

FILED
U.S. District Court
District of Kansas
01/29/2026
Clerk, U.S. District Court
By: SND Deputy Clerk

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

Arish Rustami,)	
)	
Petitioner,)	
)	Case No. <u>26-3018-JWL</u>
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.)	
)	

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 (CAT), banning his removal to Iran. Should Defendants wish to remove Petitioner to Iran, the law sets forth specific procedures by which they can reopen the immigration court case and ask a judge to set aside that order.

2. After he won CAT protection, the Department of Homeland Security placed Mr. Rustami on an "Order of Supervision," allowing him to live outside of detention as long as he

complied with the order.

3. By all accounts, Mr. Rustami has complied with all legal requirements and has been a model citizen since his release in 2011. But in June, he was 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.

4. That detention has lasted for over six months with nothing to show for it. The United States has applied for one travel document, to Pakistan (a country Mr. Rustami has no legal right to go to), in October 2025. Pakistan rejected that request.

5. Although Mr. Rustami has complied with his custodian's efforts, he maintains that as a stateless person with CAT protection from Iran, there are no countries to which he can be deported.

6. 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.

7. The Court denied a previous habeas petition, noting that his detention had not been unreasonably lengthy yet. But given that his detention continues with no effort to remove him, Mr. Rustami again asks the Court for its help in securing his release.

JURISDICTION AND VENUE

8. 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).

9. 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.

10. 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

11. Petitioner Arish Rustami is a native of Iran and a citizen of no country who, until his detention, resided with his wife and children in Missouri. He is currently detained by Respondents in Leavenworth, Kansas.

12. 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.

13. 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.

14. 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.

15. 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.

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

LEGAL BACKGROUND

17. 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.”

18. For an immigration judge (serving as the designee of Respondent Bondi) to grant CAT withholding of removal to a noncitizen, the noncitizen must prove 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).

19. 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.

20. 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.

21. 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.

22. 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).

23. 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.

24. After the removal period expires, the government may continue to detain certain noncitizens, including 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).

25. 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.

26. 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.

FACTS

27. Petitioner Arish Rustami has no country of citizenship. He has no claim to permanent residency or indeed any legal immigration status in any country.

28. 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.

29. 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.

30. 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.

31. To date, Respondents have taken no steps to reopen or rescind the CAT order.

32. 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.¹

33. 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

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

FCI Leavenworth.

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

35. 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, until this Court ordered one on December 30, 2025. *See* Memorandum and Order, *Rustami v. Noem et al.*, Dkt No. 12 (Dec. 12, 2025).

36. After the Court's order granting, in part, Mr. Rustami's first habeas petition, the respondents conducted two interviews:

- On January 7, 2026, an DHS officer conducted a “Post Order Custody Review” or “POCR” interview, because Mr. Rustami's detention has lasted longer than 180 days.
- On January 9, 2026, a separate DHS officer named Aaron Winner conducted the mandatory “informal interview” that was required when the order of supervision was revoked (this is the interview the Court ordered respondents to conduct).

37. Following a POCR interview, DHS is required to provide the noncitizen a copy of any decision to release or continue detaining him. 8 C.F.R. § 241.4(d). And a decision “to retain custody shall briefly set forth the reasons for the continued detention. *Id.* At a minimum, this regulation requires the DHS to provide written notice of the outcome and a brief statement of the

² 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.”).

reasons if detention is to continue.

38. To date, Mr. Rustami has received no written or verbal notice of the reasons for his continued detention or the outcome of his POCR interview. No copies of any decision to continue his detention have been served on him. His counsel has requested that any such decision be served on him, but to date he has received no response either way.

39. If there were any country to which Mr. Rustami could be removed, the respondents have made no attempts to obtain travel documents in the three months since Pakistan said, “no.”

40. Mr. Rustami’s fifteen years of compliance with his Order of Supervision further demonstrates that his detention is serving no purpose – he would continue to comply with the government’s efforts were he not detained.

41. While Mr. Rustami continues to believe that there is no country to which he can be removed, he also remains in fear that his custodians will secret him away to a third country detention facility without notice or any opportunity to challenge such removal or apply for protection.

42. Respondents currently lack any factual or legal basis to detain Petitioner, as there is no likelihood that he can be removed in the reasonably foreseeable future.

43. The respondents cannot lawfully remove Mr. Rustami to Iran.

44. 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 remove him.

45. 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)**

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

47. 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.

48. The only effort the respondents have taken, a request for a travel document to Pakistan, was denied months ago. On information and belief, the respondents have not submitted any further travel document requests since then.

49. Mr. Rustami continues to fear persecution and torture if he is removed to various third countries.

50. Under *Zadvydas*, the continued detention of someone like Mr. Rustami 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.

51. 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:
Violation of 8 C.F.R. § 241.4 and Due Process**

52. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-51.

53. Following the POCR interview, the respondents were required to serve their decision to continue his detention on Mr. Rustami along with "the reasons for the continued detention." 8 C.F.R. § 241.4(d).

54. Respondents conducted the POCR interview on January 7, 2026 and, upon information and belief, have decided to keep detaining him. But they have not served on the respondent any copy of that decision nor provided the reasons for it.

55. Petitioner is represented by counsel in his post-order custody review, and no decision or explanation has been served on counsel.

56. Respondents' actions following the POCR interview on January 7, 2026 violate 8 C.F.R. § 241.4 and the petitioner's right to due process.

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) Issuing an Order to Show Cause, directing the Respondents to comply with 8 C.F.R. § 241.4(d);
- c) Issuing a writ of habeas corpus, and ordering that Petitioner be released from physical custody forthwith; and
- d) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

//s// Matthew Lorn Hoppock

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