

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

Civil Action No.: 25-cv-2059

Hossein Batoorie,

Petitioner,

v.

Juan Baltazar,

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.

VERIFIED AMENDED PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

The Petitioner, Hossein Batoorie, is a 60-year-old  convert from Iran. He has lived in the U.S. for over 25 years. The Department of Homeland Security (“DHS”) detained Mr. Batoorie nearly eight months ago, on June 22, 2025, for the purpose of removing him to a country other than Iran. At the time of detention, the government did not have a removal order.

At first, the government insisted that, despite the face of a summary order indicating that proceedings had been terminated in 2004, there must be a more fulsome record reflecting an order of removal. The government sought and received multiple extensions to obtain the recording of the 2004 proceedings, a record which they believed would provide post-facto justification for the June 22, 2025 detention. They were disappointed, but undeterred, when further discovery revealed instead that DHS had agreed to a grant of withholding and termination of the 2004 removal process in exchange for Mr. Batoorie withdrawing his claim to asylum and waiving his right to appeal.

Without notice to Mr. Batoorie or his counsel, the government then asked an Immigration Judge to “clarify” the 2004 order while this litigation was pending. As a result, an Immigration Judge issued a removal order in August 2025, purportedly *nunc pro tunc* to 2004, and vacated the 2004 order terminating proceedings.

Mr. Batoorie’s timely-filed appeal of the August 2025 order remains pending. As a result, the purported removal order is non-final and cannot be relied upon *post facto* to support the government’s initial decision to detain, or to continue to detain, Mr. Batoorie, much less effect his removal. And yet, the government continues to insist that its detention of Mr. Batoorie is both lawful and proper with their stated intention of executing

an order that has no legal weight. Further, discovery has revealed no attempts to actually find a third country to remove Mr. Batoioe since unsuccessful attempts initiated less than a week after his arrest. It goes without saying that the government has yet to identify any intended country of removal.

Despite Mr. Batoioe having no criminal history nor any indication of flight risk, the government has failed to follow even the most basic required reviews during this prolonged detention. When that review did take place—months out of time—the government inexplicably found him to be a danger to the community and a flight risk. As the government has been forced to disgorge more and more evidence from its files, this litigation makes clear that Mr. Batoioe is the unlucky victim of this administration's all-too-frequent litigation style in which the government will admit no mistake and instead, double down on their error at the expense of an innocent man.

The government's actions are illegal for four reasons. *First*, assuming the existence of a final removal order, the government has not provided Mr. Batoioe a meaningful opportunity to present a claim from future persecution on account of his religion in a country selected for his deportation. *Second*, the government's claimed authority to detain and deport Mr. Batoioe is premised on the existence of an administratively final order of removal, but there is no such final order. *Third*, even if an administratively final order of removal were to spring forth based on the August 2025 *nunc pro tunc* decision, the government's decision to detain Mr. Batoioe after more than two decades of freedom was premised on insufficient evidence of a significant likelihood of removal in the reasonably foreseeable future, in violation of the regulations and Mr. Batoioe's due process rights. *Fourth and finally*, again assuming the existence of a valid

removal order, Mr. Batooié's nearly eight-month detention has now become unconstitutionally prolonged.

II. 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 he is detained at the Aurora ICE Processing Center in Aurora, Colorado.

III. VENUE

5. Venue is proper because Mr. Batooié is 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. Batooié'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).

IV. PARTIES

6. Petitioner, Hossein Batoorie, is a 60-year-old native and citizen of Iran who entered the United States on a nonimmigrant visa in 2000. He was raised as a Muslim but converted to [REDACTED]. His apostasy put his life at risk were he to return to Iran and led to his seeking protection from removal. He has lived in the U.S. under a grant of withholding of removal since 2004.

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

8. Respondent Hagan is sued in his official capacity as the Field Office Director of the Denver ICE Office. ICE is a component agency of the Department of Homeland Security (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. Batoorie 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. Batoorie.

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. Batoioe pending a decision on whether he is to be removed from the United States. Respondent Bondi is a legal custodian of Mr. Batoioe.

V. STATEMENT OF FACTS

A. Lawful Entry on K-1 Visa

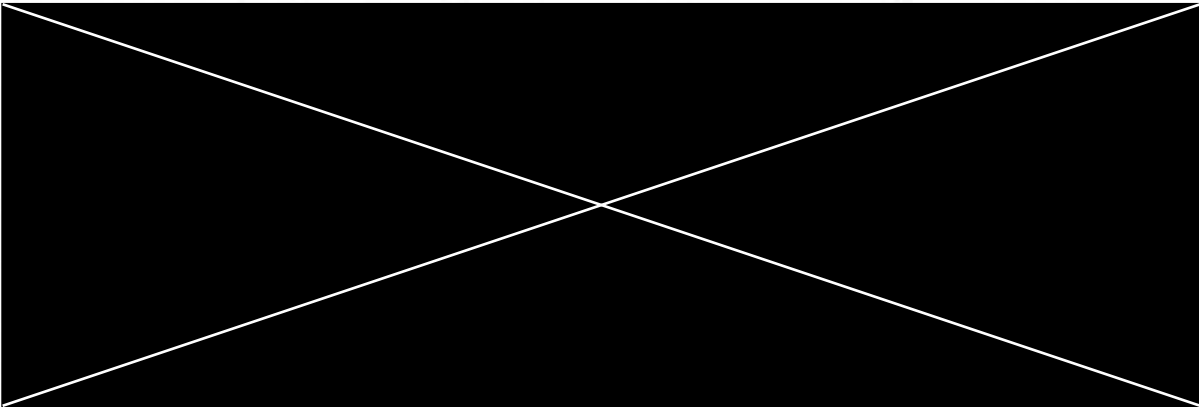
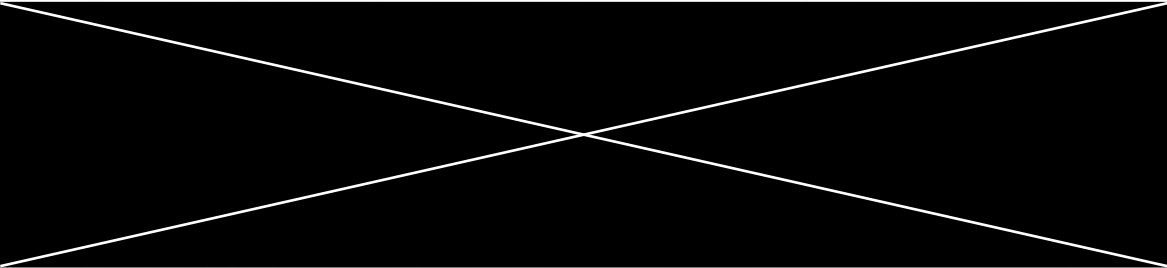
11. As noted, Hossein Batoioe is 60-year-old man from Iran. In 1998, he met a woman while on vacation in Europe. She was a U.S. citizen. They started a romantic relationship and, about one year later, decided to marry. Mr. Batoioe left Iran on August 1, 2000, and went to Turkey, where he was issued a K-1 visa. Upon his arrival in the U.S. on August 4, 2000, he stayed with his fiancée in Denver, Colorado.

B. Abandonment by Fiancée and Depression


12. Less than a week after his arrival, Mr. Batoioe's fiancée changed her mind and broke off their engagement, having reunited with her ex-husband. Mr. Batoioe moved in with his uncle in Denver, hoping that his fiancée would have a change of heart, and later with his brother, also in Denver. When it became clear that the relationship was over, he fell into a depression, leaving him emotionally unable to immediately return to his old life in Iran.





C. Conversion to

13. Trying to overcome his depression, Mr. Batoioe moved to Los Angeles, with thoughts of pursuing a music career. He lived with a roommate who had a book on



D. Affirmative Asylum Application

15. After the revelation of his baptism to his family, Mr. Batoie became scared of being tortured or killed in Iran for his apostasy. He searched for an attorney to help him file an asylum claim, eventually hiring Houman Varzandeh. The I-589 was filed with USCIS on September 12, 2003, less than five months after 

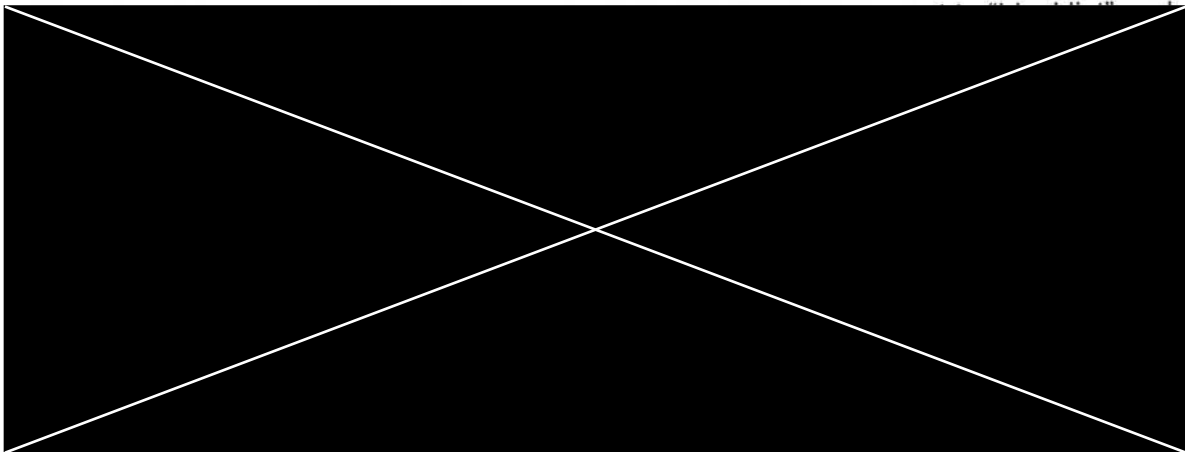
 He was interviewed in connection with that application on October 6, 2003. During that interview, the examiner asked Mr. Batoie if his life would have been in danger,  if the Iranian government had discovered that he was having regular discussions  starting in January 2003. Mr. Batoie indicated that *if the government knew about his conversations*, then yes, his name would have been put on a “blacklist” and his life would have been in danger even prior 



E. Referral to Immigration Court due to One Year Issue

16. On October 7, 2003, the Asylum Office decided to refer Mr. Batoorie's asylum claim to Immigration Court for further review. The agency noted correctly that Mr. Batoorie had not filed his I-589 within a year of his entry on a K-1 visa on August 4, 2000. It then noted that he qualified for an exception to the one-year filing deadline due to a change in personal circumstances, consistent with 8 C.F.R. § 208.4(a)(4)(i)(B) (2003), which allows for a late submission where an applicant's activities outside the country of feared persecution put him at risk. The officer noted that Mr. Batoorie's interest in [REDACTED] which began in January 2003, "caused him to be in violation of the Iranian government's and Muslim law."

17. However, the Asylum Office then found that Mr. Batoorie did not file his I-589 within a reasonable period of time given those changed circumstances, waiting until September 2003 to file his claim after he started meeting with [REDACTED]. The Asylum Office failed to note, however, that Mr. Batoorie only told his family about his [REDACTED]. It correctly noted that Mr. Batoorie had said that [REDACTED].



19. A merits hearing was held before Immigration Judge David Anderson in Los Angeles on November 10, 2004. No testimony was taken as counsel for DHS, Ms. Ngyuen, agreed to offer withholding of removal in exchange for a withdrawal of the asylum claim by Mr. Batoorie and his agreement to not further litigate the matter by formally waiving appeal. The exchange between the attorneys and Immigration Judge Anderson is noted below:

THE COURT: Counsel for the government, this case was reset for asylum merits. The asylum application has not yet been marked into the record. Any objections if the I-589 with the attached supporting documents B through H, if they're marked into the record as a group exhibit 2?

MS. NGYUEN: No, your honor.

THE COURT: ... will be marked into the record ... Counsel [inaudible] ... The one-year rule at issue is whether the respondent filed his application for asylum within a reasonable time period given the changed circumstances. I also had noted that the respondent had lived in the United States for quite some time before the changed circumstances. In fact, he has been out of status since November 3rd, 2000. I wasn't making a final decision on whether the respondent qualifies for an exception to the one-year deadline but I at least raised the issue. What do you want to do this morning? What application do you want to pursue? In other words, is there going to be an agreement on withholding only or is the respondent going to pursue asylum? And counsel for the government, feel free to weigh in if you would like.

MR. VARZANDEH: Yes, uh, your Honor, after the court raised that issue, the government attorney, Ms. Ngyuen, was gracious enough, along with the discussion with myself, to agree to a grant of withholding or restriction on removal if we waive any appeal. I discussed that at length with my client, Mr. Batoorie. I informed him of all the legal ramifications of the withholding of removal grant and in the totality of circumstances, he has agreed to accept the gracious offer of the government attorney, and I will then represent on his behalf that we will, with the court's permission, accept withholding of removal as a relief from the [unintelligible].

THE COURT: Will the respondent be withdrawing his applications for asylum and protection under Article 3 of the Convention Against Torture? If I grant withholding of removal?

MR. VARZANDEH: Umm, I don't ... perhaps [unintelligible] just go ahead and deny it, if you wish.

MS. NGYUEN: I would only, I would only agree to withholding grant if the respondent concedes to the one year bar.

THE COURT: Well, I'm not going to require the respondent to make concessions. However withdrawal simply eliminates the issues.

MR. VARZANDEH: Okay, we'll withdraw the asylum application.

MS. NGYUEN: Okay, that's fine.

THE COURT: All right, so I'll note that the ..., all the applications were withdrawn except for withholding of removal. Is the government going to oppose a grant of withholding of removal?

MS. NGYUEN: No.

THE COURT: Then I will issue an order granting withholding of removal.

MS. NGYUEN: Your honor, if I may, just one second.

THE COURT: Yes.

MS. NGYUEN: Could we get off the record for a minute? I need to check his prints.

THE COURT: Yes, you need some time off the record. Back on the record. While off the record, counsel for government looked into the fingerprinting. Does the government have anything to add?

MS. NGYUEN: No, your honor.

THE COURT: You also handed me a country report of human rights practices for the year 2003 for Iran. Any objections, counsel for the respondent, if it's marked into the record as exhibit number 3?

MR. VARZANDEH: No, your honor.

THE COURT: We've marked it to the record. Both sides accept the summary decision granting withholding of removal?

MS. NGYUEN: Yes, your honor.

MR. VARZANDEH: Yes, your honor.

THE COURT: Anything else from either party?

MS. NGYUEN: No, Your Honor.

MR. VARZANDEH: No, your honor.

THE COURT: Is it ... And I may have asked before, but I'll ask you again, is respondent reserving appeal or waiving appeal of this decision?

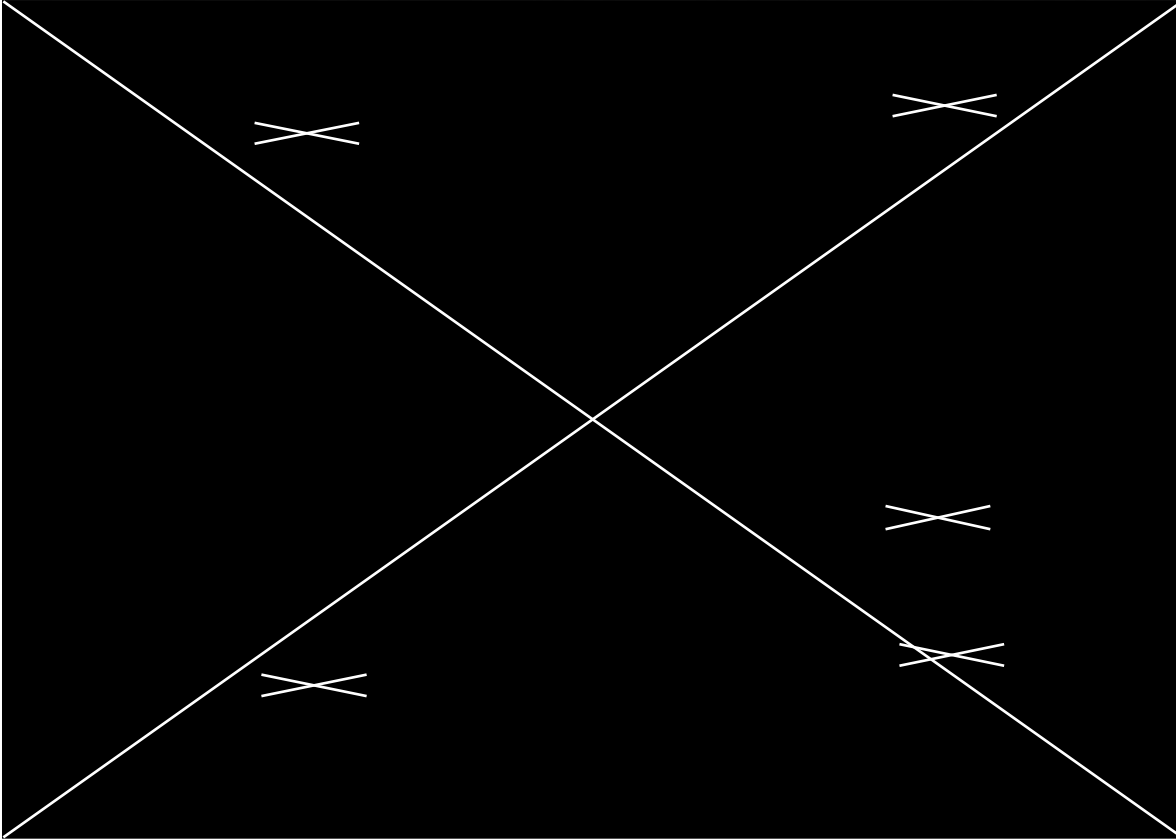
MR. VARZANDEH: No, we, we, uh, we waive appeal by our agreement with the government.

THE COURT: Counsel for the respondent, er... for the government?

MS. NGYUEN: We'll waive, thank you.

THE COURT: Hearing is closed.

20. The agreement of the parties and the Immigration Judge was then memorialized in a summary decision with checkboxes indicating that Mr. Batooié was granted withholding of removal and that proceedings had been terminated. Ex. A (2004 Summary Order Granting Withholding and Terminating Proceedings). The order reflected that Mr. Batooié had withdrawn his application for asylum, as well as his application for protection under the Convention Against Torture. The order did not include an order of removal nor specify a country of removal as removal had not been ordered. Mr. Batooié, as clear from the hearing transcript, waived his appeal as part of the bargain. The Department, too, waived appeal of the termination order or the lack of a removal order. The absence of a removal order was further documented in Mr. Batooié's A file in a data inquiry sourced from EOIR: the report showed that the final disposition was "NOT R/O" meaning the removal proceedings did *not* result in a removal order.



G. No Detention Following 2004 Immigration Judge Decision

21. Mr. Batoioe was not detained following the issuance of the Immigration Judge's administratively final order in 2004. He remained free from detention for the next twenty-one years.

H. 2025 Detention and Pending Habeas Petition

22. As noted above, DHS detained Mr. Batoioe on June 22, 2025, intending to deport him to an unidentified country other than Iran. This habeas petition was initiated shortly afterwards on July 2, 2025. The claims raised in the initial petition have been fully briefed.

I. 2025 DHS Motion to Clarify

23. In July 2025, DHS filed a motion to clarify with the West Los Angeles Immigration Court. DHS served a copy of the motion with Mr. Batoorie's counsel from the 2004 removal proceedings, Houman Varzandeh, at his 2004 business address, even though he was not counsel of record in connection with any motion to reopen or reconsider. DHS did not serve Mr. Batoorie with a copy of its motion, or provide a copy to Mr. Batoorie's counsel in the habeas proceedings, in which the existence (or not) of a removal order was a central issue.

24. On August 21, 2025, an Immigration Judge ruled on the Motion to Clarify, without any input by Mr. Batoorie or his counsel in the habeas proceedings.

J. IJ Grant of DHS Motion to Clarify and Issuance of *Nunc Pro Tunc* Removal Order

25. On August 21, 2025, Immigration Judge Rodin Rooyani in Los Angeles granted the DHS motion. Ex. B (2025 IJ Grant of DHS Motion to Clarify). Noting that she had "reviewed the record," but without specifying what documents or materials she had considered, she held that:

- (1) Immigration Judge 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 *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008), and that a removal order to Iran would be entered now, *nunc pro tunc* to 2004;
- (2) Immigration Judge 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 had agreed in 2004 that Mr. Batooié's applications for asylum and CAT protection would be withdrawn; and

(4) IJ Anderson had granted withholding of removal in 2004 but did not specify a country.

K. Pending Administrative Appeal of IJ Grant of DHS Motion to Clarify and Issuance of *Nunc Pro Tunc* Removal Order

26. Mr. Batooié filed a timely appeal of the Immigration Judge's August 21, 2025 decision with the Board of Immigration Appeals. It remains pending at this time rendering the order nonfinal and therefore without legal weight to support Mr. Batooié's detention.

L. DHS Unsuccessful Attempts to Designate a Country of Removal

27. As a result of discovery disputes in this litigation, DHS has provided records related to its attempts to deport Mr. Batooié to a country other than Iran. Those records show the following:

- On June 28, 2025, DHS asked the government of Turkmenistan to accept Mr. Batooié. Later that day, Turkmenistan said no, absent a valid tourist or business visa to enter the country. Mr. Batooié holds no such visa. ECF No. 53-1, ¶ 4.
- On June 28, 2025, DHS asked the government of Kuwait to accept Mr. Batooié. On June 30, 2025, Kuwait declined to take Mr. Batooié. *Id.*
- On June 30, 2025, DHS asked the government of Azerbaijan to accept Mr. Batooié. On July 1, 2025, Azerbaijan asked for proof that Mr. Batooié is a citizen of Azerbaijan. He is not, thus DHS did not respond. *Id.*

28. On information and belief, DHS has made no attempts to identify any other country of removal since June 28, 2025.

VI. STATEMENTS OF LAW

A. Withholding and Third Country Removal

29. 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).

30. 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).

31. 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).

32. Under current case law, 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). Prior to the issuance of this precedent decision, Immigration Judges frequently issued grants of withholding of removal without issuing an order of removal to be withheld. In some cases—such as Mr. Batoorie’s—Immigration Judges terminated cases upon finding a noncitizen eligible for such relief.

33. Presuming the entry of an actual removal order, 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 was ordered and has been withheld. 8 U.S.C. § 1231(b)(2)(D, E), 8 C.F.R. §§ 1208.16(f).

34. 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.

35. 8 U.S.C. § 1231(b)(2) sets out a 4-step process for designating countries of removal.

36. 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).

37. 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).

38. 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).

39. 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).

40. 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)."

41. 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]dvis[e] . . . that he or she may apply for asylum in the United States or withholding of removal to those countries.").

42. 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”).

43. 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.

44. 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.*

45. 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.

B. Detention After Issuance of Removal Order

1. During the Removal Period

46. When a final removal order is issued, a 90-day removal period commences, during which an individual is subject to mandatory detention. 8 U.S.C. §§ 1231(a)(1)(A), (2)(A); 8 C.F.R. § 241.3(a).

47. One exception to this default rule applies to foreign nationals for whom DHS has made a determination that there is no significant likelihood of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.4(b)(4), 241.13. A non-citizen with a final order of removal who is not placed in custody shall be subject to an order of supervision. 8 C.F.R. § 241.5.

2. After the Removal Period

48. Following the 90-day removal period, individuals “*may* be detained. 8 U.S.C. § 1231(a)(6) (emphasis added).

49. For individuals previously free from detention due to a determination that there was no significant likelihood of removal in the reasonably foreseeable future, DHS can revoke that freedom where the foreign national violated the conditions of his release. 8 C.F.R. § 241.13(i)(1). Absent such a violation, DHS can only detain a person based on a determination that there have been changed circumstances such that there

is *now* a significant likelihood that the non-citizen may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

50. Even where a person has been detained beyond the removal period, pursuant to 8 U.S.C. § 1231(a)(6), however, prolonged detention beyond the removal period raises “serious constitutional concerns.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

51. In *Zadvydas*, the Supreme Court 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. Following that period, if an individual provides “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government shall carry the burden of justifying continued detention. *Id.*

52. The Supreme Court then clarified in *Johnson v. Arteaga-Martinez* that: (1) individuals detained under § 1231 are not, as of right, provided a bond hearing after six months detention, and (2) the *Zadvydas* court applied the canon of constitutional avoidance and merely interpreted § 1231 not to permit indefinite detention. 596 U.S. 573, 576, 579 (2022). The *Arteaga-Martinez* Court followed suit and “implicitly recognized” a distinction between constitutional claims regarding prolonged detention and “the statutory prohibition against indefinite detention embodied in *Zadvydas*.” *Arostegui-Maldonado v. Baltazar*, No. 25-cv-2205-WJM-STV, 2025 WL 2280357, at *6 (D. Colo. Aug. 8, 2025); *Juarez v. Choate*, No. 1:24-cv-00419-CNS, 2024 WL 1012912,

at * 6 (D. Colo. July 19, 2024); *see also Arteaga-Martinez*, 596 U.S. at 583. The *Arteaga-Martinez* Court thus chose not to place any restrictions around as-applied, constitutional claims against prolonged, post-removal detention.

53. The *Arteaga-Martinez* Court acted carefully, choosing not to disrupt decades of jurisprudence addressing and correcting governmental violations of constitutional rights belonging to individuals facing prolonged, if not indefinite, civil detention. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.”)); *Zadvydas*, 533 U.S. at 699 (“to avoid a serious constitutional threat, we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute”); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed”); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011) (stating that after the maximum of five months, “the constitutional case for continued detention without inquiry into its necessity becomes more and more suspect as detention continues”); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 474-75 (3d Cir. 2015) (declaring that due process requires recognition that, at a certain point, the burden to a noncitizen’s “liberty outweighs a mere presumption” that they will flee and/or are dangerous); *German Santos v. Warden*, 965 F.3d 203, 210-11 (3d Cir. 2020); *Juarez*, 2024 WL 1012912, at *5-6 (“noncitizens detained under § 1231(a)(6) past the *Zadvydas* six-month presumptively constitutional period may bring an as-applied due process challenge to his or her detention under the statute”); *Ramirez v.*

Bondi, No. 25-cv-1002-RMR, 2025 WL 1294919, at *5 (D. Colo. May 5, 2025) (“when a noncitizen’s detention becomes unreasonably prolonged in relation to [risk of danger and preventing flight], his or her continued detention may violate the Fifth Amendment”).

54. The District Court of Colorado, in the past several months, has decided at least four as-applied, constitutional due process claims filed by individuals in post-removal order, mandatory detention. *Arostegui-Maldonado*, 2025 WL 2280357; *Ramirez*, 2025 WL 1294919; *Juarez*, 2024 WL 1012912; *Vizguerra-Ramirez v. Baltazar*, No. 25-cv-00881-NYW, 2025 U.S. Dist. LEXIS 261067 (D. Colo. Dec. 17, 2025). In each of those cases, the court granted the petitioner an individualized bond hearing and placed the burden on the government to justify further detention.

55. The “vast majority of judges” in this district apply a set of factors identified in *Singh v. Choate*, No. 19-cv-00909-KLM, 2019 U.S. Dist. LEXIS 141979 (D. Colo. Aug. 21, 2019) when deciding whether a noncitizen’s detention without a bond hearing, whether they are in pre- or post-removal proceedings, has become “unduly prolonged as to become unreasonable or unjustified,” in violation of their constitutional rights. *Arostegui-Maldonado*, 2025 WL 2280357, at *6; *Juarez*, 2024 WL 1012912, at *6-8 (collecting cases); *Vizguerra-Ramirez*, 2025 U.S. Dist. LEXIS 261067, at *33. The factors include: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.

56. While the *Singh* factors were originally applied in this district to assess a constitutional claim of prolonged detention by an individual detained under 8 U.S.C. §

1226(c), recent jurisprudence indicates that there is “little substantial distinction between the liberty interest of noncitizens detained pursuant to § 1226(c) and § 1231(a)(6).” *Juarez*, 2024 WL 1012912, at *6. This is “because [r]egardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention.” *Id.* (quoting *Guerrero-Sanchez v. Warden York County Prison*, 905 F. 3d 208, 222 (3d Cir. 2018)).

57. This district, alongside others, consistently holds that the appropriate remedy for prolonged detention of a noncitizen is an individualized bond hearing in front of an Immigration Judge in which the government bears the burden of proving by clear and convincing evidence that the noncitizen is a flight risk or a danger to the community. The government is better equipped with freedom and extensive resources to carry the burden of proof to justify continued detention.

58. Well-established precedent places the burden on the government to justify an individual’s deprivation of liberty in civil detention. *Arostegui-Maldonado*, 2025 WL 2280357, at *11 (citing *United States v. Salerno*, 481 U.S. 739,751 (1987)) (“the Supreme Court has long held that the clear and convincing evidence standard applies to civil detention where an individual’s liberty interest is at stake”); *Addington v. Texas*, 441 U.S. 418, 427 (1979) (“We conclude that the individual’s interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement . . .”). This district repeatedly, although not exclusively, applies this principle to civil immigration detention, by deliberately placing the burden to justify continued detention on the government in bond hearings. *Juarez*, 2024 WL 1012912, at * 8 (“entitlement to a bond hearing in this case emanates from the Due

Process Clause . . . and in that light, to the extent that the Court has already determined that a bond hearing is warranted, the Court is persuaded that placing the burden of proof on the government comports with due process requirements”); *Singh*, 2019 WL 3943960, at *7; *Arias v. Choate*, No. 1:22-cv-02238-CNS, 2022 WL 4467245, at *4 (D. Colo. Sept. 6, 2022); *Vizguerra-Ramirez*, 2025 U.S. Dist. LEXIS 261067, at *43-45 (holding that all three *Mathews* factors supported shifting the burden to the government at a bond hearing to prove, by clear and convincing evidence, that petitioner was either a flight risk or a danger to the community); *but see Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1199 (D. Colo. 2024); *de Zarate v. Choate*, No. 23-CV-00571-PAB, 2023 WL 2574370, at *4 (D. Colo. Mar. 20, 2023).

VII. REQUIREMENTS OF 28 U.S.C. § 2243

59. 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).

60. 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).

VIII. CLAIMS FOR RELIEF

A. Count One: Violation of Fifth Amendment Right to Due Process

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

62. The Respondents' detention of Mr. Batooi 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.

B. Count Two: Violation of 8 U.S.C. § 1231 and Implementing Regulations

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

64. Respondents are claiming to detain Mr. Batooi under 8 U.S.C. § 1231 with the intent of deporting him to an unnamed country. Their actions are unlawful where the record does not contain an administratively final order needed to authorize their detention under § 1231.

65. The Immigration Judge's 2004 Order did not not contain an order of removal. Instead, the Immigration Judge's 2004 Order indicated that removal proceedings were terminated. The government could have appealed termination, but it did not. The government could have filed a motion to reconsider with the Immigration Judge, stating the errors of fact and law in the Immigration Judge's termination order, or submitted a motion to reopen, with new, previously unavailable evidence about why termination was inappropriate. 8 C.F.R. §§ 1003.23(b). It did not. Finally, if the Department later regretted termination, it could have initiated new proceedings. 8

U.S.C. § 1229. It did not. Absent any of these procedural remedies, the termination order should stand (and currently does stand, pending resolution of the BIA appeal), depriving DHS of the requisite removal order on which to base its detention.

66. Even assuming the Respondents' use of a motion to clarify was a procedurally proper mechanism for overturning an unappealed termination order (it was not), the Immigration Judge's granting of that motion is not yet administratively final, meaning that no removal order exists on which Respondents can base their claimed detention authority under § 1231.

67. A person adversely impacted by a decision issued by an Immigration Judge in removal proceedings 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 Immigration Judge decision does not become final until review by the Board of Immigration Appeals. *Id.*

C. Count Three: Violation of Fifth Amendment Rights to Procedural Due Process (Unlawful Revocation of Prior Decision to not Detain)

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

69. Even assuming the existence of an administratively final removal order on which Respondents can base their detention authority, the manner in which the government revoked Mr. Batoorie's twenty-one years of freedom from detention

violated his Fifth Amendment due process rights guaranteed to him by the United States Constitution.

70. Under the terms of 8 C.F.R. § 241.13(i)(1), DHS can revoke the liberty of a person with a final order where that person has violated the conditions of his release. But Respondents make no claim that Mr. Batooe ever violated any terms of his prior freedom from detention.

71. Absent such a violation, DHS can only deprive a person's prior liberty based on a determination that there have been changed circumstances such that there is now a significant likelihood that the non-citizen may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). It is now clear that Respondents relied on this authority to detain Mr. Batooe after more than two decades of freedom. ECF No. 24-1, ¶ 22 ("On June 22, 2025, ICE officers encountered Petitioner and detained him for potential removal to a third country").

72. It is *also* now clear, however, that when DHS arrested Mr. Batooe, it had not identified *any* country to which it could send him. ECF No. 53-1, ¶ 4 ("On June 28, 2025, pursuant to 8 U.S.C. § 1231(b), ICE submitted third country removal requests to Azerbaijan, Kuwait, and Turkmenistan. Between June 28, 2025, and June 30, 2025, Turkmenistan and Kuwait declined the request. ICE has not received a final denial or acceptance from Azerbaijan.").

73. Respondents make no claim to having provided Mr. Batooe, at the time of his arrest, a written notification stating what circumstances had changed such that removal was now imminent, as required by 8 C.F.R. § 241.13(i) (a non-citizen must be given "an opportunity to respond to the reasons for revocation stated in the

notification”). How could they, given that nothing had materially changed in the 20+ years since DHS initially made the determination not to detain following the Immigration Judge's decision from November 2004? DHS did not have a country to which it could have removed Mr. Batoioe November 2004, and that remained true in June 2025.

74. And, in the nearly eight months since it detained Mr. Batoioe, DHS has yet to identify a country to which he may be lawfully removed. ECF No. 53-1. By early July 2025, the agency knew it could not deport Mr. Batoioe to Turkmenistan, Azerbaijan, or Kuwait. ECF No. 53-1, ¶ 4. No evidence has been provided of any DHS attempts to find a country of removal other than its bland assertion that it “continues to pursue third country removal options.” ECF No. 53-1, ¶ 10.

75. “[T]he Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) (per curiam) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Due Process Clause is also at play where “an individual has reasonably relied on agency regulations promulgated for his guidance or benefit and has suffered substantially because of their violation by the agency.” *United States v. Caceres*, 440 U.S. 741, 752-53 (1979).

76. In detaining Mr. Batoioe 20+ years after their initial decision not to detain him during the removal period, Respondents were subject to the provisions of 8 U.S.C. § 1231(a)(3) and its regulations. Given that the sole, articulated basis for the Respondents’ decision to detain Mr. Batoioe in 2025 was to “for potential removal to a third country” (ECF 24-1, ¶ 22), it is now clear that the original decision not to detain during the removal period in 2004 was made pursuant to 8 C.F.R. § 241.13(a), (b)(1),

because, at that time, “there was no significant likelihood of removal in the reasonably foreseeable future.”

77. DHS may revoke a prior decision not to detain a person with a removal order if he (1) violates the terms of his freedom from detention, or (2) “if, on account of changed circumstances” DHS “determines that there is a *significant* likelihood” that the non-citizen “may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(1)-(2) (emphasis added). Respondents here do not allege that Mr. Batoioe violated any conditions of prior liberty. Accordingly, Respondents rely solely on the “changed circumstances” regulatory requirement for their legal justification for arresting and detaining Mr. Batoioe.¹ 8 C.F.R. § 241.13(i)(2).

78. However, Respondents have failed to demonstrate that DHS determined there was a significant likelihood of Mr. Batoioe’s removal in the reasonably foreseeable future before revoking his liberty and imprisoning him. The declaration previously submitted by Respondents to the Court (ECF No. 24-1, ¶ 22), simply states that Mr. Batoioe was arrested “for potential removal to a third country,” with no indication of the likelihood of such removal. Indeed, Respondents concede that there was no country to which Mr. Batoioe could have been legally deported at the time of his arrest on June 22,

¹ Of note, Respondents have not presented the Court (nor Mr. Batoioe following their concession to release the A file) a written notice of revocation, which would have stated even more clearly the reasons for the decision to detain after two decades of liberty. See 8 C.F.R. § 241.13(i)(3) (“Upon revocation, the alien will be notified of the reasons for revocation of his or her release.”); § 241.13(g) (“[ICE] shall issue a written decision . . . regarding the likelihood of removal and whether there is a significant likelihood that the alien will be removed in the reasonably foreseeable future under the circumstances. [ICE] shall provide the decision to the alien, with a copy to counsel of record, by regular mail.”).

2025. ECF No. 53-1, ¶ 4. The agency attempted to designate Turkmenistan, Azerbaijan, or Kuwait as countries of removal, but by early July it knew that it could not remove Mr. Batooi to any of those three countries. There is no evidence of any subsequent attempts to identify countries of possible removal other than a conclusory statement that the government “continues to pursue third country removal options.” ECF No. 53-1, ¶ 10.

79. The Respondents bare assertion that Mr. Batooi should remain detained because they are “working on it,” with no indication of likelihood of success, or timing for that designation, cannot satisfy the regulation’s mandatory requirement that the government establish “a *significant* likelihood” of removal in the “*reasonably foreseeable future*” before it can exercise its revocation authority under the “changed circumstances” prong. 8 C.F.R. § 241.13(i)(2) (emphasis added). Respondents’ conclusory statement that it is continuing “to pursue third country removal options,” without any mention of what countries are being considered, and what efforts have been made to negotiate acceptance of Mr. Batooi, is unambiguously deficient.

80. Mr. Batooi’s case is on all fours with *Yee S. v. Bondi*, 2025 U.S. Dist. LEXIS 20016* (D. Minn. Oct. 9, 2025). In that case, Petitioner was granted CAT deferral of removal to Burma. *Id.* at *2. In 2021, DHS released him after determining there was no likelihood of removal in the reasonably foreseeable future. *Id.* In the next four years, Petitioner did not violate the terms of his release, *id.* at *2-3, but in June 2025, DHS re-detained Petitioner, claiming that changed circumstances made his removal imminent because the agency was in the process of obtaining a travel document to an unidentified alternate country of removal. *Id.* at *3-4. The Court found that justification

insufficient, where DHS could “direct the Court to no facts in the record supporting a conclusion that any specific country where Petitioner is not a citizen would agree to accept him,” and where “Respondents simply repeat the vague and conclusory assertions that ‘ICE is in the process of obtaining a travel document.’” *Id.* at *12. Finding that DHS violated the law when it re-detained Petitioner without complying with 8 C.F.R. § 241.13(i)(2), the Court ordered Petitioner’s immediate release. *Id.* at *14.

81. Attention is also pointed towards *Sun v. Noem*, 2025 WL 280037, at *2-3 (S.D. Cal. Sept. 30, 2025), where the government said it was “putting together a travel document” in order to deport a Cambodian man whose release had been revoked, and the Court found such vague assertions insufficient to meet its burden of establish changed circumstances under 8 C.F.R. § 241.13(i)(2). *See also Hoac v. Becerra*, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (“The fact that Respondents intend to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future.”); *Roble v. Bondi*, 2025 WL 2443453, at *4 (D. Minn. Aug. 25, 2025) (finding the Respondents’ assertion that DHS had “requested third country removal assistance” from headquarters to be an insufficient demonstration of changed circumstances).

82. DHS regulations specifically state that where the agency is continuing its efforts to execute a removal order, “there is no presumptive period of time within which” the removal must be accomplished, “but *the prospects for the timeliness of removal must be reasonable under the circumstances.*” 8 C.F.R. § 241.13(f) (emphasis added).

The Federal Register commentary for § 241.13 similarly advised that:

[a]lthough [§ 241.13] does not set a specific time limit for consultation with the State Department, or for the Service’s final decision on the likelihood

of removal in the reasonably foreseeable future, the HQPDU will have to be mindful of the overall purposes of the detention laws, as interpreted by the Supreme Court. The time for the Service to determine the likelihood of removal must also be reasonable under the circumstances, in light of the interests at stake. The HQPDU review process should not, itself, give rise to the same kinds of concerns about “indefinite, perhaps permanent” detention that troubled the Supreme Court. *See Zadvydas*, at 2503 (“for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ would have to shrink.”).

Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967-01, 56970, 2001 WL 1408247(F.R.) (Nov. 14, 2001) (to be codified at 8 C.F.R. Parts 3 and 241).

83. Respondents’ conclusory statement in Mr. Batooié’s case, that it continues to pursue a third country removal, with hopes that one will eventually be found at an uncertain date in the future, cannot establish a reasonable timeline.

84. Accordingly, Respondents have failed to show that DHS followed its own regulations in making the decision to revoke Mr. Batooié’s liberty, making that revocation unlawful. “ICE, like any agency, has the duty to follow its own federal regulations. As here, where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute . . . and [ICE] fails to adhere to it, the challenged [action] is invalid.” *Nguyen v. Hyde*, 2025 WL 1725791, at *5 (D. Mass. June 20, 2025) (quoting *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)); *see also Qui v. Carter*, 2025 WL 2770502, at *1-2 (D. Kan. Sept. 26, 2025) (finding that failure to properly revoke the Petitioner’s liberty “pursuant to the applicable regulations” rendered revocation ineffective).

85. Respondents’ violation of its own regulations means that Mr. Batooié’s detention is unlawful, and release is a necessary remedy under 28 U.S.C. § 2241(c)(3).

In so holding, this Court would be joining a host of sister courts that have come to the same conclusion under substantially similar or analogous circumstances. See, e.g., *Tran v. Bondi*, 2025 WL 3140462, at *3 (W.D. Wash. Nov. 10, 2025) (finding that Petitioner showed his detention did not comply with the requirements set forth by 8 C.F.R. § 241.13 and granting habeas relief); *Soryadvongsa v. Noem*, 2025 WL 3126821, at *3 (S.D. Cal. Nov. 8, 2025) (“The government’s authority to civilly detain anyone is strictly confined [by the INA regulations]. [Petitioner] has carried his burden of establishing that ICE exceeded those uncompromising bounds and that his custody is unlawful. Thus, he must be set free.”); *Phongsavanh v. Williams*, 2025 U.S. Dist. LEXIS 221725, at *17 (S.D. Iowa Nov. 7, 2025) (holding that “[t]he Government has failed to carry its burden under 8 C.F.R. § 241.13(i)(2). That regulation embodies the Executive Branch’s own procedural requirements, and agencies must comply with the rules they promulgate” and granting habeas relief); *Rasakhamdee v. Noem*, 2025 WL 3102037, at *5 (S.D. Cal. Nov. 6, 2025) (“Government agencies are required to follow their own regulations. ICE failed to do so here. The Court’s research indicates that every district court, except two, to consider the issue has ‘determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner’s release must be ordered.’”) (internal citation and footnote omitted); *C.M. v. Maples*, 2025 WL 3102037, at *5 (S.D. Ind. Nov. 5, 2025) (same); *E.M.M. v. Almodovar*, 2025 WL 3077995, at *4 (S.D.N.Y. Nov. 4, 2025) (holding that “[i]f the Government’s violation of its own regulations culminates in an alien’s detention, due process may require that alien’s release” and granting habeas relief); *Yee S.*, 2025 U.S. Dist. LEXIS 200016, at *14 (ordering immediate release because “Petitioner has shown that ICE’s re-detention

of him on June 6, 2025 violated the law because ICE did not comply with its own regulations under section 241.13(i)(2)”; *Roble*, 2025 WL 2443453, at *5 (holding that “[i]t goes without saying that ICE, like all government agencies, must follow its own regulations” and ordering release based on violation of 8 C.F.R. § 241.13(i)); *Sarail A. v. Bondi*, 2025 WL 2533673 (D. Minn. Sept. 3, 2025) (ordering release based on violation of 8 C.F.R. § 241.13(i)).

D. Count Four: Violation of Fifth Amendment Rights to Procedural Due Process (Unreasonably Prolonged Detention)

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

87. Even assuming the existence of an administratively final removal order on which Respondents can base their detention authority, Mr. Batoioie’s prolonged detention under 8 U.S.C. § 1231(a) violates his Fifth Amendment due process rights guaranteed to him by the United States Constitution.

88. Mr. Batoioie’s as-applied, constitutional due process claim against his prolonged, post-removal detention under 8 U.S.C. § 1231 stands squarely upon precedent. *Zadvydas*, 533 U.S. at 701; *Arteaga-Martinez*, 596 U.S. at 583; *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018) (declining to disturb *Zadvydas*). Mr. Batoioie’s claim also parallels the claims made in *Arostegui-Maldonado*, *Juarez*, and *Vizguerra-Ramirez* recently decided in the noncitizen’s favor in this district. 2025 WL 2280357, at *6; 2024 WL 1012912, at *5; *Vizguerra-Ramirez*, 2025 U.S. Dist. LEXIS 261067, at *43-45.

89. Due process requires that Mr. Batoioe be released from detention, or in the alternative, that he receive a bond hearing at which the government bears the burden to justify further detention by clear and convincing evidence.

90. This Court's application of the *Singh* factors will show that Mr. Batoioe's detention is now unconstitutionally prolonged.

1. First *Singh* Factor: Length of Detention

91. The first and "most important" *Singh* factor weighs in favor of Mr. Batoioe because he has spent nearly eight consecutive months in the Aurora Contract Detention Facility since the government arrested him – thus, his detention exceeds the six-month period of presumptively "reasonable" detention.

2. Second *Singh* Factor: Likely Duration of Future Detention

92. The second factor, the likely duration of Mr. Batoioe's future detention, also weighs in his favor. Mr. Batoioe is currently awaiting a decision from the Board of Immigration Appeals regarding the propriety of the Immigration Judge's granting of the Department's motion to clarify, her issuance of a removal order *nunc pro tunc* to 2004 where none previously existed, and her vacatur of an unappealed termination order. Should Mr. Batoioe lose that agency appeal, he is prepared to challenge the decision before the U.S. Court of Appeals for the Ninth Circuit, and to seek a stay of removal during judicial review. *Villaescusa-Rios*, No. 20-cv-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) ("Courts examine the anticipated duration of all removal proceedings—including administrative and judicial appeals—when estimating how long detention will last"). His detention will terminate eventually, but "that point is likely to be many months or even years from now." *Arostegui-Maldonado*, 2025 WL 2280357, at *7 (quoting *Villaescusa-Rios*, 2021 WL 269766, at *3).

93. Respondents have shown no inclination to release Mr. Batoioe during the pendency of his administrative appeal or any subsequent judicial review. This fact is most noticeably demonstrated by the Department's procedurally flawed and inadequate custody review process, in which it concluded that removal was imminent despite no evidence of any attempts by the Department to designate a country for removal after its failed attempts to remove to Turkmenistan, Azerbaijan, or Kuwait in the early summer of 2025.

94. 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 Mr. Batoioe's current detention would be more than two decades outside the statutory removal period for mandatory detention.²

95. After the expiration of the 90-day removal period, the Respondents only have discretionary authority to detain Mr. Batoioe 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

² Respondents detained Mr. Batoioe nearly eight months ago, on June 22, 2025. 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.

have the statutory permission to release him, subject to supervision and restrictions on his conduct and activities. 8 U.S.C. § 1231(a)(3).

96. 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(h), 241.4(k)(1)(i). In conducting the POCR, officials must review the person's records and all documents submitted by the person and must inform the person of the decision. 8 C.F.R. § 241.4(h)(1).

97. The 90-day POCR 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).

98. In Mr. Batoioe's case, DHS conducted its 90-day POCR review, under 8 C.F.R. § 241.4(k)(1)(i), on September 20, 2025. Ex. C (Notice to Alien of File Custody Review). However, neither Mr. Batoioe nor his attorney were able to take part in that process, as DHS did not provide notice to Mr. Batoioe of the September 20th review until November 18, 2025, two months after the review had taken place, in violation of the regulation's notice requirements. Ex. C; 8 C.F.R. § 241.4(h)(2). As a result, Mr. Batoioe was denied his right to present materials and testimony in support of release, in violation of 8 C.F.R. § 241.4(h)(1)).

99. On November 25, 2025, DHS denied release following its 90-day POCR review. The agency stated that it was in receipt of, or expected to receive, the necessary travel documents to effectuate Mr. Batoorie's removal in the reasonably foreseeable future. Ex. D (Decision to Continue Detention). The written decision failed to note the Department's unsuccessful attempts at convincing Turkmenistan, Azerbaijan, or Kuwait to accept Mr. Batoorie in late June 2025. Likewise, the written decision failed to specify what attempts it had made beyond those three rebuffed requests.

100. Where release is denied after the 90-day POCR review, an ICE Director may continue detention for an additional three months beyond the removal period, conducting additional custody reviews where appropriate. 8 C.F.R. § 241.4(k)(1)(i). Where release is not ordered during those additional three months, continued detention review is passed to the Headquarters Post-Order Detention Unit (HQPDU). 8 C.F.R. §§ 241.4(c)(2), 241.4(i)(1)(ii).

101. The HQPDU review begins with a recommendation prepared by a two-member review panel which considers a detainee's file and, where release is not recommended, a personal interview. 8 C.F.R. § 241.4(i)(1-3). Should the panel recommend release, it must agree that: (a) travel documents are not available, or, if they are, that removal is otherwise not practicable or in the public interest; (b) the detainee is not violent and will continue to be non-violent; (c) the detainee does not pose a danger to the community; and (d) the detainee is not likely to violate conditions of release or be a flight risk. 8 C.F.R. § 241.4(e).

102. Where release is not recommended by the panel, the written recommendation for continued detention must include a statement of the factors that the panel deemed material to its recommendation. 8 C.F.R. § 241.4(i)(5).

103. In accordance with 8 C.F.R. § 241.4(i)(3), the two-member review panel interviewed Mr. Batoorie on December 9, 2025, without clear or adequate notice to counsel of record. Ex. E (POCR Review Panel Interview Summary). On the same day, the panel issued a recommendation to HQPDU that Mr. Batoorie continue to be detained. Ex. F (Panel Recommendation to HQPDU for Continued Detention). The required statement of relevant factors consisted, in its entirety, of the following:

The panel believes that the criteria for release set forth at 8 C.F.R. § 241.4(e) has not been met. BATOOIE, Hossein currently has withholding of removal from Iran. The panel recommends that BATOOIE, Hossein be detained pending a third country removal. If no decision is received prior to day 179, the panel recommends detainment until a travel document or approval is issued for BATOOIE, Hossein.

Ex. F.

104. The panel did not note the lack of any criminal history for Mr. Batoorie. The panel did not note the Department's quickly rebuffed attempts at getting removal approval from Turkmenistan, Azerbaijan, or Kuwait from the end of June. The panel did not note any attempts by the Department to find other countries of removal being turned down by those three countries early in the summer of 2025. The panel did note any disciplinary issues with Mr. Batoorie during his months of detention. The panel did not note his long residence in the U.S., family ties in the U.S., and stable residential and employment history. The panel did not note any history of escapes, failures to appear for immigration or other proceedings, absence without leave from any halfway house or sponsorship program and other defaults, or any other indicia of flight risk. Ex. F.

105. A final decision from the HQPDU has not been given yet to Mr. Batoorie, more than two months after the panel's recommendation for continued detention. However, given the lack of consideration to relevant details throughout the entire custody review process to date, it can be assumed that the agency plans on continuing detention for as long as it can get away with, including during the pending administrative review of his removal order and any subsequent judicial review. It can also be assumed that even if Mr. Batoorie prevails on his pending agency appeal, the government would likely seek judicial review.

106. Because of the likelihood of a prolonged agency and judicial review of the contested *nunc pro tunc* removal order, this factor weighs in favor of Mr. Batoorie. *Arias*, 2022 WL 4467245, at *2.

3. Third *Singh* Factor: Conditions of Confinement

107. The third *Singh* factor, conditions of Mr. Batoorie's confinement, weighs in his favor; indeed, this factor regularly weighs in favor of the petitioner, given that facilities for civil immigration detention and penal institutions for criminal detention are not meaningfully different from one another. *German-Santos*, 965 F.3d at 211; see also *Velasco-Lopez v. Decker*, 978 F.3d 842, 851 (2d. Cir. 2020) (finding that a noncitizen detained for immigration proceedings where they cannot "maintain employment or see . . . family or friends or others outside visiting hours [and] the use of a cell phone [is] prohibited, and [there is] no access to the internet or email and limited access to the telephone" are conditions "indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes"); *Chavez-Alvarez*, 783 F.3d at 478.

108. Where the conditions of detention resemble a penal institution, this factor weighs in favor of finding that detention is unreasonable. *Singh*, 2019 WL 3943960 at *6; *Villaescusa-Rios*, 2021 WL 269766, at *4, (“[t]he more that the conditions under which the [person] is held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing”). Further, the extensive history of abusive conditions at the Aurora Contract Detention Facility exacerbates the conditions of Mr. Batooié’s deprivation of liberty. *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *4 (D. Colo. Jan. 6, 2023). As the length of his detention increases, this factor weighs increasingly in his favor. *Chavez-Alvarez*, 783 F.3d at 478.

109. Courts in this district have found that conditions in civil immigration detention are not meaningfully different from criminal incarceration. *Arostegui-Maldonado*, 2025 WL 2280357, at *7 (“The Court has little trouble concluding . . . that the conditions at the Aurora Facility strongly resemble penal confinement . . . they are abhorrent. That is, they more than resemble penal confinement”); *Martinez*, 760 F. Supp. 3d at 1195 (“Mr. Martinez’s allegations regarding his confinement at the Aurora Detention Facility, which respondents do not contest, demonstrate that he is being held in conditions resembling penal confinement.”); *de Zarate*, 2023 WL 2574370, at *4 (“[C]ourts have concluded that [the Aurora facility] is enough like a corrections facility for this factor to favor” individuals subject to immigration detention) (citing *Daley*, 2023 WL 2336052, at *4); *Vizguerra-Ramirez*, 2025 U.S. Dist. LEXIS 261067, at *35 (noting that petitioner’s uncontested factual allegations “demonstrate that the conditions at the Aurora Contract Detention Facility resemble criminal incarceration,” a conclusion supported by the “clear weight of authority in this District.”).

110. For nearly the last decade, immigrants detained at the Aurora facility have sounded the alarm about oppressive and unsafe conditions, including substandard medical and mental health care, medical neglect, failures to comply with agency standards, reports of excessive use of force, retaliation against First Amendment protected speech, and claims related to wage violations and forced labor. In this context, three people detained at Aurora have died since 2012, including Melvin Ariel Calero Mendoza in 2022. Indeed, Mr. Batoioe has already brought to this Court's attention the substandard medical care and failure to meet basic standards of care in regards to his cardiac issues. See Reply to Response to First Motion for Order to Release, ECF No. 54.

111. In addition, Mr. Batoioe has repeatedly been provided with substandard care in regards to his cardiac disease, being denied routine but critical medications throughout his detention, as well as being denied the prescribed course of care by attending physicians. ECF No. 54.

112. Finally, this Court already has held that the location of Mr. Baootie's incarceration weighs in his favor because it is akin to a penal institution. *Sheikh v. Choate*, No. 1:22-cv-01627-RMR, 2022 WL 17075894, at *8-9, (D. Colo. July 19, 2024); *Singh*, 2021 WL 22090712, at *3-4; *Villaescusa-Rios*, 2021 WL 269766, at *4; Cf. *de Jesus de Jesus v. Wolf*, No. 20-cv-03637-RBJ, 2021 WL 603056, at *3 (D. Colo. Feb. 16, 2021).

4. Fourth and Fifth *Singh* Factors: Causes of Delay

113. For the fourth and fifth *Singh* factors, courts consider the cause of any "bad faith" delays in removal proceedings. *German Santos*, 965 F.3d at 211 (internal quotations omitted). These factors weigh in Mr. Batoioe's favor as he has done nothing

to delay his proceedings, rather the government (1) prejudiced Mr. Batoorie by filing a motion to clarify with the Immigration Court without service on him, preventing him from opposing that motion before the Immigration Judge, and (2) failing to take any steps to identify a country of removal after being rebuffed by Turkmenistan, Kuwait, and Azerbaijan nearly eight months ago. In seeking an appeal of the Immigration Judge's grant of the Department's motion to clarify, Mr. Batoorie was acting in good faith and not engaging in "dilatory tactics." *Arias*, 2022 WL 4467245, at *3. Further, any administrative or judicial review filed by Mr. Batoorie shall not be held against him. *German Santos*, 965 F.3d at 212 ("Absent carelessness or bad faith, we will not scrutinize the merits of immigration proceedings and blame whichever party has the weaker hand."). This district recognized the importance of protecting one's right to exhaust their legal pathways in *Martinez* and *de Zarate*, declaring that they would not hold the petitioner's efforts to seek relief through the available legal channels against them. *Martinez*, 760 F. Supp. 3d at 1195; *de Zarate*, 2023 WL 2574370, at *4. Thus, these factors weigh heavily in favor of Mr. Batoorie.

5. Final *Singh* Factor: Likelihood of Removal

114. The final *Singh* factor weighs in Mr. Batoorie's favor, as the Board is likely to grant Mr. Batoorie's administrative appeal and either allow the 2004 termination order to stand or remand proceedings to the Immigration Judge for renewed consideration of his previously withdrawn asylum claim. Even absent a victory on the issue of the contested removal order, physical removal is unlikely given that, during the nearly eight months of his detention, the Respondents have been unable to find a country to which Mr. Batoorie could be deported. ECF No. 53-1, ¶ 4. And even should the Respondents be able to find a country for removal, Mr. Batoorie would likely have a strong claim for

protection in any designated country in which Muslim apostates are persecuted on account of their religious beliefs.

115. Mr. Batoioie is likely to prevail on his administrative appeal and, at a minimum, have his case remanded to the Immigration Judge where the record is clear that the 2004 grant of withholding and case termination was the result of a brokered settlement in which Mr. Batoioie gave up his good-faith claim to asylum and waived his right to further litigate the timeliness of his claim. The Board is unlikely to allow the *nunc pro tunc* order to stand where doing so would unjustly change the terms of that agreement.

116. In front of the Immigration Judge, Mr. Batoioie had a good-faith argument that he qualified for an exception to the one-year filing deadline. “An application for asylum of an alien may be considered, notwithstanding” the one-year deadline, if he “demonstrates to the satisfaction of the Attorney General ... the existence of changed circumstances which materially affect the applicant’s eligibility for asylum.” 8 U.S.C. § 1158(a)(2)(D) (2003). Mr. Batoioie was prepared to argue that his baptism into Christianity, followed by his family being informed of the conversion, constituted the type of “changed circumstance” that allowed for his late filing. Had he won that argument, he likely would have been granted asylum, as the Immigration Judge’s grant of withholding necessarily demonstrated that he met the substantive criteria for asylum.³

³ An asylum applicant must demonstrate that he has a well-founded fear of persecution on account of his race, religion, nationality, membership in a particular social group, or

117. Mr. Batoorie, however, voluntarily withdrew his application for asylum (and CAT protection) in reliance on an agreement his attorney reached with government counsel. The August 21, 2025 order confirms the existence of this agreement, with the Immigration Judge writing that “Immigration Judge Anderson granted withholding of removal *after both parties agreed that the respondent would withdraw all other applications.*” *Id.* (emphasis added). As a result of this brokered deal, there was no testimony or argument on any of Mr. Batoorie’s relief applications. Under the terms of the agreement outlined by his attorney and affirmed by DHS counsel, Mr. Batoorie withdrew his bona-fide asylum claim in exchange for a withholding grant, giving up his right to further litigate the timeliness of the filing. In addition, given Judge Anderson’s purposeful termination of proceedings and similarly intentional omission of an order of removal (as well as the government’s decision not to appeal, move to reconsider or reopen the November 2004 order), it can be presumed that those issues were also a part of the agreement between Mr. Batoorie’s attorney and DHS counsel.

118. This deal was likely attractive to Mr. Batoorie in 2004—the security of a withholding grant and termination of proceedings, with the knowledge that asylum could be pursued in the future should the government reinstate removal proceedings, balanced against the uncertainty of a merits hearing on asylum and the potential for time, stress and expense of further litigation if his arguments did not prevail. However, should the BIA affirm Judge Rooyani’s August 2025 *nunc pro tunc* order, that would

political opinion. 8 U.S.C. §§ 1158(b)(1), 1101(a)(42). A withholding applicant has the higher burden of proving that it is more likely than not that his life or freedom would be threatened due to the same five protected grounds. 8 U.S.C. § 1231(b)(3).

necessarily contravene the 2004 agreement making his agreement to withdraw his asylum application and forgo appeal null and void. Had Mr. Batoioe understood that his removal proceedings would *not* be terminated, and a removal order *would* be issued, he may not have been willing to withdraw his meritorious asylum claim. It is likely that the Board will recognize such an injustice and remand proceedings to the Immigration Court for renewed consideration of all relief applications.

119. Even if agency and judicial review were to result in the issuance of an administratively final order of removal, he would file a Petition for Review and seek a stay of removal. In the unlikely event that a stay was not granted or a Petition for Review was unsuccessful such an order could not be executed against Mr. Batoioe until the government finds a country, other than Iran, to which it can deport him. However, as noted above, the three attempts made by the government in late June to secure permission for Mr. Batoioe's deportation were quickly rebuffed by Turkmenistan, Kuwait, and Azerbaijan. Since June 28, 2025, the government has made no attempt to identify a country of removal. ECF No. 53-1, ¶ 4.

120. Even if the government is eventually able to identify a country for possible removal, Mr. Batoioe, under existing DHS guidance, will be able to seek protection from removal to that third country based on a fear of religious persecution as a Muslim apostate unless the State Department receives credible diplomatic assurances from that third country that Mr. Batoioe would not be persecuted or tortured.⁴ Given that the

⁴ See DHS memorandum of March 30, 2025, titled 'Guidance Regarding Third Country Removals.' Notably, Mr. Batoioe would have faced certain harm in all three of the countries to which DHS sought to remove him in June 2025.

government has now had nearly eight months to find such a country, it is likely that none exists.

121. In sum, the balance of as-applied factors weighs in favor of finding Mr. Batooié's prolonged detention without a bond hearing unreasonable and unconstitutional.

6. Appropriate Remedies: Grant of Immediate Release or Individualized Bond Hearing in which the Government Bears the Burden

122. Granting Mr. Batooié immediate release is the most appropriate and equitable remedy due to his prolonged detention in violation of his Fifth Amendment constitutional right to procedural due process.

123. In the alternative, and at a minimum, due process requires Mr. Batooié be granted a bond hearing. At such bond hearing, the government must be required to justify Mr. Batooié's ongoing detention by clear and convincing evidence. See *Arostegui-Maldonado*, 2025 WL 2280357, at *16; *Ramirez*, 2025 WL 1294919, at *8 (D. Colo. May 5, 2025) (ordering a bond hearing where detention pursuant to 8 U.S.C. § 1231(a) violated due process).

124. Mr. Batooié should not be detained. The Respondents cannot prove that he poses a flight risk or a danger to his community. He has a stable home and job in Colorado. He has no criminal history.

125. An equitable remedy in Immigration Court will be most likely delivered if an Immigration Judge is required to meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including conditional release, parole, as well as Mr. Batooié's ability to pay a bond.

IX. 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.
- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, as well as 8 U.S.C. § 1231(a)(5) and its implementing regulations.
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.
- (5) Alternatively, require the Respondents to provide, within seven days of this Court's order, a constitutionally adequate, individualized bond hearing before an impartial adjudicator in which DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified.
- (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law.
- (7) Grant any further relief this Court deems just and proper.

Dated: February 10, 2026

Respectfully submitted,

/s/ Laura L. Lichter
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X. VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Hossein Batoie, 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 10th day of February, 2026

/s/ Laura L. Lichter
Counsel for Petitioner

Laura L. Lichter
Lichter Immigration
1601 Vine Street
Denver, CO 80206
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XI. INDEX OF EXHIBITS

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EXHIBIT A

2004 SUMMARY ORDER GRANTING WITHHOLDING AND TERMINATING PROCEEDINGS

IMMIGRATION COURT
606 SOUTH OLIVE ST., 15TH FL.
LOS ANGELES, CA 90014

In the Matter of

Case No. : 

BATOUIE, HOSSEIN
Respondent

IN REMOVAL PROCEEDINGS
ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Nov 10, 2004.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- The respondent was ordered removed from the United States to or in the alternative to
- Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to
- Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to


Respondent's application for:

- Asylum was () granted () denied () withdrawn
- Withholding of removal was () granted () denied () withdrawn
- A Waiver under Section _____ was () granted () denied () withdrawn
- Cancellation under Section 240A(a) was () granted () denied () withdrawn

Respondent's application for:

- Cancellation under Section 240A(b)(1) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- Cancellation under Section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- Respondent's status was rescinded under section 246.
- Respondent is admitted to the United States as a _____ until _____.
- As a condition of admission, respondent is to post a \$ _____ bond.
- Respondent knowingly filed a frivolous asylum application after proper notice.
- Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- Proceedings were terminated.
- Other: _____

Date: Nov 10, 2004



DAVID C. ANDERSON
Immigration Judge

V60

Appeal: Waived/Preserved Appeal Due By:

ALIEN NUMBER: ~~XXXXXXXXXX~~

ALIEN NAME: BATCOIE, HOSSEIN

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ALIEN ALIEN c/o Custodial Officer ALIEN's ATT/REP INS
DATE: 2/10/24 BY: COURT STAFF *[Signature]*
Attachments: EOIR-33 EOIR-28 Legal Services List Other

Q6

EXHIBIT B

2025 IJ GRANT OF DHS MOTION TO CLARIFY

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
WEST LOS ANGELES IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

File No.:



In the Matter of:

BATOOIE, Hossein

IN REMOVAL PROCEEDINGS

Respondent

MOTION: Department of Homeland Security's Motion to Clarify Order

ON BEHALF OF RESPONDENT:

Houman Varzandeh, Esquire
Varzandeh Anderson, LLP
6464 Sunset Boulevard, Suite 880
Hollywood, California 90028

ON BEHALF OF DHS:

Candice Kasperson, Assistant Chief Counsel
U.S. Department of Homeland Security
12445 East Caley Avenue
Centennial, Colorado 80111

ORDERS OF THE IMMIGRATION JUDGE

On July 23, 2025, the Department of Homeland Security (DHS) moved the Court to clarify the summary order of the oral decision in this matter, dated November 10, 2004, because it did not include an order of removal to a specific country when granting the respondent's application for withholding of removal under INA § 241(b)(3). See Motion to Clarify Order. The Court reviewed the record and confirmed that Immigration Judge David Anderson granted withholding of removal after both parties agreed that the respondent would withdraw all other applications.¹ Both parties also waived appeal in the matter. While the Court did not order the respondent be removed to a specific country, this case was decided prior to the Board of Immigration Appeal's decision in Matter of I-S- & C-S-, 24 I&N Dec. 432, 434 (BIA 2008), which clarified that "when an Immigration Judge decides to grant withholding of removal, an explicit order of removal must be included in the decision." This is also likely why the Court "terminated" proceedings pursuant to 8 C.F.R. § 1240.12(c). See also I-S- & C-S-, 24 I&N Dec.

¹ The Los Angeles Immigration Court ceased operations on April 17, 2024, after which time the respondent's case was transferred to the West Los Angeles Immigration Court. In accordance with 8 C.F.R. § 1240.1(b), the undersigned Immigration Judge has familiarized herself with the record.

at 433 (explaining that an explicit removal order was necessary because 8 C.F.R. § 1240.12(c) “provides that the Immigration Judge’s order will direct the alien’s removal from the United States, the termination of the proceedings, or some other appropriate disposition of the case”).

The Court will grant the DHS’s Motion to Clarify Order. The Court’s removal order from November 10, 2004, is hereby reissued *nunc pro tunc*, with an explicit order removing the respondent to Iran in accordance with Board precedent. See I-S- & C-S-, 24 I&N Dec. at 434. The termination of proceedings will no longer be necessary and will be stricken. The Court’s original order indicating that all other applications were withdrawn will remain undisturbed.

Accordingly, the following amended orders shall be entered:

ORDERS

IT IS HEREBY ORDERED that DHS’s Motion to Clarify Order be **GRANTED**.

IT IS FURTHER ORDERED that the respondent’s application for asylum pursuant to INA § 208 was **WITHDRAWN**.

IT IS FURTHER ORDERED that the respondent’s applications for withholding and deferral protection under Article III of the Convention Against Torture were **WITHDRAWN**.

IT IS FURTHER ORDERED that the respondent be **REMOVED** to **IRAN** on the charge contained in the Notice to Appear.

IT IS FURTHER ORDERED that the respondent’s application for withholding of removal under INA § 241(b)(3)(A) be **GRANTED**.

IT IS FURTHER ORDERED that the respondent’s removal to **IRAN** is hereby **WITHHELD** pursuant to INA § 241(b)(3)(A).

DATE: August 21, 2025

Nunc Pro Tunc November 10, 2004
to: (Date of original order)



Rodin Rooyani
Assistant Chief Immigration Judge

EXHIBIT C

NOTICE TO ALIEN OF FILE CUSTODY REVIEW

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
12445 E. Caley Avenue
Centennial, CO 80111



U.S. Immigration
and Customs
Enforcement

BATOOIE, Hossein
c/o Immigration and Customs Enforcement
Denver Field Office



Notice to Alien of File Custody Review

You are detained in the custody of U.S. Immigration and Customs Enforcement (ICE) and you are required to cooperate with ICE in effecting your removal from the United States. If ICE has not removed you from the United States within the removal period as set forth in INA 241(a) (normally 90-days of either: 1) your entering ICE custody with a final order of removal, deportation or exclusion, or 2) the date of any final order you receive while you are in ICE custody), ICE's Deciding Official will review your case for consideration of release on an Order of Supervision. Release, however, is dependent on your demonstrating to the satisfaction of the Attorney General that you will not pose a danger to the community and will not present a flight risk.

Your custody status will be reviewed on or about 09/20/2025 . The Deciding Official may consider, but is not limited to considering the following:

1. Criminal convictions and criminal conduct;
2. Other criminal and immigration history;
3. Sentence(s) imposed and time actually served;
4. History of escapes, failures to appear for judicial or other proceedings, and other defaults;
5. Probation history;
6. Disciplinary problems while incarcerated;
7. Evidence of rehabilitative effort or recidivism;
8. Equities in the United States;
9. Cooperation in obtaining your travel document;
10. Any available mental health reports.

You may submit any documentation you wish to be reviewed in support of your release, prior to the date listed above, to the attention of the Officer and address below. English translations must be provided pursuant to 8 CFR 103.2(b)(3). An attorney or other person may submit materials on your behalf. The deciding official will notify you of the decision in your case. Attached to this notice is a list of free or low cost legal representatives who may be able to provide assistance to you in preparing your case.

www.ice.gov

CONFIDENTIAL

BATOOIE, Hossein



PROOF OF SERVICE

(1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I _____, _____,
Name of ICE Officer Title
certify that I served _____ with a copy of
Name of detainee
this document at _____ on _____, at _____.
Institution Date Time

(b) I certify that I served the custodian _____,
Name of Official
_____, at _____, on
Title Institution
_____ with a copy of this document.
Date

OR

(2) Service by certified mail, return receipt. (Attach copy of receipt)

I _____, _____,
M. KINSEY 8867 Name of ICE Officer Deportation Officer Title
certify that I served _____ and the custodian
Name of detainee
_____ with a copy of this document by certified mail at
GEO Group Name of Official
_____ on 11/18/2025.
Denver CDF Institution Date

Detainee Signature: _____ Date: _____

- cc: Attorney of Record or Designated Representative
- cc: A-File

www.ice.gov

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EXHIBIT D

DECISION TO CONTINUE DETENTION

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
12445 E. Caley Avenue
Centennial, CO 80111



U.S. Immigration
and Customs
Enforcement

BATOOIE, Hossein
c/o Immigration and Customs Enforcement
Denver Field Office



Decision to Continue Detention

This letter is to inform you that your custody status has been reviewed, and it has been determined that you will not be released from the custody of U.S. Immigration and Customs Enforcement (ICE) at this time. This decision has been made based on a review of your file, consideration of the information you submitted to ICE's reviewing officials, and upon review of the factors for consideration set forth at 8 C.F.R. § 241.4(e), (f), and (g).

As explained below, after such review, ICE has determined to maintain your custody because:

- You have not demonstrated that, if released, you will not:
 - Pose a danger to the community, to the safety of other persons, or to property.
 - Pose a significant risk of flight pending your removal from the United States.
- OR
- ICE is in receipt of or expects to receive the necessary travel documents to effectuate your removal, and removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest.

ICE has made such determination based upon:

The Significant Likelihood of Removal in the Reasonably Foreseeable Future.

Based on the above, you are to remain in ICE custody pending your removal from the United States as ICE is unable to conclude that the factors set forth at 8 C.F.R. § 241.4(e) have been satisfied. You are advised that you must demonstrate that you are making reasonable efforts to comply with the order of removal and that you are cooperating with ICE's efforts to remove you by taking whatever actions ICE requests to affect your removal. You are also advised that any willful failure or refusal on your part to make timely application in good faith for travel or other documents necessary for your departure, or any conspiracy or actions to prevent your removal or obstruct the issuance of a travel document, may subject you to criminal prosecution under 8 U.S.C. § 1253(a).

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If you have not been released or removed from the United States at the expiration of the three-month period after this 90-day review, jurisdiction of the custody decision in your case will be transferred to the ICE Headquarters (ERO Removal Division), Potomac Center North, 500 12th Street SW, Washington, DC 20536. The ERO Removal Division will thereafter conduct a custody review and will make a determination regarding whether you will continue to be detained pending removal or may be released.

To assist in the ERO Removal Division custody review, you will be afforded a personal interview. You and your representative who has filed a Form G-28, Notice of Entry of Appearance, if any, will be notified of the date and time of the interview approximately 30 days prior to the scheduled interview date. This interview may be in person or through a video teleconference. If ERO needs to change the date of the interview, ERO will provide notice to you and your representative who has filed a Form G-28, Notice of Entry of Appearance, if any.

You may be accompanied during the interview by a person of your choice, subject to security requirements at the detention facility, as long as this person is able to attend the interview at the scheduled time.

You may submit any additional documentation in English you wish to be considered in support of your release at the time of the interview or via mail service up to five business days prior to the scheduled time of your interview to the following address:

**Denver CDF (GEO)
3130 North Oakland Street
Aurora, CO 80010**

Such documentation should contain a cover letter indicating that the material is submitted in support of your Post Order Custody Review personal interview. An attorney or other person may submit materials on your behalf.

You are required to complete the below information.

I do _____ do not _____ want a personal interview.

If you do want an interview, please check the appropriate box(es) below:

- Check this box if you need an interpreter for your interview.
Language/Dialect: _____
- I will be assisted at this interview by a representative of my own choosing.

Name: _____

If your representative has not filed a G-28, Notice of Entry of Appearance, on your behalf, you are responsible for notifying any other person you have selected to assist you

Decision to Continue Detention

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of the date, time, and location of the interview. The representative must be at least 18 years of age.

You will be sent a separate Notice to Alien of Interview for Review of Custody Status approximately 30 days before the interview is scheduled. If you wish to request additional time to prepare for the interview, you must notify your deportation officer within five business days of receipt of the Notice of Interview. If ERO agrees to postpone the interview at your request, you will be deemed to have waived its completion prior to jurisdiction over your case transferring to the ERO Removal Division.

You will be notified of the decision in your case when the custody review has been concluded by the ERO Removal Division.

KATIE MARTIN Digitally signed by KATIE MARTIN
RIESNER RIESNER
Date: 2025.11.25 16:12:01 -07'00' 11/25/2025
Katie M Riesner, Deputy Field Office Director Date

PROOF OF SERVICE

(Officer to complete both (a) and (b) below.)

(a) I K. BENNER, Deportation Officer,
Name of ICE Officer Title
certify that I served BATOOIE, Hossein with a copy of
Name of detainee
this document at Denver CDF on 11/26/2025, at 0900.
Institution Date Time

(b) I certify that I served the custodian K. BENNER,
Name of Official
Deportation Officer, at Denver CDF, on
Title Institution
11/26/2025 with a copy of this document.
Date

Detainee Signature: refusal to sign Date: 11/26/25

- cc: Attorney of Record or Designated Representative
- cc: A-File

EXHIBIT E

POCR REVIEW PANEL INTERVIEW SUMMARY

EXHIBIT F

PANEL RECOMMENDATION TO HQPDU FOR CONTINUED DETENTION

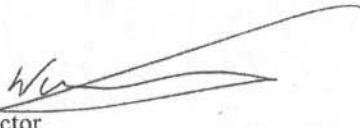
Enforcement and Removal Operations
Denver Field Office
U.S. Department of Homeland Security
12445 E. Caley Ave
Centennial, CO 80111



**U.S. Immigration
and Customs
Enforcement**

December 09, 2025

MEMORANDUM FOR: Headquarters Removal Division
Lasker, Rita R.
Unit Chief
Middle East and Europe

THROUGH: William H. Wilkinson III 
Assistant Field Office Director
Denver Field Office

FROM: K. Benner 
J. Mansur 
Deportation Officer

SUBJECT: 

The panel recommends BATOOIE, Hossein be detained in ICE custody. On December 09, 2025, the panel interviewed BATOOIE, Hossein pursuant to 8 C.F.R. § 241.4(i). The interview took place at GEO Aurora 3130 North Oakland ST, Aurora, CO 80010. The purpose of this interview was to allow BATOOIE, Hossein to submit to the review panel any information, in English, that he believes presents a basis for his release.

During the interview with BATOOIE, Hossein, the panel cited 8 C.F.R. § 241.4(i), and stated the purpose of the interview. BATOOIE, Hossein was given the opportunity to state any facts and present any documentation relevant to his custody review or provide it at a later time. BATOOIE, Hossein was also asked a series of questions to assist the panel in determining whether his detention should be continued; the following questions and answers are also attached to this memorandum.

The panel believes that the criteria for release set forth at 8 C.F.R. § 241.4(e) has not been met. BATOOIE, Hossein currently has withholding of removal from Iran.

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Subject: Alien Name, [REDACTED]
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The panel recommends that [REDACTED] be detained pending a third country removal. If no decision is received prior to day 179, the panel recommends detainment until a travel document or approval is issued for [REDACTED].

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EXHIBIT G

Amended Petition Showing
Additions and Deletions, pursuant
to D.C.COLO.LCivR 15.1(a)