

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

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

HOSSEIN BATOOIE,

Petitioner,

v.

JUAN BALTAZAR, 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.

SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 19)

Pursuant to the Court's August 25, 2025, Order, Respondents submit this supplemental response to the Court's Order to Show Cause why the Petition for a Writ of Habeas Corpus (ECF No. 1) should not be granted. *See* ECF No. 38.

In this habeas proceeding, Petitioner contends that the Department of Homeland Security (DHS) may not detain and remove him under 8 U.S.C. § 1231 because a "2004 Immigration Judge Order did not include an explicit order of removal" and "there is no indication on the 2004 Order stating to which country removal has been withheld." ECF No. 1, ¶¶ 34-35. He, therefore, requests his release or a bond hearing. *See id.* at 13 (Prayer for Relief).

On August 21, 2025, the Immigration Court ordered that Petitioner's "removal order from November 10, 2004, is hereby reissued *nunc pro tunc*, with an explicit order removing the

respondent to Iran....” Exhibit 1 at 2. The Immigration Court explained that an explicit order of removal for Petitioner was not in the summary entered by the Court in 2004 because Petitioner’s case was decided prior to the Board of Immigration Appeal’s decision in *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008). *See id.* at 1. As a result, the Immigration Court reissued Petitioner’s 2004 removal order *nunc pro tunc* and ordered that Petitioner “be **REMOVED** to **IRAN** on the charge contained in the Notice to Appear.” *Id.* at 2. And, as before, the Immigration Court ordered that Petitioner’s “removal to **IRAN** is hereby **WITHHELD**.” *Id.*

The Immigration Court has thus confirmed Respondents’ position in its Response to Order to Show Cause: Petitioner should not be released or provided a bond hearing because he has a final removal order to Iran and is, therefore, subject to mandatory detention under 8 U.S.C. § 1231. *See* ECF No. 33. Because Petitioner has a final order of removal—as confirmed by the Immigration Court’s August 21, 2025, Order—and is set for removal to a third country, he is a member of the non-optout class certified in *D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.) and cannot separately litigate his claims relating to third-country removal here. Finally, should Petitioner continue to pursue his challenge to his final order of removal (despite the Immigration Court’s August 21, 2025, Order and his prior decision to admit the charges against him and waive his right to appeal), this Court lacks jurisdiction to address that challenge.

Accordingly, as Respondents’ Response to Order to Show Cause explained, the Petition should be denied.

ARGUMENT

The Immigration Court's August 21, 2025, Order confirms that the Petition should be denied.

I. As the Immigration Court explained, Petitioner is and has been subject to a final order of removal to Iran.

Respondents' Response to Order to Show Cause explained that Petitioner's existing record in the Immigration Court demonstrated that he "is currently subject to a final removal order," and, as a result, he is properly detained under 8 U.S.C. § 1231. ECF No. 33 at 6-9.

In Reply, Petitioner argued that he has no final order of removal. *See* ECF No. 34 at 1-6. Notably, he contended that the proper "procedural remedy" to confirm the existence of a final order of removal was for "DHS ... to obtain a new [immigration judge] order." ECF No. 34 at 5; *see also id.* at 6 ("[T]he remedy for such a significant error would be a new order from the IJ in response to a DHS motion, identifying which door he meant to choose in 2004.").

The Immigration Court's August 21, 2025, Order, resolves the issue of Petitioner's final order of removal—Petitioner has a final order of removal to Iran and has had that final order of removal since November 2004.

The Immigration Court unequivocally ordered that Petitioner "be **REMOVED** to **IRAN** on the charge contained in the Notice to Appear." Ex. 1 at 2. In addition, the Immigration Court explained why the summary entered by the Court in 2004 did not explicitly order Petitioner's removal or designate a country of removal:

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).

Id. at 1.

Importantly here, the Immigration Court reissued Petitioner’s final order of removal *nunc pro tunc*; in other words, according to the Immigration Court, Petitioner’s final order of removal has existed since November 2004. The Immigration Court’s August 21, 2025, Order, states, “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.” *Id.* at 2. *Nunc pro tunc* is Latin for “now for then.” *Nunc Pro Tunc*, Black’s Law Dictionary (12th. ed. 2024). Black’s Law Dictionary defines the phrase “*nunc pro tunc*” as “[h]aving retroactive legal effect through a court’s inherent power <the court entered a *nunc pro tunc* order to correct a clerical error in the record>.” *Id.* As the Tenth Circuit has also explained, “[t]he function of a *nunc pro tunc* order is to recite the action theretofore taken but not properly or adequately recorded.” *Cairns v. Richardson*, 457 F.2d 1145, 1149 (10th Cir. 1972); *see also Santistevan v. Stegink*, No. 14-cv-02726-RM-KMT, 2015 WL 5561095, at *4 (D. Colo. Sept. 22, 2015) (explaining the retroactive legal effect of a *nunc pro tunc* order). Consequently, the Immigration Court has established that Petitioner has a final order of removal to Iran and *has been under* that final order of removal since 2004.

While Petitioner has suggested the Immigration Court’s August 21, 2025, Order is “nonfinal” because he intends to appeal, ECF No. 35 at 4, that is not so. As an initial matter, Petitioner waived his right to appeal. As the Immigration Court observed, “Both parties ... waived appeal in the matter.” Ex. 1 at 2. Given that waiver, Petitioner is unlikely to appeal successfully. Even assuming the Board of Immigration Appeals permitted an appeal here, the

Immigration Court's August 21, 2025, Order simply "reissued" Petitioner's final order of removal to Iran. That is, in its August 21, 2025, Order, the Immigration Court reaffirmed what already occurred in the immigration proceedings—Petitioner remains subject to a final order of removal. Therefore, an appeal of the Immigration Court's August 21, 2025, Order would not render Petitioner's final order of removal any less final. Finally, the Immigration Court's assessment of its own record should be conclusive evidence for this Court to conclude that Petitioner has had a final order of removal to Iran since 2004.

In short, the Immigration Court's August 21, 2025, Order confirms that Petitioner is subject to a final order of removal to Iran and, thus, subject to mandatory detention under 8 U.S.C. § 1231.

II. The Immigration Court's August 21, 2025, Order further establishes that Petitioner is a member of the *D.V.D.* non-optout class.

In their Response to Order to Show Cause, Respondents explained that Petitioner is a member of the *D.V.D.* non-optout class. *See* ECF No. 33 at 9-11. The non-optout class certified in *D.V.D.* consists of "[a]ll individuals who have a final order of removal ... 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." *D.V.D.*, ECF No. 64 at 23. Respondents explained that, because Petitioner is subject to a final order of removal to Iran and is being detained for removal to a previously undesignated, unidentified country (*i.e.*, a "third country"), he is a member of the *D.V.D.* non-optout class. *See* ECF No. 33 at 9-11.

In Reply, Petitioner conceded that he "would be a member of the *D.V.D.* class if he had a final order of removal." ECF No. 34 at 7.

With the Immigration Court's August 21, 2025, Order confirming that Petitioner is subject to a final order of removal, Petitioner is a member of the *D.V.D.* non-optout class, as he has conceded. Because Petitioner is admittedly a member of the *D.V.D.* non-optout class and detained for removal to a previously undesignated, unidentified country, he cannot proceed with his challenge to Respondents' third-country removal procedure in this habeas proceeding. *Cf. Sanchez v. Bond*, No. 25-cv-02287-CNS, ECF No. 16 at 3-5 (D. Colo. Aug. 20, 2025) (denying injunctive relief regarding third-country removal procedure because the petitioner was "a member of *D.V.D.*'s Rule 23(b)(2) class").¹

III. To the extent Petitioner continues to challenge the validity or execution of his final order of removal, the Court lacks jurisdiction to adjudicate that challenge.

As Respondents' Response to Order to Show Cause explained, the Petition challenges the existence of Petitioner's final order of removal and the procedures to execute that removal order via third-country removal, but the Immigration and Nationality Act (INA) deprives this Court of jurisdiction to address those challenges. *See* ECF No. 33 at 12-14.

In Reply, Petitioner contends that the Court has jurisdiction over his challenges both to the existence of his removal order and to the execution of that order. The Immigration Court's August 21, 2025, Order, though, undermines Petitioner's challenges and further establishes the Court's lack of jurisdiction over them.

First, Petitioner contends that this Court has jurisdiction because he "does not challenge any determination that he is removable," only "Respondents' attempts to divine the existence of a removal order where none exists in the four corners of the IJ's order." ECF No. 34 at 8.

¹ Given the Court's August 25, 2025, Order (ECF No. 38), Respondents do not address Petitioner's contentions in his Reply that he can still proceed in this action despite his status as a *D.V.D.* non-optout class member.

Petitioner, however, was and is challenging his final order of removal—the Immigration Court’s August 21, 2025, Order makes that even more clear. As a result, this Court lacks jurisdiction to review Petitioner’s challenge to his final order of removal.

Section 1252(a)(5) of Title 8 provides that the “sole and exclusive” means of “judicial review of an order of removal” is in the “appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) of Title 8 likewise provides the courts of appeals with exclusive jurisdiction to consider “all questions of law and fact,” including constitutional and statutory issues, “arising from any action taken or proceeding brought to remove an alien from the United States.” 8 U.S.C. § 1252(b)(9).

Section 1252(a)(5) and (b)(9) deprive the Court of jurisdiction here. Again, the Immigration Court ordered that Petitioner “be **REMOVED** to **IRAN** on the charge contained in the Notice to Appear.” Ex. 1 at 2. To the extent that Petitioner would continue to challenge the existence of his removal order given the Immigration Court’s August 21, 2025, Order, he plainly requests “review of an order of removal.” *Aguayo v. Martinez*, No. 20-cv-00825-DDD-KMT, 2020 WL 2395638, at *5 (D. Colo. May 12, 2020) (Domenico, J.) (“[A]ny challenge to [a final removal] order must be brought in a petition for review in the applicable court of appeals, not in a habeas petition in a district court.”). Moreover, even if Petitioner would now like to challenge the Immigration Court’s August 21, 2025, Order, Section 1252(a)(5) bars review of that Order as well. See *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1274 (10th Cir. 2018) (Section 1252(a)(5)’s scope includes “indirect challenges to the merits of a removal order”). In short, the Immigration Court’s August 21, 2025, Order further demonstrates that this Court lacks

jurisdiction under Section 1252(a)(5) and (b)(9) to review Petitioner's challenge to his final order of removal.

Second, Petitioner contends that this Court has jurisdiction to hear his challenge to his "potential removal to a country *other* than Iran" because "there currently exists no final removal order" for that removal. ECF No. 34 at 8. The Immigration Court's August 21, 2025, Order, however, makes clear that Petitioner does have a final order of removal upon which Respondents may execute a potential third-country removal.

To the extent that Petitioner seeks to challenge Respondents' execution of that final order of removal, the Court lacks jurisdiction. Section 1252(g) of Title 8 precludes review of challenges to the execution of removal orders: "no court shall have jurisdiction to hear any cause or claim by ... any alien arising from the decision or action by [DHS] to ... execute removal orders against any alien." 8 U.S.C. § 1252(g).

Here, the Court lacks jurisdiction over Petitioner's challenge to third-country removal under Section 1252(g). *Cf. C.R.L. v. Dickerson*, No. 4:25-cv-175-CDL, 2025 WL 1800209, at *2 (M.D. Ga. June 30, 2025) ("[T]he Court finds that it does not have jurisdiction to consider Petitioner's claim that he should not be removed to [a third country]."). The Immigration Court reissued Petitioner's "removal order from November 10, 2004, ... *nunc pro tunc*, with an explicit order removing the respondent to Iran...." Exhibit 1 at 2. That Petitioner has a final order of removal to Iran is plain. Petitioner, though, cannot be removed to Iran because he also has withholding of removal to Iran. *See id.* Given that Petitioner is under a final order of removal to Iran but cannot be removed to Iran, the INA provides that he may be removed to a "country with a government that will accept [him]." 8 U.S.C. § 1231(b)(1)(C) (providing for third-country

removal where it is “impracticable, inadvisable, or impossible” to send an alien to his home country). Thus, to the extent that Petitioner would continue to challenge the execution of his final order of removal (confirmed by the Immigration Court) to a third country, this Court lacks jurisdiction to hear that challenge.

In sum, as the Immigration Court’s August 21, 2025, Order makes clear, the INA deprives the Court of jurisdiction over the Petition.

CONCLUSION

The Immigration Court’s August 21, 2025, Order, confirms that Petitioner is subject to a final order of removal to Iran. More specifically, that Order affirms that Petitioner was ordered removed to Iran in 2004 but is subject to withholding of removal to Iran. Because Petitioner is subject to a final order of removal and Respondents intend to remove him to a country other than Iran, Petitioner is a member of the *D.V.D.* non-optout class. To the extent that Petitioner continues to challenge his final order of removal or its execution despite the Immigration Court’s August 21, 2025, Order, the INA precludes judicial review of those challenges.

In sum, the Immigration Court’s August 21, 2025, Order further establishes that Petitioner’s habeas claims fail and that his Petition should be denied.

Dated: September 8, 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 the Court's August 25, 2025, Order. *See* ECF No. 38.

CERTIFICATE OF SERVICE

I certify that, on September 8, 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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