

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

Arish Rustami,

Petitioner,

v.

Kristi Noem, Secretary of Homeland Security,

Secretary of Homeland Security  
Washington, DC 20508

Todd M. Lyons, Acting Director, U.S. Immigration  
and Customs Enforcement,  
Sam Olson, ICE Chicago Field Office Director,

500 12th St., SW  
Washington, D.C. 20536

Pamela Bondi, Attorney General,

950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Respondents.

Civil Action No. 25-3160-JWL

**PETITION FOR WRIT OF HABEAS CORPUS**

1. Fourteen years ago, in 2011, Petitioner Arish Rustami won an order from an immigration judge in Kansas City, granting him a form of relief called withholding of removal under the Convention Against Torture, which prohibits Defendants from removing him to Iran. Should Defendants wish to remove Petitioner to Iran, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of withholding of removal. Since then he has complied with all legal requirements and has been a model citizen. But he has now been arrested without notice and has been told that he will be deported. And until Respondents can find a country to send him to, he has been told that he will remain detained.

2. Should Defendants wish to remove Petitioner to any country other than Iran, they would first need to provide him with notice and the opportunity to apply for protection as to that country as well. Until they do either of these things, they cannot remove Petitioner from the United States. And in the interim, they lack authority to detain him without bond indefinitely.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction to hear this case under 28 U.S.C. § 2241; 28 U.S.C. § 2201, the Declaratory Judgment Act; and 28 U.S.C. § 1331, Federal Question Jurisdiction. The individual Respondents are United States officials. 28 U.S.C. § 1346(a)(2).

4. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers, as well as issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

5. Venue lies in this District because Petitioner is currently detained in FCI Leavenworth, a federal medium security facility in Leavenworth, Kansas, at the behest of Immigration and Customs Enforcement. Each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

6. Petitioner Arish Rustami is a citizen and native of Iran who resides in Missouri. He is currently detained by Respondents in Leavenworth, Kansas.

7. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

8. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration

enforcement in the United States.

9. Respondent Kenneth Genalo is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States.

10. Respondent Sam Olson is the ICE Chicago Field Office Director. He is the head of the ICE office overseeing the Kansas City office for Enforcement and Removal Operations, which unlawfully arrested Plaintiff, and such arrest took place under his direction and supervision. He is the immediate legal and physical custodian of Petitioner.

11. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

12. All government Respondents are sued in their official capacities.

#### **LEGAL BACKGROUND**

13. The Convention Against Torture (“CAT”) prohibits the government from removing a noncitizen to a country where he is more likely than not to face torture. 8 C.F.R. § 1208.16(c). This protection is usually referred to as “CAT withholding of removal.”

14. For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT withholding of removal to a noncitizen, the noncitizen must meet a high bar: proof that he is more likely than not to suffer torture. “The burden of proof is on the applicant for withholding of removal under [the CAT] to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2).

15. If a noncitizen is granted withholding of removal, “DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie.

16. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge and must prove, by a preponderance of the evidence, that the individual would no longer face persecution. 8 C.F.R. § 1208.24(f). Only after termination may removal proceed.

17. Withholding of removal under 8 U.S.C. § 1231(b)(3) is a country-specific protection. As a result, the government may not remove a noncitizen with a valid grant of withholding to any country other than the one designated in the original removal order— Iran, in this case—unless it complies with specific procedural requirements. Should the government wish to remove an individual with a grant of withholding of removal to some other country, due process requires that it first provide that individual with notice and an opportunity to apply for protection as to that country as well, if appropriate.

18. Due process requires that removal to a third country must come after: (1) written notice to the noncitizen and his counsel of the third country to which he may be removed, in a language he can understand; (2) a meaningful opportunity for the noncitizen to raise a fear of return for eligibility for CAT protections; and (3) if the noncitizen is not found to have demonstrated a “reasonable fear,” a meaningful opportunity, and a minimum of 15 days, for him to seek to move to reopen his prior immigration proceedings to challenge the potential third-country removal.

19. When an individual is ordered removed, 8 U.S.C. § 1231(a) permits the government to detain them during the “removal period,” which is defined as the 90-day period during which “the Attorney General shall remove the alien from the United States.” 8 U.S.C. § 1231(a)(1)(A). With two exceptions not relevant here, the removal period begins on “[t]he date the order of removal becomes administratively final.” 8 U.S.C. § 1231(a)(1)(B)(i). The 90-day removal period is tolled and extended only if “the alien fails or refuses to make timely application in good faith

for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). The statute contains no provision for re-initiating the removal period or refreshing the 90-day clock to zero after it has expired.

20. After the removal period expires, the government may continue to detain certain noncitizens, including even noncitizens with aggravated felony convictions. 8 U.S.C. § 1231(a)(6). Still, this broad authority is subject to an important constitutional limitation, which the Supreme Court has read into the statute: detention beyond the removal period is permissible only where reasonably related to a legitimate government purpose: securing the noncitizen's physical removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). When there is no possibility of removal, detention presents due process concerns because "the need to detain the noncitizen to ensure the noncitizen's availability for future removal proceedings is "weak or nonexistent." *Id.* at 690-92. Detention is lawful only when "necessary to bring about that alien's removal." *Id.* at 689. Because the *Zadvydas* Court understood Congress to have recognized that not all removals can be accomplished in 90 days, the Court established a rebuttable presumption that six months from the start of the removal period could be deemed a "presumptively reasonable period," after which the burden shifts to the government to justify continued detention by means of evidence if the noncitizen provides a "good reason to believe that there is not significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701.

21. Finally, a person like Mr. Rustami on an order of supervision can only be taken back into custody and have his order of supervision revoked under specific conditions spelled out in 8 C.F.R. § 241.4(l)(1). That section allows an Order of Supervision to be revoked only where the noncitizen "violates the conditions of release." That regulation goes on to provide, "Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole."

Finally, the regulation provides, “The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” Absent a specific violation of the conditions of release, only specific high-level ICE officials are able to revoke an Order of Supervision, and the regulation does not purport to allow delegation of this authority. 8 C.F.R. § 241.4(l)(2).

### **FACTS**

22. Petitioner Arish Rustami is a citizen of Iran and no other country. He has no claim to permanent residency or indeed any legal immigration status in any other country.

23. Mr. Rustami was originally a refugee in the United States as a Christian from Iran. But he was convicted of possessing child pornography and then placed into removal proceedings.

24. On March 3, 2011, an Immigration Judge in Kansas City granted Mr. Rustami withholding of removal under the Convention Against Torture, finding that he had proven it more likely than not that he would be tortured in Iran. The government did not appeal.

25. Since March 2011, Mr. Rustami has lived in the Kansas City area without issue. He has followed all instructions and requirements by ICE. He has remained on an “order of supervision” which has required him to check in with immigration authorities annually. He has also maintained employment authorization.

26. To date, Respondents have taken no steps to reopen or rescind the grant of relief.

27. At no time since 2011 did ICE request that Petitioner take any specific steps to assist in his removal, such as applying for travel documents to a third country. In any event, to have applied for such travel documents would have been futile, as there are no other countries on earth that would be willing to accept Petitioner, due to his lack of legal immigration status in any other country.

28. On June 22, Iran attacked the al-Udeid Air Base in Qatar, which is a major US

military base, in retaliation for US strikes on Iranian nuclear facilities. In apparent retaliation to that attack, the United States in the following days arrested more than 130 Iranians in the United States.<sup>1</sup>

29. On June 23, 2025, Arish Rustami was arrested by ICE officers at his home. He was handcuffed and taken in an ICE vehicle to the ICE office and then shortly after was transferred to FCI Leavenworth.

30. ICE didn't just arrest Mr. Rustami – it also publicized his arrest, which led to widespread reporting of his name and “prior sex offense.”<sup>2</sup>

31. Petitioner did not receive any written or verbal explanation for whether or why his Order of Supervision was canceled. Nor was Petitioner given any opportunity or personal interview to explain why his Order of Supervision should not be canceled.

32. Since his arrest in June, multiple ICE officers have told Mr. Rustami that he is never being released.

33. To Petitioner's knowledge, ICE has not designated any third country for removal. Indeed, since there is no third country in which Petitioner has a claim to legal immigration status, there is no third country to which Respondents can remove Petitioner without that third country sooner or later removing him to Iran, where he will be tortured or killed.

34. This chain refolement would violate the withholding of removal statute just as surely as if Respondents carried out the removal directly to Iran. For this reason, Petitioner intends to submit a statement of fear of third-country removal, and will request a Reasonable Fear

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<sup>1</sup> Iran International, “Over 130 Iranian nationals arrested in US amid security sweep – Fox News,” June 27, 2025, <https://www.iranintl.com/en/202506272410>.

<sup>2</sup> Fox News, “More Iranians with criminal histories arrested by ICE in Trump's security sweep: 'Worst of the worst',” June 24, 2025 (“Arish Rustami was also arrested and has a prior sex offense, and Abdolmohammad Raghizadeh was taken into ICE custody on Monday. He's had a deportation order since November 2005 from an Arizona immigration judge, and he's currently an Iranian citizen, according to ICE.”).

Interview if any third country is eventually designated.

35. But petitioner fears that he will someday be removed without notice to a third country or to Iran and that he will have no chance to seek protection from torture under the Convention Against Torture.

36. There is also a very real chance that Mr. Rustami is in danger in various other countries aside from Iran, both because of his religion and because ICE has publicized his arrest in international news media.

37. Respondents currently lack any factual or legal basis to detain Petitioner, since Respondents cannot establish that the Petitioner will likely be removed from the United States in the reasonably foreseeable future.

38. The respondent cannot lawfully remove Mr. Rustami to Iran.

39. Petitioner's highly publicized arrest as a response to an announced bombing of a U.S. base by Iran had nothing to do with the possibility or likelihood that DHS could actually remove him.

40. Petitioner has exhausted all administrative remedies. No further administrative remedies are available to Petitioner.

**FIRST CLAIM FOR RELIEF:  
Violation of 8 U.S.C. § 1231(a)(6)**

41. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-40.

42. Petitioner's continued detention by the Respondents violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*. Petitioner's 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts expired in 2011.

43. Under *Zadvydas*, the continued detention of someone like Petitioner is

unreasonable and not authorized by 8 U.S.C. § 1231, because he is no longer in the “removal period” and there is no reasonable likelihood that he can be removed.

44. The timing and international publication of Mr. Rustami’s arrest give the impression that his arrest was pretextual and was not based on any reasonable likelihood that the United States can deport him. As a result, his detention is not justified under *Zadvydas*.

**SECOND CLAIM FOR RELIEF:  
Due Process/Detention**

45. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-44.

46. Petitioner’s detention during the removal period is only constitutionally permissible under the Due Process Clause when there is a significant likelihood of removal in the reasonably foreseeable future.

47. Respondents have rearrested Petitioner and then immediately publicized that arrest in international media apparently to respond to a bombing by Iran. But they have taken no steps to reopen his removal proceedings, nor has any such motion been granted by an immigration judge.

48. In the alternative, Respondents have rearrested and re-detained Petitioner on the assumption that Petitioner will be removable to a third country but have designated no such third country, nor do they have any factual basis to believe that such third-country removal will ever become practicable and legally permissible.

49. Respondents have informed Mr. Rustami that they intend to detain him indefinitely and that he will never be released.

50. Respondents continue to detain Petitioner without evidence that they will be able to remove him to any country.

51. Respondents’ detention of Petitioner no longer bears any reasonable relation to a legitimate government purpose, and thus violates the Due Process Clause.

52. Even if the Respondents line up a third country to send Mr. Rustami to, their publication of his arrest likely affects the degree of danger that awaits him upon removal. Thus, it is absolutely vital that he receive basic notice of which country or countries he is being removed to and a chance to seek protection from harm there.

53. To date the respondent has not received the basic due process required by the immigration statute and the constitution.

**THIRD CLAIM FOR RELIEF:  
Violation of 8 C.F.R. § 241.4**

54. Petitioner incorporates the foregoing paragraphs 1-53 by reference.

55. As explained above, Respondents' actions in cancelling Petitioner's Order of Supervision and re-arresting Petitioner without any advance or contemporaneous explanation of the legal or factual basis for re-detention violated 8 C.F.R. § 241.4, a regulation designed to protect the due process rights of noncitizens like Petitioner.

56. The only lawful basis for revoking an order of supervision is when the noncitizen "violates the conditions of release." 8 C.F.R. § 241.4(l)(1). Mr. Rustami has not violated the conditions of his release.

57. That regulation also requires notice of the violation and a hearing for "an opportunity to respond to the reasons for revocation stated in the notification." To date, the petitioner has not been provided such a notification or the required hearing.

58. This violation of required procedures also violated Petitioner's due process rights under the Fifth Amendment to the U.S. Constitution.

59. Several federal district courts have held that where ICE revokes an Order of Supervision without following the procedures set forth in these regulations, such revocation violates due process and the post-removal-period statute. *See Ceesay v. Kurzdorfer*, 2025 WL

1284720, at \*20-\*21 (W.D.N.Y. May 2, 2025) (finding violations of statute, regulations, and due process where ICE revoked Order of Supervision and detained noncitizen without advance notice and opportunity to be heard); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (same).

60. Respondents had no legal basis to re-arrest Petitioner, and the writ of habeas corpus should issue.

### REQUEST FOR RELIEF

Petitioner prays for judgment against Respondents and respectfully requests that the Court enter an order:

- a) Issuing an Order to Show Cause, ordering Respondents to justify the basis of Petitioner's detention in fact and in law, forthwith;
- b) Preliminarily and permanently enjoining Respondents from removing Petitioner to Iran unless and until his order of Withholding of Removal is terminated, including all appeals;
- c) Preliminarily and permanently enjoining Respondents from removing Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal as to that country;
- d) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody forthwith; and
- e) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

//s// Matthew Lorn Hoppock

Date: 8/11/2025

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