

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

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

HOSSEIN BATOOIE,

Petitioner,

v.

MARK BOWEN, Acting Warden, Aurora ICE Processing Center,
ROBERT GUADIAN, Field Office Director, U.S. Immigration & Customs Enforcement, U.S.
Department of Homeland Security,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice, in their official
capacities,

Respondents.

**RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 4)
CONSENTING TO EXTENSION OF TEMPORARY RESTRAINING ORDER**

Respondents submit this response to Petitioner Hossein Batooie's Motion for Temporary Restraining Order, ECF No. 4, which was granted on an interim basis by U.S. District Court Judge Gordon P. Gallagher on July 3, 2025.¹ *See* ECF No. 10 at 3 (the Temporary Restraining Order) (granting Petitioner's Motion and ordering that Respondents shall not remove Petitioner "from the District of Colorado or the United States unless or until this Court or the Court of Appeals for the Tenth Circuit vacates this Order"). Pursuant to Fed. R. Civ. P. 65(b)(2), Respondents consent to the extension of the Temporary Restraining Order pending further order of the Court. As explained

¹ On July 9, 2025, this Court further extended the Temporary Restraining Order until July 31, 2025. *See* ECF No. 19.

below, Respondents' records show that Petitioner is subject to a final order of removal that authorizes his detention and removal. In an abundance of caution, however, and due to a lack of clarity in the Immigration Court's records, Respondents are seeking additional clarification from the Immigration Court that entered the removal order. Until that process concludes and the Court can decide this case on the merits with the benefit of a full record, Respondents agree that Petitioner should not be removed from the United States or the District of Colorado to maintain the status quo between the parties.

BACKGROUND

A. Legal framework governing detention and removal to third countries of noncitizens with final orders of removal

"The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens." *Arizona v. United States*, 567 U.S. 387, 394 (2012). As relevant here, the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, provides the government with the authority to execute orders of removal and to ensure that noncitizens who have been ordered removed are in fact removed from the United States. This authority is expansive. The United States may remove noncitizens who have been ordered removed to various countries including, where other options are unavailable, any country willing and able to accept them. *See* 8 U.S.C. § 1231(b)(1)(C)(iv) (permitting removal to a "country with a government that will accept the alien into the country's territory" when other options are "impracticable, inadvisable, or impossible"). And the government may detain a noncitizen subject to a final order of removal for purposes of effectuating that removal. *See* 8 U.S.C. § 1231(a); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (holding such detention up to six months' duration presumptively reasonable under the Due Process Clause).

B. Petitioner's Entry into the United States and 2004 Immigration Judge Proceedings

Petitioner is a native and citizen of Iran. ECF No. 1 ¶ 6; Ex. A, Decl. of Mark Kinsey ¶ 4. In 2000, Petitioner was admitted into the United States on a K-1 nonimmigrant visa, which was valid for 90 days. Ex. A ¶ 5. Petitioner overstayed his visa. *Id.* ¶ 5-7. In his Petition, Petitioner explains that he sought asylum, claiming that he feared harm or mistreatment from the government of Iran, but his asylum petition was denied. ECF No. 1 ¶ 11; Ex. A ¶¶ 8-10.

In late 2003, the Bureau of Citizenship and Immigration Services referred Petitioner's case to an Immigration Judge (IJ) and issued a Notice to Appear (NTA). Ex. A ¶ 11. The NTA charged Petitioner with being removable under 8 U.S.C. § 1227(a)(1)(B), asserting that he: (1) is not a citizen or national of the United States; (2) is a native of Iran and a citizen of Iran; (3) was admitted to the United States on a nonimmigrant K-1 visa; and (4) remained in the United States beyond the authorized period. *Id.* ¶ 12. The NTA ordered him to appear at the Los Angeles Immigration Court. *Id.*

On November 10, 2004, the IJ held a hearing in Petitioner's case. *Id.* ¶ 13; ECF No. 4-1 at 1; ECF No. 1 ¶ 12. At the hearing, Petitioner admitted the factual allegations in the NTA and conceded that he is removable. *Id.* ¶ 13.

The IJ issued a summary of his order at the hearing, which Petitioner has attached to his motion. *See generally* ECF No. 4-1. The summary contains, among other things, checkmarks indicating that Petitioner's application for withholding of removal was granted but also that his applications for that withholding and for other relief from removal were withdrawn and that proceedings were terminated. *See id.* at 1. It does not explicitly order Petitioner's removal or designate a country of removal. *Id.* The document also states, however, that it is "a summary of

[an] oral decision” that is “solely for the convenience of the parties,” and that “[i]f the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.” *Id.*

Despite these ambiguities, the record strongly suggests that the IJ ordered Petitioner’s removal at the November 2004 hearing. In addition to Petitioner’s admission of removability described above, the Immigration Court’s Automated Case Information website also shows that Petitioner was ordered removed at the proceeding:

Automated Case Information	
Name: BATOOIE, HOSSEIN A-Number [REDACTED]	
Next Hearing Information  There are no future hearings for this case.	Court Decision and Motion Information The immigration judge ordered REMOVAL. DECISION DATE November 10, 2004 COURT ADDRESS 5245 PACIFIC CONCOURSE DR #100 LOS ANGELES, CA 90045

Executive Office of Immigration Review Automated Case Information for Batooe, Hossein, A-Number [REDACTED], available at: <https://acis.eoir.justice.gov/en/caseInformation/> (last visited July 22, 2025); Ex. A ¶ 18. The U.S. Department of Homeland Security (DHS) file system also reflects notes taken at the time of the IJ hearing indicating that Petitioner withdrew his application for a benefit that would prevent his removal, and that—consistent with Petitioner’s allegations—the IJ granted withholding of removal. Ex. A ¶ 19; ECF No. 1 ¶¶ 11-12 (noting that the IJ “granted withholding of removal to an undesignated country” and that the “order withholding removal would have been based on Mr. Batooe’s fears of being persecuted due to his apostacy”); *Ali v. Beers*, 988 F. Supp. 2d 89, 93 & n.4 (D. Mass. 2013) (IJ’s grant of withholding of removal necessarily requires determination that noncitizen is deportable, which “is equivalent to an order

of deportation,” “despite [the IJ’s failure] to check the box that ‘respondent was ordered removed’”).

Finally, during the over twenty years after the IJ entered his order, Petitioner applied for work authorization several times, which DHS consistently granted under 8 C.F.R. § 274a.12(a)(10). Ex. A ¶ 21. That regulation sets forth the classes of noncitizens eligible for work authorization. It does not offer work-authorization eligibility for a person whose removal proceedings were terminated. *Id.* § 274a.12. Petitioner was granted work authorization as a noncitizen “granted withholding of deportation or removal.” *Id.*; Ex. A ¶ 21.

C. The Petition

On June 22, 2025, U.S. Immigration and Customs Enforcement (ICE) officers took Petitioner into custody for potential removal to a third country under 8 U.S.C. § 1231 and 8 C.F.R. § 1208.16(f). Ex. A ¶ 22. On July 2, 2025, Petitioner filed a Petition for a Writ of Habeas Corpus (the Petition). *See generally* ECF No. 1. He claims that the “statutory authority for [DHS] to detain and deport [him] is unclear due to ambiguities on the face of [the] 2004 [IJ] Order,” but that “under all possible interpretations, [DHS]’s legal authority to detain and deport [him] is unlawful.” *Id.* at 1. He argues that his detention as well as his potential removal to a third country other than Iran violate the INA and his right to due process under the Fifth Amendment. *See id.* ¶¶ 40-45. He asks that the Court declare his detention and removal unlawful and order Respondents to release him immediately or schedule a bond hearing before an IJ. *See id.* at 13 (Prayer for Relief).

D. Petitioner’s Motion for Temporary Restraining Order and the Court’s Interim Grant of the Motion

On the same day he filed the Petition, Petitioner filed a Motion for Temporary Restraining Order. *See generally* ECF No. 4. The motion notes ambiguity—based on the summary of IJ’s 2004

order—as to whether Petitioner is detained under 8 U.S.C. § 1226 or 8 U.S.C. § 1231. *See id.* at 1-2, 4-5. The motion also notes ambiguity as to which country to which Petitioner has been granted withholding from removal. *See id.* As relief, the motion seeks an order enjoining Respondents from removing him from the United States or from the Court’s jurisdiction during the pendency of the habeas proceeding. *See id.* at 6. It does not seek any expedited consideration of the merits of the Petition or any interim release from detention.

On July 3, 2025, Judge Gallagher granted the motion on an interim basis. *See* ECF No. 10 at 3. Specifically, Judge Gallagher entered a Temporary Restraining Order that prohibited Respondents from removing Petitioner from the District of Colorado or the United States “unless or until this Court or the Court of Appeals for the Tenth Circuit vacates” the Temporary Restraining Order. *Id.* On July 9, 2025, this Court extended the Temporary Restraining Order until July 31, 2025, and required Respondents to show cause by July 30, 2025, why the Petition should not be granted. ECF No. 19.

E. Respondents’ Investigation

While Respondents’ records reflect that Petitioner is subject to a final order of removal as discussed above, Respondents have taken several steps to obtain additional confirmation that Petitioner has a final order of removal. On July 9, 2025, ICE filed a motion for clarification with the Immigration Court asking the IJ to clarify that the November 10, 2004, order is a final order of removal to Iran and grants withholding of removal to Iran. Ex. A ¶ 24. That motion is pending. *Id.* The Immigration Court further provided to ICE a cassette tape purporting to contain a copy of the audio recording of the November 2004 removal proceeding from the Immigration Court. *See id.* ¶ 25. The tape, however, does not contain any audible recording. *Id.* ICE has asked that the

Immigration Court review its original copy of the audio to confirm that there is no available recording of the proceeding, which request remains pending. *Id.* ¶ 26.

LEGAL STANDARD

Federal Rule of Civil Procedure 65(b)(2) provides that a temporary restraining order “expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension.” Fed. R. Civ. P. 65(b)(2).

ARGUMENT

Pursuant to Rule 65(b)(2), Respondents consent to the extension of the Temporary Restraining Order until further order of the Court.

Petitioner is not likely to succeed on the merits of his Petition. The existing record—which includes contemporaneous notes from the IJ proceedings that Petitioner conceded his removability, a history of work authorization consistent with an order of removal, and an entry in the Immigration Court’s automated database showing that the IJ ordered removal—shows that Petitioner is subject to a final order of removal, which authorizes his detention and removal. *See Lolong v. Gonzales*, 484 F.3d 1173, 1177 (9th Cir. 2007) (an immigration judge’s grant of withholding of removal “necessarily requires the IJ to have already determined that the alien is deportable,” which determination “constitutes an ‘order of deportation’”) (quoting 8 U.S.C. § 1101(a)(47)); *Cruz-Camey v. Gonzales*, 504 F.3d 28, 30 (1st Cir. 2007) (other circuits’ reasoning that an “IJ’s order canceling removal implicitly includes a *threshold* determination that the petitioner is otherwise subject to removal” was “unimpeachable”); *Sapunxhiu v. Mukasey*, No. 06-cv-3975-JLL, 2008 WL 360984, at *4 (D.N.J. Feb. 8, 2008) (“[A]n alien’s concession of

removability is enough to amount to a finding of removal by the IJ and a grant of discretionary relief like the one here necessitates an inherent finding of removability.”); 8 U.S.C. § 1231(a) (authorizing detention to effectuate a final order of removal).

In addition, because Petitioner is subject to a final order of removal, the Court’s subject-matter jurisdiction is in doubt. *See* 8 U.S.C. § 1252(g) (stripping the district courts of subject-matter jurisdiction to hear cases, like this one, that “aris[e] from the decision or action by the Attorney General to. . . execute removal orders against any alien”). To the extent Petitioner is challenging the process for his removal to a third country under a final order of removal, the Court would also lack jurisdiction to hear Petitioner’s claims because he is a member of a pending nationwide, non-opt out class action on that issue. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676 (BEM), --- F. Supp. 3d ---, 2025 WL 1142968, at *12 (D. Mass. Apr. 18, 2025), *appeal filed*, No. 25-1393 (1st Cir. Apr. 22, 2025), *stayed in part on other grounds sub nom. Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (defining class as “[a]ll individuals who have a final removal order . . . whom DHS . . . will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed”); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (explaining in the prison context that “[i]ndividual suits for injunctive and equitable relief. . . cannot be brought where there is an existing class action.”).

Notwithstanding these defects in Petitioner’s claims, Respondents are working diligently to obtain additional confirmation of Petitioner’s 2004 final order of removal, and they do not object

to maintaining the status quo between the parties while they do so.² Among other efforts, ICE has reviewed a copy of the audio from the 2004 hearing provided to ICE by the Immigration Court, but the copy did not contain any discernible audio. *See* Ex. A ¶ 25. ICE has therefore requested that the Immigration Court review the original of the audio to confirm whether there is any available recording of the hearing. *Id.* ¶ 26. Respondents have also filed a motion asking the Immigration Court for clarification of the 2004 order. *Id.* ¶ 24.

CONCLUSION

As the Court has already recognized, obtaining additional information from the Immigration Court regarding the “2004 immigration proceedings will shed necessary light on the facts of th[is] case, including whether an explicit order of removal was issued prior to or in conjunction with the order granting withholding of removal.” ECF No. 19. To allow that necessary clarification to occur, and for the reasons set forth above, Respondents consent under Fed. R. Civ. P. 65(b)(2) to the extension of the Temporary Restraining Order (ECF No. 10) prohibiting Petitioner’s removal from the District of Colorado or from the United States pending further order of the Court.

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² For similar reasons, Respondents anticipate moving separately for an extension of their time to respond to the Court’s Order to Show Cause why the Petition should not be granted.

Dated: July 23, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel for Respondents hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

CERTIFICATE OF SERVICE

I certify that on July 23, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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Attorneys for Petitioner

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ V. William Scarpato III
V. William Scarpato III