to prevail on a motion for bond pending the outcome of the underlying habeas petition. *Id.*; *United States v. Wellington*, No. 25-2001, 2025 WL 1178460, at \*1 (10th Cir. Apr. 23, 2025) (recognizing the disjunctive test set forth in *Pfaff*); *but see King v. Ciolli*, No. 1:23-CV-00519-CNS, 2023 WL 11196896, at \*1 (D. Colo. Sept. 5, 2023) (discussing “the apparent tension between federal appellate courts” as to whether the test is disjunctive or conjunctive and finding that petitioner failed to meet either of the required elements to establish eligibility for release during the pendency of habeas proceedings).

The Tenth Circuit has applied the *Pfaff v. Wells* standard outside the 28 U.S.C. § 2254 context to determine whether someone imprisoned “seeking federal habeas relief” can obtain “release pending a determination on the merits.” *United States v. Palermo*, 191 F. App’x 812, 813 (10th Cir. 2006). At least one district court has followed suit in the context of a habeas for someone challenging the legality of detention ordered by an Indian tribe pursuant to 25 U.S.C. § 1303. *Coriz v. Rodriguez*, 347 F. Supp. 3d 707, 715 (D.N.M. 2018). Therefore, it is the most appropriate standard for this Court to adopt when assessing Mr. Batoonie’s request for release.

Although the Tenth Circuit has yet to address the precise issue of release during pending habeas proceedings in the immigration context, the Second Circuit has endorsed

district courts' authority under such circumstances. *Mapp v. Reno*, 241 F.3d 221, 229 (2nd Cir. 2001) (holding that federal courts have inherent authority to grant bail to habeas petitioners who are in immigration detention). Various district courts agree. *See, e.g., Ozturk v. Trump*, 779 F. Supp. 3d 462, 486 (D. Vt. 2025) (recognizing that *Mapp* authorizes possible immediate release for a non-citizen in immigration detention during the pendency of his habeas proceedings); *Suri v. Trump*, No. 1:25-CV-480 (PTG/WBP), 2025 WL 1392143, at \*1 (E.D. Va. May 14, 2025) (ordering immediate release on personal recognizance during the pendency of petitioner's habeas proceedings); *Mahdawi*, 2025 WL 1243135, at \*14 (granting immediate release on personal recognizance pending the outcome of the habeas proceeding); *Avendano Hernandez v. Decker*, 450 F. Supp. 3d 443 (S.D.N.Y. 2020) (ordering immediate release of petitioner under *Mapp*); *Coronel v. Decker*, 449 F. Supp. 3d 274, 290 (S.D.N.Y. 2020) (same).

Given this persuasive authority, this Court should find that it has the inherent authority to order release during the pendency of an immigration-based habeas petition.

**B. Respondent's failure to follow its regulations for post-order custody reviews constitutes an exceptional circumstance justifying immediate release.**

Under 8 U.S.C. § 1231(a)(2)(A), many noncitizens are subject to mandatory detention during the so-called "removal period," defined as the 90 days immediately following the entry of a final order of removal. 8 U.S.C. §§ 1101(a)(47), 1231(a)(1); 8 C.F.R. § 1241.1(a).

If an individual "does not leave or is not removed within the removal period," then he "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added). However, for certain people release on an order of supervision after the removal period is discretionary rather than mandatory. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(a)(3).

But even where the government makes a discretionary decision to continue detention, it may not hold that person longer than the time reasonably necessary to secure removal. In *Zadvydas*, the Supreme Court suggested that detention beyond the removal period raises “serious constitutional concerns.” 533 U.S. 678, 682 (2001). It then addressed the statutory ambiguity inherent in the word “may” in 8 U.S.C. § 1231§ (a)(6) and held that “read in light of the Constitution’s demands,” § (a)(6) “does not permit indefinite detention” for noncitizens in post-removal detention. *Id.* at 689. In fact, the Court decided that six months constituted a “presumptively reasonable” period in post-removal detention. *Id.* at 701.

The Supreme Court made this determination of presumptive reasonableness against a regulatory framework that mandated an agency custody review within approximately three months after a person’s prior release was revoked. 8 C.F.R. § 241.4(l)(3). In that agency review, the government must provide a notification to the person of the custody review and schedule him for an interview. *Id.* The custody review will include a final evaluation of any contested facts and a determination of whether continued detention is warranted. *Id.*

In Mr. Batoioie’s case, however, the government failed to initiate the mandatory three-month review for nearly five months. ECF No. 53-1. Even then, it failed to notify him of the review or schedule him for an interview, in violation of 8 C.F.R. § 241.4(l)(3). ECF No. 53-1.

Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures

are possibly more rigorous than otherwise would be required.”). Respondents here violated agency regulations governing the mandatory procedure for assessing the propriety of continued detention. Such due process violations constitute extraordinary circumstances militating in favor of release. *See, e.g., Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D. N.Y. 2025) (holding that where ICE did not follow its own regulations regarding re-detention, the non-citizen’s due process rights were violated and he was entitled to release); *Rombot v. Souza*, 296 F. Supp. 3d 383, 386-89 (D. Mass. 2017)) (holding that where ICE fails to adhere to regulations designed to protect fundamental rights, the challenged action is invalid); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. 2025).

**C. Respondent’s failure to act on a possible third-country removal for over five months also constitutes an exceptional circumstance justifying immediate release.**

Where the government makes a discretionary decision to continue detention after release revocation, it may not hold that person longer than the time reasonably necessary to secure removal. After this, if the detained person shows there is no significant likelihood of removal in the reasonably foreseeable future, the government must come forward with evidence to rebut that showing or the person must be released, again subject to conditions of supervision. 8 C.F.R. § 241.4(b)(4) (noting that the post-removal period custody review procedures do not apply where there is no significant likelihood that a person can be removed in the reasonably foreseeable future); *see also Zadvydas*, 533 U.S. 678, 699-701 (holding that after six months of post-removal order detention, the government generally may not continue to confine someone for whom there is no significant likelihood of removal in the reasonably foreseeable future and that the

detainee's release should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances [ ... ].”

In twenty days, Respondents will have held Mr. Batooi in detention for six months. With their response to Mr. Batooi's motion for release, ECF No. 51, it is now apparent that virtually no action has been taken on effectuating his removal to a country other than Iran. Immediately after detaining Mr. Batooi at the end of June, the government sought permission to remove him to Azerbaijan, Kuwait, and Turkmenistan. ECF No. 53-1. By the end of June, the government was aware that Turkmenistan and Kuwait had turned down the offer to accept Mr. Batooi. *Id.* No answer was ever received from Azerbaijan. *Id.* Respondents make no claim to following up with Azerbaijan in the last five months or seeking out additional countries for a possible removal. *Id.* In the face of such inaction, it cannot be said that there is a significant likelihood of Mr. Batooi's removal in the reasonably foreseeable future. This constitutes another exceptional circumstance supporting an immediate release.

**D. The government's failure to provide adequate medical care also constitutes an exceptional circumstance justifying immediate release.**

Respondents correctly note that Mr. Batooi did not point to health concerns as a justification for his release pending resolution of his habeas claim. ECF No. 53, pgs. 9, 11-12. Since the submission of his motion for release, however, Mr. Batooi has received a copy of his medical file from the detention facility. Those records indicate that Mr. Batooi has been repeatedly denied the proper medications for his cardiac issues (history of stents) and gout. *See* attached medical records. That deprivation of care in custody constitutes another exceptional circumstance in favor of immediate release.

**III. Conclusion**

For the reasons set forth in this reply and in the original motion, Mr. Batoioe respectfully asks for release during the pendency of his habeas petition.

Dated: December 2, 2025

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

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

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