

**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.

**REPLY TO RESPONDENTS' SUPPLEMENTAL RESPONSE (ECF No. 39) TO
ORDER TO SHOW CAUSE (ECF No. 19)**

Pursuant to the Court's August 25, 2025, Order (ECF No. 38), Petitioner submits this reply to the Respondents' supplemental response to the Court's Order to Show Cause (ECF No. 19) why the Petition for Writ of Habeas Corpus (ECF No. 1) should not be granted.

I. Relevant Procedural History of the 2004 Order

At the heart of this litigation is a summary order issued by Immigration Judge David Anderson on November 10, 2004, indicating that:

- (1) no removal order was issued;
- (2) proceedings were terminated;
- (3) applications for asylum and CAT protection were withdrawn; and
- (4) withholding of removal to an unspecified country was granted.

ECF No. 1-1; ECF No. 24-1, ¶ 17. According to Respondents, contemporaneous DHS notes indicate that Petitioner withdrew his asylum application and the IJ granted withholding of removal to an unspecified country. ECF No. 24-1, ¶ 19. Those notes, however, do not indicate the entry of a removal order, or that termination was ordered in error. *Id.* No contemporaneous Immigration Court notes have been provided to Petitioner that contradict or further explain the summary order. An audio recording of the hearing was found to be “essentially blank, containing only hissing or white noise.” ECF No. 24-1, ¶ 25.

In the face of this ambiguity, on July 23, 2025, counsel for DHS filed a motion with the Immigration Court, asking it to clarify the self-contradictory 2004 termination / withholding order.¹ ECF No. 35.

On August 21, 2025, Immigration Judge Rodin Rooyani granted the DHS motion. Noting that she had “reviewed the record,” but without specifying what documents or materials she had considered, she held that:

- (1) Immigration Judge Anderson, had, in fact, not ordered removal in 2004, but that failure was allegedly justifiable because it occurred prior to the Board’s decision in *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008), and that a removal order to Iran would be entered now, *nunc pro tunc* to 2004;

¹ The actual history of the motion is more complicated, as discussed in Petitioner’s notice of August 22, 2025. ECF No. 35. Counsel for DHS initially filed its motion for clarification on July 11, 2025. On July 21, 2025, the Immigration Court rejected the DHS motion, noting that the address used by the agency to serve counsel of record from 2004 did not match Court records. On July 23, 2025, DHS counsel emailed the Immigration Court a duplicate copy its rejected motion. No changes were made to the certificate of service. No new service was attempted on the 2004 attorney of record. Petitioner was never informed of DHS attempts at getting the prior rejection overturned without correcting its service error. The Immigration Court later treated the motion for clarification as having been filed on July 23, 2025, with no mention of its prior rejection of the exact same motion two days prior. ECF No. 35.

- (2) Immigration Judge Anderson had, in fact, ordered termination in 2004, but because “the termination of proceedings will no longer be necessary,” that termination order would be “stricken” as of 2025;
- (3) the parties had agreed in 2004 that Petitioner’s applications for asylum and CAT protection would be withdrawn; and
- (4) IJ Anderson had granted withholding of removal in 2004.

ECF No. 37-1.

In response to Immigration Judge Rooyani’s August 21st order, on August 25, 2025, this Court provided the parties an opportunity to submit supplemental briefing. ECF No. 38.

Meanwhile, on August 19, 2025, Petitioner filed an administrative appeal of Immigration Judge Rooyani’s order with the Board of Immigration Appeals. Ex. A (BIA Notice of Appeal).

II. Discussion

A. The Immigration Judge’s August 21st order confirmed the irregularities of the 2004 order.

1. There was a termination order entered in 2004.

Petitioner has cited the existence of a termination order as a fatal defect in his 2004 removal proceedings, rendering him not subject to detention under 8 U.S.C. § 1231 or to removal. ECF No. 34, p. 6. He acknowledged that other record evidence might show the termination order to have been a clerical mistake. *Id.*

However, the August 21st order makes clear that the Immigration Judge did, in fact, purposefully enter a termination order. The checked box on the summary order was not a clerical error. According to Immigration Judge Rooyani, Judge Anderson purposefully included a termination order, in an apparent belief that it was necessary to comply with 8 C.F.R. § 1240.12(c). ECF No. 37-1, p. 2.

As a practical matter, this means that Petitioner's case was terminated in November 2004. The government could have appealed termination, but it did not. Ex. A (Notice of Appeal), Ex. A, p. 2 (second page of the 2004 summary order, indicating that the government waived appeal). The government could have filed a motion to reconsider with Immigration Judge, stating the errors of facts and law in Immigration Judge's termination order, or a motion to reopen, with new, previously unavailable evidence about why termination was inappropriate. 8 C.F.R. §§ 1003.23(b). It did not. Finally, if the Department later regretted termination, it could have initiated new proceedings. 8 U.S.C. § 1229. It did not.

2. The Immigration Judge did not order removal in 2004.

The August 21st order also confirmed that the lack of a removal order on the summary order was not a clerical error or oversight. ECF No. 37-1. As Judge Rooyani noted, Judge Anderson "did not order the respondent be removed to a specific country." *Id.*, p. 1. The fact that Judge Rooyani had to issue a removal order *nunc pro tunc* also confirms that the 2004 order did not contain an order of removal. Had the record already contained a removal order, Judge Rooyani could have simply pointed to the existence elsewhere in the record that Judge Anderson had already ordered removal.

Respondents contend that Judge Rooyani simply "reissued" a removal order that had existed in the record since 2004, even if not noted on the summary order. ECF No. 39, p. 5. But this is simply not true. Judge Rooyani explicitly noted that Judge Anderson had failed to order removal in 2004, even offering up her own explanation as to why he made that decision to not order removal. ECF No. 37-1, p. 1.

3. Petitioner was detained in June 2025 without a removal order.

The August 21st order therefore makes clear that when Petitioner was detained in June of this year, his proceedings had been terminated for over 20 years, and he did not have a final order of removal.

B. The Immigration Judge's August 21st order is not administratively final.

A person adversely impacted by a decision issued by an Immigration Judge in removal proceedings has the right to appeal that decision. 8 C.F.R. §§ 1003.1(b)(3), 1003.38, 1240.15. "Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39. Accordingly, where the right to appeal *is* exercised, an Immigration Judge decision does not become final until review by the Board of Immigration Appeals. *Id.*

Petitioner exercised this right by filing a notice of appeal, challenging the Immigration Judge's decision to grant the DHS motion to clarify, striking the termination order as no longer necessary, and ordering removal to Iran *nunc pro tunc* to 2004. Ex. A.

Respondents contend that Petitioner cannot appeal because both parties waived appeal in 2004. ECF No. 39, p. 4. But this is putting the cart before the horse. Petitioner is challenging the Immigration Judge's 2025 decision to order removal *nunc pro tunc* and to strike the termination order. It is true that if the Board affirms the Immigration Judge, then it would be too late to file an appeal of a 2004 order. But until that Board decision, it remains an open question whether Petitioner has a removal order, and if so, the date of that order.

C. Petitioner has a meritorious agency appeal.

Respondents assert that Petitioner is unlikely to prevail on his agency appeal. ECF No. 39, p. 4. Petitioner respectfully disagrees, noting the following meritorious issues with the August 21st order.

1. Allowing the *nunc pro tunc* order to stand would unjustly change the terms of the agreement under which Petitioner voluntarily withdrew his asylum claim.

Petitioner is from Iran. He was raised as a Muslim. However, in the U.S. he converted to Christianity. He was baptized on April 20, 2003. Following his acceptance of Jesus as his savior, he became afraid of being punished in Iran for his apostasy. Ex. B (Petitioner's asylum application).²

Accordingly, in September 2003, he filed an affirmative asylum application with USCIS. The Asylum Office did not grant the application and referred the matter to the Immigration Court for further review, presumably because Petitioner had not filed his claim within one year of his entry. 8 U.S.C. § 1158(a)(2)(B) (2003). Ex. B.

In front of the Immigration Judge, Petitioner had a good-faith argument that he qualified for an exception to the one-year filing deadline. "An application for asylum of an alien may be considered, notwithstanding" the one-year deadline, if he "demonstrates to the satisfaction of the Attorney General ... the existence of changed circumstances which materially affect the applicant's eligibility for asylum." 8 U.S.C. § 1158(a)(2)(D) (2003). Petitioner was prepared to argue that his baptism into Christianity constituted the type of "changed circumstance" that allowed for his late filing. Had he won that argument, he likely would have been granted asylum,

² Petitioner's asylum application was included in the Immigration Court records provided to Petitioner by Respondents in response to the Court's order of July 31st. ECF No. 29.

as the Immigration Judge's grant of withholding necessarily demonstrated that he met the met the substantive criteria for asylum.³

Petitioner, however, voluntarily withdrew his application for asylum (and CAT protection) due to an agreement his attorney reached with government counsel. The August 21st order confirms the existence of this agreement, with Immigration Judge writing that "Immigration Judge Anderson granted withholding of removal after both parties agreed that the respondent would withdraw all other applications." ECF No. 37-1, p. 1.

As a result of this brokered deal, there was no merits hearing on any of Petitioner's relief applications. Under the terms of the agreement discussed by counsel, he withdrew his bona-fide asylum claim in exchange for a withholding grant. *Id.* In addition, given Judge Anderson's purposeful termination of proceedings and similarly intentional omission of an order of removal, it can be presumed that those issues were also a part of the attorney exchange.

That might have been an attractive offer to Petitioner—the security of a withholding grant and the termination of proceedings, with the knowledge that asylum could be pursued in the future should the government re-start proceedings, balanced against the uncertainty of a merits hearing on asylum. However, should the Board affirm Judge Rooyani's *nunc pro tunc* order, the attorneys' 2004 agreement would necessarily be altered, without Petitioner having had the opportunity to weigh the pros and cons of the retroactively altered proposal. Had Mr. Batooie understood that his removal proceedings would *not* be terminated, and a removal order *would* be issued, he may not have been willing to withdraw his meritorious asylum claim.

³ An asylum applicant must demonstrate that he has a well-founded fear of persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1158(b)(1), 1101(a)(42). A withholding applicant has the higher burden of proving that it is more likely than not that his life or freedom would be threatened due to the same five protected grounds. 8 U.S.C. § 1231(b)(3).

2. The Immigration Judge lacked jurisdiction to consider the motion.

Petitioner will argue on appeal to the Board that the Immigration Judge lacked jurisdiction to consider the DHS motion. Judge Rooyani acknowledged that Judge Anderson had ordered termination, and that the entry of that order was not a clerical mistake. ECF No. 37-1, p. 1-2. That should have ended the matter. Absent a successful government appeal, or motion for reconsideration or reopening, the termination order was administratively final, and the Immigration Judge lacked authority to unring that bell.

3. The Judge Rooyani erred in relying on *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008), to excuse Judge Anderson's failure in 2004 to include an order of removal.

Petitioner will argue on appeal that Immigration Judge Rooyani was wrong to hold that because the Board did not issue *I-S- & C-S-* until 2008, Judge Anderson was correct to order termination and to not issue an order of removal. ECF No. 37-1, p. 1-2. In *I-S- & C-S-*, the Board held that failing to enter an order of removal prior to granting withholding was not an insignificant technicality, noting that “[i]t is axiomatic that in order to withhold removal there must first be an order of removal that can be withheld.” *Id.* at 433. It reasoned that requiring an explicit order of removal was consistent with the relevant regulations, which require that an Immigration Judge’s order fully dispose of a case (8 C.F.R. § 1240.12(c)) and that an IJ identify a country of removal (8 C.F.R. § 1240.12(d)). *Id.* According to Judge Rooyani, Judge Anderson was not on notice of the need to order removal in Petitioner’s withholding case because proceedings were held four years prior to *I-S- & C-S-*. ECF 37-1, p.1.

However, Petitioner’s case is distinct from *I-S- & C-S-*, with the latter not *also* involving a termination order. The Board did not hold in *I-S- & C-S-* that when withholding is granted, the

Immigration Judge must not also terminate proceedings. Accordingly, even prior to *I-S- & C-S-*, Immigration Judge Anderson should have understood the legal impact of a termination order.

4. Judge Rooyani's decision had procedural errors.

Petitioner will also argue on appeal that the August 21st order contained several procedural errors. Specifically, he will note that Judge Rooyani erred by ruling on a DHS motion that had been rejected by the Immigration Court, with no corrective action taken by DHS. Petitioner was prejudiced by this failure, as counsel of record was unable to file a response. He will also contend that Judge Rooyani erred by failing to identify which parts of “the record” she relied upon to make her decision, with the lack of clarity frustrating meaningful appellate review. *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (holding that because the BIA has limited fact-finding ability on appeal, there is a heightened need for IJs to include in their decisions clear and complete findings of fact that are supported by the record). Finally, he will argue that Judge Rooyani erred by failing to rule on attorney Lichter's motion to substitute counsel for a month, preventing her from responding to the DHS motion.

III. Conclusion

Petitioner stands in a stronger position than he did at the start of this litigation. The August 21st order confirms what he had always suspected—that the 2004 Immigration Court record contained no explicit order of removal but *did* contain an order of termination. The August 21st order also confirmed that those decisions were intentional, and not simple clerical errors, and that Petitioner was granted withholding as a part of an agreement with DHS counsel, and not as the result of full-blown merits hearing.

The Immigration Court has now, nearly 24 years later, issued an order of removal to Iran and “un-terminated” proceedings, *nunc pro tunc* to 2004. But that is not yet an administratively

final order, with Petitioner exercising his right to appeal Judge Rooyani's 2025 order. Unless and until the Board rules on his good-faith appeal, Petitioner remains *with* an order of termination and *without* an order of removal, rendering his current detention unlawful.

Dated: September 22, 2025

Respectfully submitted,

s/ Mark Robert Barr
Mark Robert Barr
Laura Lichter
Lichter Immigration
1601 Vine Street
Denver, CO 80206
(303) 554-8400
MBarr@LichterImmigration.com
LLichter@LichterImmigration.com

Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Counsel for Petitioner hereby certifies that the foregoing reply complies with the type-volume limitation set forth in the Court's August 25, 2025, Order (ECF No. 38), as it contains 2,621 words.

s/ Mark Robert Barr
Mark Robert Barr

CERTIFICATE OF SERVICE

I certify that on September 22, 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:

Nicholas Albert Deuschle (Nick.Deuschle@usdoj.gov)
Victor William Scarpato, III (Victor.Scarpato@usdoj.gov)

Attorneys for Respondents

s/ Mark Robert Barr
Mark Robert Barr

INDEX OF EXHIBITS

Ex.	Documents	Pages
A	BIA Notice of Appeal.	1-31
B	Petitioner's Asylum Application.	32-42