

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

Civil Action No.: 25-cv-2059

Hossein Batooei,

Petitioner,

v.

Dawn Ceja,

Warden, Aurora ICE Processing Center,

Robert Guadian,

Field Office Director, U.S. Immigration and Customs Enforcement, U.S.
Department of Homeland Security,

Kristi Noem,

Secretary, U.S. Department of Homeland Security,

Pamela Bondi,

U.S. Attorney General, U.S. Department of Justice,

in their official capacities,

Respondents.

Motion for Temporary Restraining Order

INTRODUCTION

Hossein Batooei, a 60-year-old Christian convert from Iran, was detained by the Department of Homeland Security ten days ago for the presumed purpose of removing him from the United States. A 2004 order from an Immigration Judge possibly granting Mr. Batooei withholding of removal is the presumed basis on which the Department is detaining Mr. Batooei now in advance of an imminent removal to an unnamed country. That 2004 order cannot be a valid basis for detaining Mr. Batooei under 8 U.S.C. § 1231 given that the Immigration Judge order: (a) does not contain an explicit order of

removal, (b) also indicates that removal proceedings were terminated, and (c) does not designate a country to which removal is withheld.

Mr. Batoorie has petitioned this Court for a writ of habeas corpus to remedy his unlawful detention. He now moves the Court for a temporary restraining order, barring the Respondents from removing him from the country and from the jurisdiction of this Court during the pendency of his habeas petition.

LEGAL STANDARD

Federal Rule of Civil Procedure 65 requires a movant for a temporary restraining order to show that: (i) they will suffer irreparable harm unless the injunction is issued; (ii) they have a substantial likelihood of prevailing on the merits; (iii) the threatened injury outweighs any harm that the preliminary injunction may cause the opposing party; and (iv) the injunction will not adversely affect the public interest. *Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016).

Where a restraining order alters the status quo, movants must “make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.” *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 237 F. Supp. 3d 1126, 1130 (D. Colo. 2017), *aff'd*, 916 F.3d 792 (10th Cir. 2019) (quotation omitted); see *Essien v. Barr*, 457 F. Supp. 3d 1008, 1012–13 (D. Colo. 2020) (dismissing the “mandatory versus prohibitory” distinction and agreeing that a “strong showing” must be made for a detained immigrant to win a preliminary injunction). Courts cannot require that the factors weigh “heavily and compellingly” in a movant’s favor; the Tenth Circuit “jettisoned the heavily-and-compellingly requirement over a decade ago.”

Free the Nipple-Fort Collins, 916 F.3d at 797 (citations and brackets omitted). Instead, a movant in this posture must merely make a “strong showing.” *Id.*

The Court likewise has independent authority under habeas corpus, 28 U.S.C. § 2241, to order the immediate release of detained persons from unconstitutional confinement.

DISCUSSION

I. Mr. Batooie is likely to suffer irreparable harm in the absence of preliminary relief.

Mr. Batooie is 60 years old and has a history of cardiac issues, including recent surgery to place two stents. He is also suffering from increased anxiety and stress related to his possibly imminent removal, putting additional strain on his compromised cardiac system.

The reason for Mr. Batooie’s fear of removal is related to his conversion to Christianity. Raised a Muslim, he became interested in Christianity shortly after his arrival in the U.S. 25 years ago. He eventually accepted Jesus as his savior, being baptized in a Methodist church in about 2003. Viewed as an apostate, he fears return to Iran or any other predominantly Islamic country, where people who reject Islam face severe retribution and punishment.¹ His fear of persecution due to his religion formed the basis of his potentially successful withholding claim in 2004.

¹ See generally 2023 Report on International Religious Freedom: Iran, Section II, Legal Framework, <https://www.state.gov/reports/2023-report-on-international-religious-freedom/iran/#:~:text=The%20only%20recognized%20conversions%20are,a%20crime%20punishable%20by%20death> (last visited on July 2, 2025).

Absent an injunction, Mr. Batoobie faces removal to a country where he is either tortured or killed on account of his conversion, or the anxiety of such a fate leads to cardiac arrest.

II. Mr. Batoobie has a strong likelihood of success on the merits.

There are only two possible sources for the Respondents' statutory authority to detain Mr. Batoobie. The first is 8 U.S.C. § 1226, which authorizes the detention of noncitizens during the pendency of removal proceedings under 8 U.S.C. § 1229a. However, to the extent that a 2004 Immigration Judge Order indicates that removal proceedings from 21 years ago were terminated, Respondents have yet to place Mr. Batoobie in a new round of removal proceedings and have given no indication that they intend to do so.

The second is 8 U.S.C. § 1231, which authorizes the detention of noncitizens following the issuance of an administratively final order of removal. The Respondents appear to be relying on a 2004 Immigration Judge Order purportedly granting Mr. Batoobie withholding of removal under 8 U.S.C. § 1231(b)(3). A person granted withholding of removal still has a final order of removal, but the government is barred from executing that removal order to the designated country. *Matter of I- S- & C- S*, 24 I&N Dec. 432, 433-34 (BIA 2008).

But in Mr. Batoobie's case, there are three problems with the Department's possible reliance on the 2004 Immigration Judge Order. The first is that 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. *Id.* at 434 (holding that removal proceedings are "unresolved

and incomplete” where an Immigration Judge finds a respondent removable and grants his application for withholding of removal but fails to order him removed). The order fails to do so.

The second is that the 2004 Immigration Judge Order also indicates that removal proceedings were terminated. Which order is correct? That withholding was granted, or that proceedings were terminated? There is no way to tell from the face of the document. If proceedings were, in fact, terminated, then there is no final order.

Third is the fact that the 2004 Immigration Judge Order, even if construed liberally as a removal order granting withholding, fails to designate a country of removal or specify a limitation as to which country removal is being withheld. If, as would be most likely, removal to Iran was withheld, then the Respondents cannot detain for purposes of removal to Iran unless proceedings were reopened and the withholding grant was vacated by an Immigration Judge based on a material change in circumstances showing that Christian converts no longer face persecution in Iran. The Respondents have not done that. Respondents cannot remove Mr. Batooie to a third country because the order—as written—broadly prohibits his removal to *any* country.

Accordingly, considering the profound ambiguities on the face of the 2004 Immigration Juge Order, it cannot serve as the legal basis for the Respondents’ detention authority under § 1231.

III. The equities tip strongly in Mr. Batooie’s favor.

Where, as here, the government is a party to a case, the final two injunction factors—i.e., the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). When assessing whether a preliminary injunction is

warranted, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008).

As noted, for Mr. Batooie, the possible injuries if he is removed from the U.S. include an exacerbation of his cardiac issues and likely persecution on account of his religious beliefs, including criminal prosecution which could result in a death sentence. For the Respondents, should they choose to continue Mr. Batooie’s detention during the pendency of the habeas claim, their injury would consist primarily of the de minimis financial cost of those added days of confinement, and their inability to use that bed space for another non-citizen apprehended by the Department.

Mr. Batooie has no criminal history and presents no indicia of any manner of threat to the community nor the security of the United States. Aside from a brief period when he lived in California, he has lived in Colorado for over two decades with his U.S. citizen family. There is no indication that he is a flight risk nor that Respondents would not otherwise be able to ensure his compliance through electronic monitoring, if necessary.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Batooie’s application for a temporary restraining order and enjoin Respondents from removing him from the United States or from the jurisdiction of this Court during the pendency of his habeas petition.

Dated: July 2, 2025

Respectfully submitted,

/s/ Mark Robert Barr

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