

ARTICLES

DEPORTATIONS TO PERILOUS PLACES: PROTECTING AGAINST THIRD COUNTRY REMOVAL IN IMMIGRATION COURT

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ABSTRACT

Where does the United States send someone who is being deported? One would think that the question of “country of removal” would be a central point of an immigration court removal proceeding. However, country of removal is frequently decided in seconds during one of the first preliminary hearings. Although noncitizens have the first opportunity to designate a country of removal, standard practice in asylum and fear-based relief cases has been to “decline to designate” lest Immigration and Customs Enforcement (ICE) attorneys argue that the designation of a country of removal waives the fear-based applications.

Furthermore, in the first year of the second Trump administration, the Department of Homeland Security’s (DHS) policy on “third country removals” changed dramatically as DHS sought to detain and deport as many noncitizens as possible with maximum cruelty and little-to-no process. Third country removals have gone from a theoretical possibility to a significant probability and risk for noncitizens granted protection under the Convention Against Torture or withholding of removal, as well as noncitizens with unexecuted removal orders whose countries will not accept them. As immigration lawyers and advocates respond to the increased risk of third country removals, most strategies are defensive in nature and involve complex and time-consuming federal litigation and motions to reopen immigration court proceedings. The current system leaves noncitizens subject to the whims of DHS enforcement interests, dependent on lawyers with federal litigation experience, and at risk of removal to war-torn countries where they have no family and no connections.

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This article argues that immigration lawyers should use the administrative process to create a record that protects noncitizens against third country removals. Noncitizens and immigration lawyers should use two processes to increase control and transparency over the designation of a country of removal. First, on a case-by-case basis, immigration lawyers should advise clients about their right to designate a country of removal. Should a client decide to designate a country of removal, and not decline, then the immigration lawyer should also state on the record why the designation does not waive any fear-based claims. This designation will create an administrative record that DHS would have to address should a noncitizen face third country removal. Second, noncitizens and lawyers should argue for the immigration court to revisit the country of removal question at the end of removal proceedings, particularly after an Immigration Judge has either denied all relief or granted protection under the Convention Against Torture or withholding of removal. Finalizing the question of removal at the end of the proceedings, as opposed to the very start, provides greater transparency, notice, and judicial efficiency by asking ICE to state its intention to pursue third country removal. Revisiting the country of removal at the end of proceedings also provides an opportunity for noncitizens to express any fears about returning to the proposed third country.

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INTRODUCTION

On July 5, 2025, the United States put eight men on a plane and deported them to South Sudan.¹ Of these men, only one had a connection to South Sudan; for the other seven men, who were citizens of Vietnam, Burma, Mexico, Laos, and Cuba, South Sudan was a completely unknown country.² They have no family, no friends, no community, and no connections in South Sudan. Upon arrival, the South Sudanese government detained the men, holding them in a “guarded complex” while working to send them back to their countries of citizenship.³ Worse still, the United States sent them to a country that the Department of State describes as having tortured its civilians and detainees.⁴ The Department of State further warns, “[d]o not travel to South Sudan due to crime, kidnapping, and armed conflict.”⁵ Tricia McLaughlin, the then-Assistant Secretary of the Department of Homeland Security (DHS

1. See Press Release, U.S. Dep’t of Homeland Sec., 8 Barbaric Criminal Illegal Aliens Finally Departed to South Sudan After Weeks of Delays by Activist Judges (July 5, 2025), <https://www.dhs.gov/news/2025/07/05/8-barbaric-criminal-illegal-aliens-finally-deported-south-sudan-after-weeks-delays> [<https://perma.cc/YQ9P-KQKH>]; see also *U.S. Completes Deportation of Eight Men to South Sudan After Legal Wrangling*, GUARDIAN (July 7, 2025), <https://www.theguardian.com/us-news/2025/jul/07/us-deportation-men-south-sudan> [<https://perma.cc/5XMU-FFY3>].

2. See DHS, Aliens Deported to South Sudan, *supra* note 1; see also GUARDIAN, *U.S. Completes Deportation to South Sudan*, *supra* note 1.

3. Felicia Schwartz & Myah Ward, *South Sudan Took 8 Migrants from the US. It Wants Something in Return*, POLITICO (July 30, 2025), <https://www.politico.com/news/2025/07/30/south-sudan-might-take-more-us-migrant-deportees-it-has-a-few-asks-00482793> [<https://perma.cc/2322-VA6B>].

4. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H.RTS. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2023: SOUTH SUDAN 6 (2023) (“Human Rights Watch, the United Nations, and other organizations documented cases of torture and other mistreatment during arrest and while in [National Security Service] custody. Detainees described being beaten with sticks, whips, pipes, and wires; subjected to electric shocks; burned with melted plastic; raped; and subjected to other forms of sexual violence.”). This article cites to the 2023 Department of State Human Rights reports due to concerns of political bias and inaccurate reporting in the 2024 reports. In the 2024 reports, the Trump administration deleted entire categories of review, reduced criticisms of allied administrations such as El Salvador and South Sudan, and emphasized reports of abuses in countries critical of the United States. See Graham Smith, Michele Kelemen, Nick McMillan & Alyson Hurt, *State Department Slashes its Annual Reports on Human Rights*, NPR (Aug. 12, 2025), <https://www.npr.org/2025/08/12/nx-s1-5495621/state-department-human-rights-reports-slashed> [<https://perma.cc/G2TX-PCR4>]; Anne Applebaum, *Trump Has a New Definition of Human Rights*, ATLANTIC (Aug. 13, 2025), <https://www.theatlantic.com/ideas/archive/2025/08/trump-state-department-human-rights-report/683852/> [<https://perma.cc/D3YQ-S79Y>].

5. *South Sudan International Travel Information*, U.S. DEP’T OF STATE, BUREAU OF CONSULAR AFF., <https://travel.state.gov/en/international-travel/travel-advisories/south-sudan.html> [<https://perma.cc/M7QY-64JJ>] (last visited Mar. 30, 2026); see also U.S. DEP’T OF STATE, *supra* note 4, at 3 (“There were numerous reports that the [South Sudanese] government or its agents committed arbitrary or unlawful killings, including extrajudicial killings, during the year. Security forces, opposition forces, armed militias affiliated with the government and the opposition, and ethnically based groups were responsible for widespread extrajudicial killings.”).

or “the Department”), commented on the deportations, saying “[t]hese *sickos* were finally deported to South Sudan on Independence Day We will continue to fight for the freedoms of Americans while these far-left activists continue to try and force us to bring murderers, pedophiles, and rapists back to the U.S.”⁶

Noncitizens are most frequently deported to their country of citizenship. The Immigration and Nationality Act (INA) sets out a list of priorities for country of removal. The priorities move from countries of greater connection to a noncitizen, such as a country of citizenship or nationality, to countries of lesser connection to a noncitizen, such as a country that now has sovereignty over the noncitizen’s geographic place of birth.⁷ The recent deportations to South Sudan are an example of the Trump administration’s drastic expansion of *third country* removal.⁸ Third country removal is the process of deporting noncitizens to a country not named in a removal order, often where they have no connections.⁹

In June 2025, the Supreme Court allowed DHS to continue these removals, pending further litigation, without a comprehensive administrative process or individualized screening to determine if any of the men feared torture or harm in South Sudan.¹⁰ Thus, the United States government effectively took eight incarcerated men and, without notice, warning, or vetting for fear, put them on a plane to an unfamiliar country with a history of human rights abuses.

6. DHS, *Aliens Deported to South Sudan*, *supra* note 1.

7. See 8 U.S.C. § 1231(b).

8. See Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 29, 2025) (calling for increased immigration enforcement and deportation, including investigating options for third country removals); see also U.S. DEP’T OF HOMELAND SEC., *Guidance Regarding Third Country Removals* (Mar. 30, 2025), <https://immigrationlitigation.org/wp-content/uploads/2025/04/43-1-Exh-A-Guidance.pdf> [<http://perma.cc/4BME-X3LD>].

9. See, e.g., Memorandum from Todd M. Lyons, U.S. Immigr. & Customs Enf’t, Third Country Removals Following the Supreme Court’s Order in *Dep’t of Homeland Sec. v. D.V.D.*, No. 24A1153 (July 9, 2025) [hereinafter July 9, 2025, ICE Third Country Removals Policy Memo]; Complaint at 27, *D.V.D. v. Dep’t Homeland Sec.*, No. 1:25-cv-10676 (D. Mass. Mar. 23, 2025), https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.1.0_2.pdf [<https://perma.cc/GM7A-DMWS>]. In her dissent in *Dep’t of Homeland Sec. v. D.V.D.*, Justice Sotomayor defines third country removals slightly differently; she defines third country removals as removals to any “country with a government that will accept the [noncitizen]” after “the Government tries each and every alternative noted in the statute, and determines they are all ‘impracticable, inadvisable, or impossible.’” 145 S. Ct. 2153, 2154 (2025) (citing 8 U.S.C. §§ 1231(b)(1)(C)(iv), (b)(2)(E)(vii)). For purposes of this article, I focus on deportation to a country not named in the removal order, whether or not the government has first tried every statutory alternative. This definition mirrors the definition used by class counsel in *D.V.D. v. Dep’t of Homeland Sec.* I use this definition for a few reasons. First, I am concerned with notice and opportunity to respond to a third country removal. The removal order is the formal court document that should notify a noncitizen facing deportation where the United States will send them. Second, although a topic for another article, the government does not appear to be complying with the statutory requirements before deporting individuals to a country where they have no connections. Whether or not the government tries each statutory alternative first, the current result is deportation to an unknown country where someone may fear torture or persecution.

10. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) (staying a district court order that prevented DHS from removing noncitizens to countries not named in their removal orders without individualized assessments for fear of torture); *D.V.D. v. Dep’t Homeland Sec.*, 145 S. Ct. 2627, 2629 (2025) (granting motion for clarification and confirming that the June 23, 2025 order also stays a subsequent district court remedial order that sought to stop the removals without further vetting for fear of torture).

The third country removals to South Sudan were not the first, nor will they be the last.¹¹ On July 15, 2025, ten days after the plane landed in South Sudan, the United States removed another five people to Eswatini, a small landlocked country between South Africa and Mozambique that is ruled by an absolute monarchy known for its suppression of political dissent and ban on political parties.¹² Between January 20, 2025 and June 2025, the administration removed more than 8,000 people to third countries.¹³ If the administration were to continue at this rate, it would remove more than 64,000 people to countries with which they have no connection by the end of four years.

Although the concept of third country removal has existed for decades, the Trump administration's expansion of third country removals, including who it targets and where it sends people, is unprecedented in the history of the United States.¹⁴ The Trump administration has bluntly stated in press releases, interviews, and social media posts that these third country removals are intended to quickly deport people it has labeled as undesirable.¹⁵ The administration wants noncitizens in the United States to self-deport and wishes to deter individuals fleeing harm and torture from coming to the United States in the first place.¹⁶

The current use of third country removal contravenes the United States' international obligations of *non-refoulement*, the principle that countries will not deport people to places where they will be tortured or persecuted.¹⁷ The administration's use of third country removal also contravenes the INA's statutory scheme, which requires that third country removal only be used

11. As of June 2025, more than 8,100 people have been deported to countries that are not their own. Maanvi Singh, Will Craft & Andrew Witherspoon, *How Trump Has Supercharged the Immigration Crackdown – In Data*, GUARDIAN (July 23, 2025), <https://www.theguardian.com/us-news/ng-interactive/2025/jul/23/trump-ice-data-deportations-detention> [<https://perma.cc/4FH6-8FKQ>].

12. See Gerald Imray, *What to Know About the African Kingdom of Eswatini, Where U.S. Has Sent Deportees*, L.A. TIMES (July 20, 2025), <https://www.latimes.com/world-nation/story/2025-07-20/what-to-know-about-the-african-kingdom-of-eswatini-where-the-us-sent-5-deportees> [<https://perma.cc/2PD4-CJN3>]; Gerald Imray, Michelle Gumede & Rebecca Santana, *US Depots Immigrants from Jamaica, Cuba, and Other Countries to the African Kingdom of Eswatini*, AP NEWS (July 16, 2025), <https://apnews.com/article/deportees-trump-africa-eswatini-migrant-africa-8d10c5a1de7ba50cbea9712b6b5fbfb> [<https://perma.cc/S4JC-NA6B>].

13. See Singh, Craft & Witherspoon, *supra* note 11.

14. See, e.g., Complaint, *supra* note 9, at 55 (“[O]n February 18, 2025, DHS issued a policy directive that . . . instructs DHS officers to review all cases of individuals previously released from immigration detention — including those who have complied with the terms of their release for years, even decades — for re-detention and removal to a third country. This directive places an untold number of noncitizens at imminent risk of the deprivation of liberty and deportation to a third country without the basic procedural protections of notice and opportunity to present a fear-based claim.”).

15. See, e.g., Press Release, U.S. Dep’t of Homeland Sec., DHS Announces Nationwide and International Ad Campaign Warning Illegal Aliens to Self-Deport and Stay Out (Feb. 17, 2025), <https://www.dhs.gov/news/2025/02/17/dhs-announces-ad-campaign-warning-illegal-aliens-self-deport-and-stay-out> [<https://perma.cc/9GKK-CB5C>]; Sec. Kristi Noem (@Sec_Noem), X (Aug. 14, 2025, 04:07 PM), https://x.com/Sec_Noem/status/1956085235504046584 [<https://perma.cc/2B47-BMEV>] (reposting Fox News interview telling noncitizens to “LEAVE NOW”); Dep’t of Homeland Sec. (@DHSgov), X (Aug. 21, 2025, 06:14 PM), <https://x.com/DHSgov/status/1958654081783988403> [<https://perma.cc/WAX9-E8PF>] (“Our message to criminal illegals is clear: LEAVE NOW. If you don’t, we will find you and we will deport you.”).

16. See sources cited, *supra* note 15.

17. See U.N. HIGH COMM’R FOR REFUGEES, *Note on the Principle of Non-Refoulement* (Nov. 1997), <https://www.refworld.org/policy/legalguidance/unhcr/1997/en/36258> [<https://perma.cc/JCF2-8SME>].

when deportation to a country of greater connection is “impracticable, inadvisable, or impossible.”¹⁸ For example, the Trump administration has sent people to countries where they have no ties when they could have been sent to their country of citizenship or nationality, which is the statutory preference.¹⁹ Furthermore, the Trump administration’s use of third country removal is cruel, and that cruelty is the point.²⁰

Challenging third country removals is very difficult once the government has already started preparing to send an individual to a country where they lack any connection. Current Immigration and Customs Enforcement (ICE) policy provides between six and twenty-four hours’ notice before an intended removal to a third country.²¹ Moreover, ICE will not ask whether someone fears deportation to the third country; they must affirmatively state a fear to receive any vetting for torture or harm that may occur in the third country.²² As DHS targets more noncitizens for third country removal, litigation to stop these removals has largely been through class action federal litigation, such as *D.V.D. v. DHS*, and emergency interventions only after an individual non-citizen learns of a third country removal (if they are lucky enough to have access to counsel or pro se support).²³ Large-scale federal litigation is slow moving and, at least in the case of *D.V.D. v. DHS*, the Supreme Court allowed the Trump administration to continue these removals while litigation proceeds.²⁴ Emergency interventions are resource-intensive and frequently

18. INA § 241(b)(1)(C)(iv), (2)(E)(vii), 8 U.S.C. § 1231(b)(1)(C)(iv), (2)(E)(vii). See Kristina Cooke & Ted Hesson, *The US Said it had No Choice but to Deport Them to a Third Country. Then it Sent Them Home*, REUTERS (Aug. 2, 2025), <https://www.reuters.com/world/americas/us-said-it-had-no-choice-deport-them-third-country-then-it-sent-them-home-2025-08-02/> (“The fact that one Mexican man was deported to South Sudan and another threatened with deportation to Libya suggests that the Trump administration did not try to send them to their home countries ‘Mexico historically accepts back its own citizens,’ said [Trina] Realmuto, one of the attorneys representing migrants in the lawsuit contesting third-country deportations.”).

19. See sources cited, *supra* note 18.

20. See, e.g., Press Release, H. Comm. On Oversight & Gov’t Reform, Committee Democrats Denounce Trump Administration’s Cruel and Illegal Mass Deportations, Assaults on Freedom and Rule of Law (June 12, 2025), <https://oversightdemocrats.house.gov/news/press-releases/committee-democrats-denounce-trump-administrations-cruel-and-illegal-mass> [<https://perma.cc/C8SE-Z8Z5>].

21. July 9, 2025, ICE Third Country Removals Policy Memo, *supra* note 9.

22. *Id.*

23. See *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2627 (2025). Indeed, class actions are now an even more necessary form of litigation because, in June 2025, the Supreme Court significantly limited the availability of “universal injunctions.” See *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2548 (2025). The Court held that injunctions that applied nationwide, and not just to the named plaintiffs, likely “exceed the equitable authority of federal courts.” *Id.* Furthermore, access to counsel in immigration court is very limited. Noncitizen respondents are allowed to have representatives of their choosing at no cost to the government; however, representation rates are very low and even lower in detained immigration courts. INA § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A); see also Ingrid V. Eagly, Steven Shafer & Renee Moulton, *Access to Counsel in Immigration Court, Revisited*, 111 IOWA L. REV. 1, 44 (2025); Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1 (2015).

24. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. at 2627. On February 25, 2026, the District Court for the District of Massachusetts found unlawful and set aside the Department of Homeland Security’s March 30, 2025, “Guidance Regarding Third Country Removals” and July 9, 2025, “Third Country Removals Following the Supreme Court’s Order in *Department of Homeland Security v. D.V.D.*” memoranda. *D.V.D. v. Dep’t Homeland Sec.*, No. 25-cv-10676, 2026 WL 521557 (D. Mass. Feb. 25, 2026). On

require federal habeas corpus litigation. Unfortunately, the average immigration lawyer is not well-versed in federal litigation generally and habeas corpus litigation specifically.²⁵

Furthermore, the Trump administration's weaponization of third country removals reveals deficiencies within the process by which immigration judges designate country of removal in immigration court. The country of removal designation has become a largely pro forma process in the removal proceeding. More meaningful engagement in this process will allow noncitizen respondents, and immigration lawyers or representatives on their behalf,²⁶ to use the underlying administrative proceeding before the Executive Office for Immigration Review to create a record that protects against third country removal.²⁷ First, noncitizens and advocates should, on a

March 16, 2026, the First Circuit stayed the District Court's decision pending appeal. Order, D.V.D. v. Dep't Homeland Sec., No. 26-1212 (1st Cir. Mar. 16, 2026).

25. Many immigration lawyers are experts in litigation before the administrative immigration agencies, such as the Executive Office for Immigration Review and the United States Citizenship and Immigration Services. Far fewer immigration lawyers, however, have experience in federal court. Organizations such as the American Immigration Lawyers Association (AILA) and the National Immigration Project for the National Lawyers Guild (NIP-NLG) have begun providing training on habeas and mandamus lawsuits, as well as pro se resource guides. See, e.g., *July 2025 Removal Defense Webinar: Habeas in a Time of Cruelty*, NAT'L IMMIGR. PROJECT (July 17, 2025), <https://nipnlg.org/work/resources/july-2025-removal-defense-webinar-habeas-time-cruelty> [<https://perma.cc/G4RM-HPDN>]; *Habeas Explainer & Pro Se Filing Instructions*, NAT'L IMMIGR. PROJECT (Mar. 17, 2026), <https://nipnlg.org/work/resources/habeas-explainer-pro-se-filing-instructions> [<https://perma.cc/5WA3-7UVV>]. Nonetheless, many immigration nonprofits and private law offices do not yet have personnel with the training or admissions to competently litigate these cases, let alone at the numbers necessary to intervene for everyone affected by the change in policy. Furthermore, even as immigration lawyers work to gain federal litigation competency and expand capacity, the number of noncitizens who need habeas litigation support far outpaces the availability of counsel and access to pro se support. Compare *Tracking Habeas Cases*, PROPUBLICA, <https://projects.propublica.org/habeas-tracker/> [<https://perma.cc/8M92-LMXQ>] (last visited Apr. 1, 2026) (noting 32,518 total immigration habeas cases in the first thirteen months of the Trump administration), with *Arrest Dashboard*, IMMIGR. ENF'T DASHBOARD, <https://enforcementdashboard.com/ice-arrests> [<https://perma.cc/92HE-6N6Y>] (last visited Apr. 1, 2026) (noting 395,101 total arrests by ICE from January 20, 2025, through March 23, 2026).

26. Non-lawyer representatives accredited by the Department of Justice may also represent noncitizens before the Department of Homeland Security and the immigration courts. 8 C.F.R. § 1292.1(a)(2)–(3).

27. Although the term “immigrant” is used colloquially in conversation about immigration, the term has a specific meaning. “Immigrant” is a legal term of art referring to lawful permanent residents, or individuals admitted to the United States with the intent to remain. See INA § 101(a)(15), 8 U.S.C. § 1101(a)(15) (defining immigrant as any noncitizen except those described in the list of nonimmigrants, or noncitizens who intend to stay temporarily). I therefore use the term “noncitizen” throughout this paper to refer to individuals with various forms of immigration status ranging from undocumented to lawful permanent resident. Historically, the United States has called noncitizens “aliens.” INA § 101(a)(3), 8 U.S.C. § 1101(a)(3). Recognizing that the term “alien” is dehumanizing, the Biden administration began using the term “noncitizen” instead of “alien” in U.S. immigration laws. Policy Memorandum from Jean King, Acting Director, to EOIRPM 21-27, *Clarifying the Agency's Use of Terminology Regarding Noncitizens*, EXEC. OFF. FOR IMMIGR. REV. (July 23, 2021); see also Bill de la Rosa & Zachary Nielson-Papish, *Think Immigration: From “Alien” to “Noncitizen”: The Subtle Power of Language in U.S. Appellate Courts*, AILA Doc. No. 24091007 (Sept. 10, 2024) (describing correlations between negative bias words, such as “alien” and “illegal,” and negative circuit court decisions). On January 29, 2025, the second Trump administration rescinded the Biden-era policy memorandum and reinstated the term “alien” in U.S. immigration laws and proceedings. Policy Memorandum from Sirce E. Owen, Acting Dir., Exec. Off. for Immigr. Rev., Rescinding Policy Memorandum 21-27 (Jan. 29, 2025), <https://www.justice.gov/eoir/media/1387446/dl?inline> [<https://perma.cc/F3BN-U9PT>]. Individuals in removal proceedings are “respondents.” See, e.g., Immigr. Ct. Prac. Manual §2.31 (referring to noncitizens appearing before the court as “respondents”). I therefore use “noncitizen respondents” to refer to individuals with immigration

case-by-case basis, consider designating a country of removal instead of routinely declining to designate one. Allowing noncitizens to exercise their right to designate a country of removal will create a record of where they would like to go if they have no other options to remain in the United States.²⁸ Second, noncitizens and advocates should push for immigration judges to revisit the question of country of removal at the end of the removal proceeding. Revisiting the country of removal question at the end of proceedings creates an opportunity to ask the immigration court prosecutor, an attorney in ICE's Office of the Principal Legal Advisor (OPLA), whether they intend to pursue third country removal.²⁹ Whether or not the OPLA attorney responds, the noncitizen has at least raised the question during the immigration court proceedings and can state a response on the record, which will create a stronger administrative record should a challenge to third country removal be necessary.

This article and its proposals contribute to research and literature on procedural due process rights in immigration court. The Fifth Amendment applies to noncitizens and entitles them to due process of law regardless of "whether their presence here is lawful, unlawful, temporary, or permanent."³⁰ In removal proceedings, noncitizens are entitled to a process before being ordered removed.³¹ In that proceeding, the Department bears the initial burden of demonstrating that there is a reason the noncitizen is in removal proceedings, i.e., that the noncitizen is, in fact, a noncitizen; for some individuals in removal proceedings, the DHS carries an additional burden to show that the noncitizen is removable.³²

Despite the Department's burden, many noncitizens voluntarily concede alienage and removability and do not hold the Department to its burden of proof during pleadings.³³ Professor Michael Kagan has called the widespread

status other than citizenship who are in removal proceedings. Naturalized United States citizens cannot be entered into removal proceedings; denaturalization occurs through federal court proceedings. *See* 12 USCIS POLICY MANUAL, pt. L, ch. 1 (Revocation of Naturalization: Purpose and Background).

28. *See* INA § 241(b)(2)(A); 8 U.S.C. § 1231(b)(2)(A) (stating that respondents have first opportunity to designate a country of removal).

29. The Department of Homeland Security houses ICE and OPLA. Throughout this paper, I use OPLA, DHS, and "the Department" interchangeably to refer to the prosecutor in immigration court. *See* U.S. DEP'T OF HOMELAND SEC., *Organizational Chart* (Nov. 29, 2023).

30. *See, e.g.,* *Zadydas v. Davis*, 533 U.S. 678, 693 (2001) (noting that the Fifth Amendment's "Due Process Clause applies to all 'persons' within the United States, including [noncitizens]"); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020).

31. INA § 240(a)(1), 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a[] [noncitizen]."); INA § 240(b)(4), 8 U.S.C. § 1229a(b)(4) (describing noncitizen rights in removal proceedings); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("The Fifth Amendment . . . protects every one of [the "millions of [noncitizens] within the jurisdiction of the United States"] from deprivation of life, liberty, or property without due process of law.").

32. 8 C.F.R. § 1240.8.

33. *See generally* Michael Kagan, *Mass Surrender in Immigration Court*, 14 U.C. IRVINE L. REV. 163 (2024) (discussing how, though the government has the burden of proving a noncitizen is removable, noncitizens often concede to the charges against them). Removability is the legal term of art that refers to the legal grounds and processes by which someone can be removed from the United States. This article uses "removal" and "deportation" interchangeably.

trend of noncitizens in deportation proceedings conceding to their own removability a “mass voluntary surrender of fundamental rights.”³⁴ Professor Kagan argues that noncitizen respondents should deny alienage and removability when DHS bears the burden and force DHS to prove its case.³⁵ Professor Linus Chan likewise discusses the possibility of maintaining the right to remain silent when asked questions about alienage.³⁶ This article builds on this research by arguing that, on a case-by-case basis, respondents in removal proceedings should exercise their rights to designate a country of removal while also preserving their fear-based claims.

Third country removals take place in the context of increasing deportations outside of the immigration court process, such that merits hearings “have become the privileged and the few.”³⁷ Professor Sarah Sherman-Stokes describes third country deportations and the procedures that the government should provide prior to these removals, including notice and a full evidentiary hearing.³⁸ Unfortunately, the Supreme Court did not require these processes to be implemented while *D.V.D. v. DHS* remains pending.³⁹ This article builds on Professor Sherman-Stokes’s proposal by arguing for procedures that protect against third country removals during the underlying adjudication before DHS has initiated a third country removal. These procedures would also expand the scope of client-centered lawyering in the immigration space. The designation of a country of removal should be considered a more substantive part of the removal process, requiring attorneys to advise their clients of all options and engage in vigorous advocacy to defend their client’s interests.⁴⁰ Finally, this article also builds on the work of Professor Angélica Cházaro, who argues for deportation abolition and describes the inherent violence of deportations by drawing on her research describing the intentional cruelty of third country deportations.⁴¹

The article proceeds in three parts. First, in Sections I through III, I provide an overview of the removal process and fear-based relief, with an emphasis

34. *Id.* at 164–65 (explaining that in more than 94% of observed immigration cases, “it took less than eighteen minutes for immigration judges (IJs) to find respondents deportable”).

35. *Id.* at 195–201 (arguing that because DHS routinely maintains comprehensive A-files yet often fails to produce them in removal proceedings, respondents should deny alienage and removability and force the government to meet its burden of proof).

36. See Linus Chan, *The Promise and Failure of Silence as a Shield Against Immigration Enforcement*, 52 VAL. U. L. REV. 289 (2018).

37. See Jennifer Lee Koh, *Removal in the Shadows of Immigration Court*, 90 S. CAL. L. REV. 181, 185 (2017); Shoba Sivaprasad Wadhia, *The Rise of Speed Deportation and the Role of Discretion*, 5 COLUM. J. RACE & L. 1 (2015).

38. See Sarah Sherman-Stokes, *Third Country Deportation*, 53 IND. L. REV. 333, 339–40 (2020).

39. See *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2627 (2025); see also *supra* sources cited note 24.

40. See, e.g., Susan Bennett et al., *Building a Culture of Scholarship with New Clinical Teachers by Writing About Social Justice Lawyering*, 31 AM. U. J. GENDER SOC. POL’Y & L. 311, 345–48 (2023) (describing the history and theory of client-centered representation); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 501, 551 (2006) (discussing client-centered lawyering and proposing a “taxonomy of five approaches—holistic representation, narrative integrity, client empowerment, partisan advocacy and client-directed lawyering” that would help lawyers decide when and how to get involved in a client’s decision making process).

41. Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040, 1071 (2021).

on how countries of removal are designated, the role of immigration court orders and fear-based immigration relief, and the current process of third country removals. Second, in Section IV, I discuss problems with the current process, including how it denies noncitizens a meaningful opportunity to exercise their rights, the cruelty of third country removal, how it violates *non-refoulement*, and how it decreases transparency and notice while also maximizing judicial inefficiency. Third, in Section V, I propose two strategies for noncitizens to exercise more control over the question of country of removal and create an administrative record that better protects against third country removals. As the Trump administration expands third country removals, seeking to remove more people with little-to-no process to countries where they will face persecution or torture, this article proposes strategies to increase noncitizens' options and control over where they go when the United States deports them.

I. BACKGROUND ON REMOVAL PROCEEDINGS AND COUNTRY OF REMOVAL DESIGNATIONS

Understanding the administrative immigration process is necessary to appreciate the significance of the current third country removal regime, as well as the framework for the proposals described later in this article. The following section describes preliminary proceedings in immigration court, including pleadings and how immigration judges designate a country (or countries) of removal during what many think of as “standard” removal proceedings, or proceedings under INA Section 240.⁴² There are many forms of immigration proceedings, some of which are administered by the Executive Office for Immigration Review (EOIR) and others that are administered by DHS.⁴³ I focus on proceedings under INA Section 240 because they present the clearest opportunity for an administrative record; however, as described later in this article, some of the proposals also may be applicable to other forms of administrative immigration proceedings. Immigration judges, who work in EOIR within the Department of Justice, administer removal proceedings under INA Section 240.

Removal proceedings, as they are known today, were created following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).⁴⁴ Prior to IIRIRA, the United States had two separate processes for noncitizens that it sought to remove: deportation and exclusion. Deportation proceedings were for noncitizens who had legally “entered” the United States; for example, noncitizens with lawful permanent residence or a

42. “Pleadings” refer to a noncitizen respondent’s admission/concession or denial of the factual allegations and charges contained in the Notice to Appear. See EXEC. OFF. FOR IMMIGR. REV., U.S. DEP’T OF JUST., IMMIGR. CT. PRAC. MANUAL ch. 4.15 (last revised Apr. 8, 2008). The factual allegations and charges are what DHS bears the burden to prove to initiate removal proceedings.

43. See, e.g., INA § 240, 8 U.S.C. § 1229a (removal proceedings); 8 C.F.R. § 235.3 (expedited removal).

44. Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996) (codified in scattered sections of 8 U.S.C.) [hereinafter IIRIRA].

visa.⁴⁵ Exclusion proceedings were for noncitizens who were knocking at the proverbial door to the United States and still sought legal entry, whether or not they were physically inside U.S. borders.⁴⁶ IIRIRA combined the two processes into one, which is known as *removal proceedings*.⁴⁷ Thus, “removal” is the legal term of art for what people commonly call deportation.⁴⁸

A. *Initiation of Removal Proceedings and Pleadings*

The Department of Homeland Security (DHS) initiates removal proceedings against a noncitizen by serving a Notice to Appear, Form I-862, on EOIR.⁴⁹ The Notice to Appear is the charging document, which contains the noncitizen’s name, date of birth, category of removal, the allegations (typically that the individual is not a citizen of the United States and is, instead, a citizen or national of another country), and the charge of removability under the INA.⁵⁰ Vestiges of the aforementioned deportation and exclusion processes are seen in the Notice to Appear, which has check boxes for whether someone is “an arriving [non-citizen],” a noncitizen “present in the United States who has not been admitted or paroled,” or a noncitizen “admitted to the United States” but removable for a reason stated on the form.⁵¹

When removal proceedings are initiated, EOIR schedules a master calendar hearing.⁵² Master calendar hearings are preliminary hearings “held for pleadings, scheduling, and other similar matters.”⁵³ According to the Immigration Court Practice Manual, pleadings cover, among other issues, the following topics: service of the Notice to Appear, the factual allegations and charges in the Notice to Appear, designation of the country of removal, notice of any applications for relief from removal, and scheduling an individual hearing on the application(s) for relief from removal.

Pleadings take minutes.⁵⁴ This means that incredibly substantive questions, such as where someone will go if deported, happen in seconds during one of the first preliminary hearings. In the average case, country of removal is not revisited during a subsequent hearing, even if relief from removal is denied and the noncitizen is ordered removed from the United States.

45. See, e.g., Herman L. Bookford, *Deportation and Exclusion Proceedings*, 1 IN DEFENSE OF THE ALIEN 15, 25–27 (1978) (discussing differences between and processes for exclusion and deportation proceedings).

46. *Id.* at 24–25.

47. IIRIRA § 304, 110 Stat. at 3009-587.

48. INA § 240.

49. 8 C.F.R. § 1003.14; 8 C.F.R. § 1003.15.

50. See 8 C.F.R. § 1003.15.

51. See Form I-862, DEP’T OF HOMELAND SEC., https://www.ice.gov/doclib/detention/checkin/NTA_I_862.pdf [<https://perma.cc/6VV6-4F6D>] (last visited Apr. 3, 2026).

52. Generally speaking, there are two types of hearings in immigration court removal proceedings: master calendar hearings and individual hearings. See IMMIGR. CT. PRAC. MANUAL, *supra* note 27, at ch. 4.15, 4.16.

53. *Id.* at ch. 4.15(a).

54. Kagan, *supra* note 33, at 165 (describing how observed pleadings took between ninety-two seconds and eighteen minutes).

B. *Designation of Country of Removal*

A noncitizen respondent's right to name a country of removal, known as "designation" of a country of removal, is a significant and meaningful part of the removal proceeding; courts have held that designation is a substantive right that requires remand if a noncitizen is not afforded the opportunity to name a country of removal.⁵⁵

By statute, an immigration judge directs the country of removal process and signs the removal order, but the Department of Homeland Security is in charge of effectuating removal.⁵⁶ INA Section 241(b) provides the steps for that process.⁵⁷ In *Jama v. INS*, the Supreme Court interpreted the section to contain four steps or "removal commands" that constrain both the immigration judge and DHS.⁵⁸

First, the Immigration Judge gives a noncitizen the opportunity to designate a country of removal. Often, noncitizens "decline to designate" a country⁵⁹ because designation of a country of removal is commonly thought to waive or prejudice applications for asylum, withholding of removal, and protection under the Convention Against Torture.⁶⁰

If a noncitizen were to name a country of removal, then INA Section 241(b) limits the country of removal options.⁶¹ For example, noncitizens can only

55. See, e.g., *Rodriguez-Augustin v. INS*, 765 F.2d 782, 784 (9th Cir. 1985).

56. 6 U.S.C. §§ 251(2), 252(a) (2000 ed., Supp. II); 8 C.F.R. § 1240.12(d) (discussing the removal authority of DHS after an immigration judge orders a noncitizen removed from the United States). Indeed, by regulation, immigration judges must explain to every noncitizen respondent that "the country of removal will in the first instance be the country designated by the respondent" and then provide the opportunity for a noncitizen respondent "to make such designation." 8 C.F.R. § 1240.10(f). After the noncitizen respondent's designation, the immigration judge "shall also identify for the record a country, or countries in the alternative, to which the [noncitizen's] removal may be made" if the noncitizen respondent declines to designate or if the named country will not accept the individual for removal. *Id.* In practice, immigration judges do not always designate a separate country of removal in the alternative.

57. INA § 241(b), 8 U.S.C. § 1231(b).

58. 543 U.S. 335, 341 (2005); INA § 241(b), 8 U.S.C. § 1231(b); 8 C.F.R. § 1240.10(f); *D.V.D. v. Dep't Homeland Sec.*, No. 25-cv-10676, 2026 WL 521557, at *25 (D. Mass. Feb. 25, 2026) ("DHS is further directly constrained by section 1231(b)(2)'s 'four consecutive removal commands.'") (citing *Jama*, 543 U.S. at 341). Subsection (b) of the statute is divided into three additional sections. The first addresses "arriving [noncitizens]" while the second addresses "other [noncitizens]." In practice, however, immigration judges give noncitizen respondents the first opportunity to name a country of removal, regardless of whether they are seeking to enter the United States (an arriving noncitizen) or have already been lawfully admitted into the United States.

59. See, e.g., *Kagan*, *supra* note 33, at 170 ("After that, the immigration judge will ask the respondent if she would like to designate a country of removal. It is customary for someone who wants to avoid deportation to not want to designate a country of removal, especially when a person intends to apply for asylum because of a fear of persecution."); *Asylum Manual: Immigration Court Proceedings*, IMMIGR. EQUAL., <https://immigrationequality.org/asylum/asylum-manual/immigration-court-proceedings/> [https://perma.cc/DLB9-EJE3] (last visited Apr. 5, 2026) ("Next, the IJ will ask if the respondent wishes to designate a country of removal. In asylum cases, the attorney should state that the respondent does not wish to do so, since the idea behind an asylum/withholding/CAT application is that under no circumstances does the respondent ever wish to return to their country."); *Sample Written Pleadings*, CLINIC, https://www.cliniclegal.org/sites/default/files/2022-06/sample_written_pleadings.pdf [https://perma.cc/PNR2-DBL3] (last visited Apr. 5, 2026); *Master Calendar Hearings*, HUM. RTS. FIRST, https://resources.humanrightsfirst.org/wp-content/uploads/2025/01/HRF-Memo_What-to-Expect-at-Master-Calendar-Hearings.pdf [https://perma.cc/3TPA-5N7G] (last visited Apr. 5, 2026).

60. See sources cited, *supra* note 59.

61. INA § 241(b), 8 U.S.C. § 1231(b).

name a country that is contiguous to the United States if they are a “native, citizen, subject, or national of, or has resided in” that country.⁶² However, if a noncitizen designates a country of removal, then “the Attorney General *shall* remove the [noncitizen] to the country that the [noncitizen] so designates.”⁶³ Notwithstanding the “shall remove” language in the statute, there is another limitation on the right to designate: “the Attorney General *may* disregard a designation” if the noncitizen does not promptly name a country, if the country named does not respond in a timely manner about the removal, if the country responds but will not accept the noncitizen, or if the Attorney General decides that removal to the named country will prejudice the United States.⁶⁴

Second, if a noncitizen is not removed to a country of his choice, then “the Attorney General shall remove him to a country where he is a subject, national, or citizen.”⁶⁵ This step results in the country of removal for most noncitizens. However, not all countries are willing to accept people deported from the United States, even if someone is a citizen of that country. Thus, the statute explains that if the country where a noncitizen is a subject, national, or citizen does not tell the U.S. government whether it will accept a deportee within thirty days or a reasonable time period, or if the country is not willing to accept the noncitizen, then the immigration court can designate, and DHS can consider, other countries of removal.⁶⁶

Third, if the first and second steps fail to result in a country of removal, then the immigration court can designate, and DHS can consider removal, to a country where the noncitizen has a lesser connection.⁶⁷ The statute is very broad, and the “additional removal countries” include:

- The country where the noncitizen was when they were admitted to the United States;
- A “foreign territory contiguous to the United States,” if the noncitizen had entered the United States from that country;
- The country where the departure port is located if the noncitizen arrived by boat;

62. *Id.* A native is a person “born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to INA section 202(b).” 8 C.F.R. § 40.1(m). A national is “a person owing permanent allegiance to a state.” 8 U.S.C. § 1101(a)(21). The term “citizen” is not defined in the INA, other than in reference to the categories of people who are, or have a claim to be, U.S. citizens. *See* 8 U.S.C. § 1401. Citizens are generally recognized, however, as “a person who, by place of birth, nationality of one or both parents, or naturalization, is granted full rights and responsibilities as a member of a nation or political community.” *See Citizen*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/citizen> [<https://perma.cc/M9ZW-SMBW>] (last visited Apr. 4, 2026).

63. INA § 241(a), 8 U.S.C. § 1231(a) (emphasis added); *D.V.D.*, 2026 WL 521557, at *26 (citing 8 C.F.R. § 1240.12(d)) (“[B]y regulation, DHS must execute removal to the immigration judge’s ‘specified or alternative country or countries’ unless it is ‘unable’ to do so.”).

64. INA § 241(c), 8 U.S.C. § 1231(b)(2)(C).

65. *Jama*, 543 U.S. at 363; INA § 241(b)(2)(D), 8 U.S.C. § 1231(b)(2)(D).

66. INA § 241(b)(2)(E)(i)–(vi), 8 U.S.C. § 1231(b)(2)(E)(i)–(vi).

67. *Id.*

- A country where the noncitizen resided before entering another country and then entering the United States (e.g., El Salvador if the noncitizen traveled from El Salvador to Mexico and then to the United States);
- The noncitizen's country of birth; or
- The country where the noncitizen's "birthplace is located" at the time of removal (e.g., someone who was born in Bratislava, Czechoslovakia in 1987 could be removed to Slovakia in 2025).⁶⁸

In designating a country under this step, the Supreme Court has held that the United States does not need to receive advance consent from a country before removing a noncitizen there.⁶⁹ Thus, the government has broad statutory options to remove a noncitizen to a wide variety of countries.

Fourth, and finally, *Jama v. ICE* explains that the statute has one last catchall provision. If it is "impracticable, inadvisable, or impossible" to remove a noncitizen to a country of "lesser connection," then the United States, through DHS, can remove a noncitizen to "another country whose government will accept the [non-citizen] into that country."⁷⁰ This fourth catchall provision contemplates and permits deportation of a noncitizen to "another country," i.e., a third country, when the U.S. government cannot remove to a country of direct or lesser connection. However, the provision is not unlimited. First, this provision is only triggered when *all* options provided for earlier in the statute have been considered and found "impracticable, inadvisable, or impossible."⁷¹ Second, as described below, the United States cannot deport someone to a country where they will experience torture or persecution.⁷²

The designation of a country of removal, in many cases, quite literally determines where someone goes after the United States forces them to leave the country. Despite the substantive right and importance of the country of removal designation, this question is usually decided in seconds: the OPLA attorney names a country (or countries) and the immigration judge quickly affirms. Sometimes the designation of a country of removal is simple because there really is only one country that would accept the individual. Other times, the designation can be very complicated because of multiple potential countries of citizenship and/or nationality. For example, consider someone who was born in

68. *Id.*

69. See *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335, 346 (2005). It is important, however, to distinguish the naming of the country of removal, as described in *Jama*, from the actual physical removal of a person from the United States.

70. INA § 241(b)(2)(E)(vii), 8 U.S.C. § 1231(b)(2)(E)(vii); *Jama*, 543 U.S. at 341–42.

71. INA § 241(b)(2)(E)(vii), 8 U.S.C. § 1231(b)(2)(E)(vii); see also *D.V.D. v. DHS*, No. 26-10676-BEM, 2026 WL 521557, at *26 (D. Mass. Feb. 25, 2026) ("Defendants are thus wrong to suggest that removal to 'any' country is permitted whenever other options are deemed 'impracticable, inadvisable, or impossible,' . . . by regulation, DHS must executive removal to the immigration judge's 'specified or alternative country or countries' unless it is 'unable' to do so." (citations omitted)).

72. See *infra* Part II.

Venezuela to a father who is a Spanish citizen.⁷³ That individual would be a dual citizen of Venezuela and Spain. Suppose that this person's mother was a Colombian citizen. This person might also have a claim to Colombian citizenship or nationality. Even in this more complicated scenario, however, the court names the country of removal very quickly. The Department might name Venezuela, Colombia, Spain, all three countries, or a combination of the countries as the country of removal. While individuals in removal proceedings can hold the Department to its burden in contesting the allegations and charges in the notice to appear,⁷⁴ there is rarely an evidentiary hearing on the country of removal designation and whether the designation complies with the statutory scheme.

II. FEAR-BASED RELIEF

The question of country of removal intersects with fear-based immigration relief because someone cannot be deported to a country where they will experience torture or persecution. Thus, even the country of removal steps described above are not unlimited. The following section provides a brief overview of the three forms of fear-based relief in U.S. immigration law, with a focus on the relevance of the country of removal designation and the orders that a judge will issue in each case.

Fear-based immigration relief refers to three specific protections against deportation based on a demonstration that a noncitizen will experience torture⁷⁵ or persecution if removed to a certain country: protection under the Convention Against Torture, withholding of removal under INA Section 241(b), and asylum.⁷⁶

These three forms of fear-based relief, as well as modern-day U.S. and international asylum law, came to be following World War II and the signing of the 1948 Universal Declaration of Human Rights.⁷⁷ One of the obligations contained in the Declaration was a commitment not to send individuals to

73. This hypothetical draws from *Matter of B-R-*, which discusses the dual nationality bar to asylum. 26 I&N Dec. 119 (B.I.A. 2013). In that case, the question of dual nationality arose as a bar to asylum, and not during the country of removal designation. *Id.* at 120 (discussing dual nationality bar in context of asylum for someone of Venezuelan and Spanish descent).

74. *Id.* at 119.

75. See *In re Acosta*, 19 I&N Dec. 211, 222 (B.I.A. 1985) (stating persecution is “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive”); see also 8 C.F.R. §§ 208.18(a)(1), 1208.18(a)(1) (defining torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind . . .”).

76. Other forms of immigration relief also relate to a noncitizen's fear or experience of harm. For example, U visas and T visas are visas available to noncitizens who have been victims of certain crimes or trafficking. See *U and T Visa Certifications*, U.S. DEP'T LABOR, <https://www.dol.gov/agencies/whd/immigration/u-t-visa> [<https://perma.cc/N9NQ-4DVW>] (last visited Apr. 21, 2026). For purposes of the present discussion, the article focuses on the fear of returning to or being deported to a country.

77. See, e.g., Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 CHI. J. INT'L L. 81, 83–91 (2015) (discussing the beginning of modern refugee law and its challenges).

countries where they will experience harm or torture.⁷⁸ This principle is known as *non-refoulement* and is one of the most important norms of international law; indeed, the principle that countries will not send individuals to a place where they will be tortured is *jus cogens*, or so essential that countries cannot violate the norms through other treaties, customs, or rules.⁷⁹ The United States observes its *non-refoulement* obligation through the Convention Against Torture and statutory withholding of removal under INA Section 241(b)(3).⁸⁰ In contrast, asylum goes beyond the *non-refoulement* obligations to provide greater protection and benefits.⁸¹

Due to the *non-refoulement* obligation, both protection under the Convention Against Torture and statutory withholding of removal under INA Section 241(b)(3) are mandatory protections; an immigration judge cannot discretionarily deny relief. To receive protection under the Convention Against Torture, an applicant must demonstrate that it is more likely than not that they will be tortured by, or with the acquiescence of, the government in the country of removal.⁸² In contrast, statutory withholding of removal under INA Section 241(b)(3) requires an applicant to demonstrate that it is more likely than not that they experienced past persecution or will experience persecution in the future on account of their race, religion, nationality, political opinion, or membership in a particular social group.⁸³ The persecutors must be a government actor or a private entity that the government is unwilling or unable to control.⁸⁴

Noncitizens granted protection under the Convention Against Torture or statutory withholding of removal receive a removal order. Then, the removal is *withheld* because the immigration court has found that the noncitizens would experience torture or persecution in the country of removal, and the *non-refoulement* obligations prohibit the United States from sending individuals to places where they will experience that harm. Individuals granted either of these mandatory protections therefore receive two immigration court

78. *Id.* at 85.

79. See Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INT'L J. REFUGEE L. 533, 534–57 (2001); cf. David Kretzmer, *Torture, Prohibition of*, OXFORD PUB. INT'L L. ¶¶ 6, 38 (last updated May 2022), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e880> [<https://perma.cc/7SK7-HQ8G>] (discussing the prohibition of torture as a *jus cogens* norm and later the customary international law status of non-refoulement in the context of torture).

80. See generally Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)) [hereinafter Refugee Act]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681–822 (1998) (codified at Note to 8 U.S.C. § 1231).

81. *E.g.*, Refugee Act of 1980, § 203(e), 94 Stat. at 107.

82. There are two forms of protection under the Convention Against Torture: withholding of removal under the Convention Against Torture and deferral of removal under the Convention Against Torture. For purposes of this article, protection under the Convention Against Torture will collectively refer to both withholding and deferral.

83. See INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

84. See, e.g., *Orellana v. Barr*, 925 F.3d 145, 153 (4th Cir. 2019).

orders: (1) a removal order that names the country of removal designated during pleadings at the start of proceedings, and (2) an order granting protection under the Convention Against Torture or statutory withholding, which withholds removal to the named country of removal.⁸⁵ Indeed, if the immigration court designates more than one country of removal, then it is possible that a noncitizen could receive a grant of protection under the Convention Against Torture that withholds removal to one country, and a separate removal order that orders deportation to a second country.

Thus, with these two orders in hand, noncitizens granted protection under the Convention Against Torture and statutory withholding have protection against deportation to the named country of removal but no pathway to lawful permanent residence or citizenship. Moreover, if country conditions change in the country of removal, then DHS can motion to reopen immigration proceedings to try and terminate the withholding of removal or protection under the Convention Against Torture based on those changed conditions.⁸⁶ Finally, DHS can also seek to remove Convention Against Torture and withholding grantees to a third country as long as they would not experience torture or persecution in that third country.⁸⁷

The mandatory nature of protection under the Convention Against Torture and statutory withholding make these forms of fear-based protection very different from the third option for fear-based relief: asylum. Asylum has the same underlying requirements as statutory withholding of removal but a lower evidentiary burden.⁸⁸ Unlike the mandatory protections, asylum is a discretionary relief that requires an immigration judge to make separate findings on statutory eligibility and whether an applicant merits relief after weighing the positive and negative equities.⁸⁹ Asylees also do not receive removal orders and instead have a pathway to lawful permanent residence and, after five years, citizenship.⁹⁰ Thus, an asylum applicant granted asylum in removal proceedings receives only one order: the order granting asylum.

The role of the country of removal also distinguishes protection under the Convention Against Torture and statutory withholding from asylum. An applicant for protection under the Convention Against Torture or statutory withholding must demonstrate that they fear torture or persecution, respectively, in the designated country of removal. Thus, the two mandatory forms of relief only protect someone from deportation to the country designated by the immigration judge at the start of proceedings. In asylum, however, the

85. See *Nasrallah v. Barr*, 590 U.S. 573, 581–82 (2020).

86. See INA § 240(c)(7), 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.23(b)(3); UNITED STATES DEP'T OF JUS., EXEC. OFF. FOR IMMIGR. REVIEW, IMMIGR. CT. PRACTICE MANUAL Ch. 4.7(e)(1), (4).

87. See *infra* Part III.

88. See Convention Relating to the Status of Refugees, *supra* note 80; Protocol Relating to the Status of Refugees, *supra* note 80; Refugee Act § 203(e), 94 Stat. at 107.

89. See 8 C.F.R. § 208.13(d); *In re Pula*, 19 I&N Dec. 467 (B.I.A. 1987).

90. See 8 C.F.R. § 209.1 (adjustment of status for asylees); INA § 316, 8 U.S.C. § 1427 (naturalization requirements).

country from which someone seeks asylum does not need to be the same country that has been designated as a country of removal. The refugee definition names two potential places from which someone can seek asylum: the country of nationality or, if there is no country of nationality, then the country of last habitual residence.⁹¹ In contrast, potential countries of removal, as described in the prior section, are much broader: they include a country where someone was born (is a native of), the modern countries that now control the territory where someone was born, the country where someone was located before being admitted to the United States, and more.⁹²

The role of the country of removal in fear-based claims does not come up very often because the country of removal *is* the country of nationality and the last habitual residence in most cases. To win asylum and avoid a removal order, however, a noncitizen needs only demonstrate a fear of return to their country of nationality or last habitual residence to protect against deportation to any country.⁹³

Aside from the statutory language, the role of country of removal is also demonstrated by the processes by which someone can receive asylum versus protection under the Convention Against Torture and statutory withholding of removal. Applicants can apply for asylum affirmatively through the United States Citizenship and Immigration Services (USCIS) without first having been entered into removal proceedings. Thus, affirmative asylum applicants apply for and receive asylum without ever designating or being asked to designate a country of removal.

In contrast, an immigration judge must adjudicate applications for protection under the Convention Against Torture and statutory withholding of removal. In theory, the application requires a named country of removal; however, in practice, the application may be filed *before* the immigration judge designates a country of removal. For example, some cases are referred to immigration court from USCIS, others might have a filing deadline before the court takes pleadings, and sometimes a country of removal is not designated due to an immigration judge's error or delay. Regardless, the immigration judge must name a country in the removal order that is issued alongside the order granting fear-based protection.

Non-refoulement still limits where the United States can remove noncitizens, even when DHS has the legal ability to remove someone to a third country; noncitizens cannot be sent to a country where they will experience

91. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42).

92. INA § 241(b), 8 U.S.C. § 1231(b).

93. The exception is the “dual nationality” bar. *In re B-R-*, 26 I&N Dec. 119, 121 (B.I.A. 2013) (holding that an applicant for asylum who is a dual national must demonstrate a fear of return to both countries of nationality to win asylum); *but see Zepeda-Lopez v. Garland*, 38 F.4th 315, 323 (2d Cir. 2022) (holding that a dual national need only prove fear of return to one country to win asylum). A separate concern in these cases is demonstrating what it means to be a national of a country and how to demonstrate (or rebut) dual nationality. Making the country of removal designation a more substantive process in the removal proceeding could allow for evidence and findings on a noncitizen's identity as it relates to immigration relief and potential bars. This question of identity, and the lack of a formalized process to demonstrate a noncitizen's connection to a specific country, warrants its own research.

persecution or torture.⁹⁴ Therefore, under the principle of *non-refoulement*, after someone receives a final order of removal, DHS should not be able to name any country and quickly deport that person there without first vetting whether that person will experience harm upon removal.⁹⁵ Unfortunately, as described below, the Supreme Court has allowed DHS to continue removing individuals to third countries with limited notice and little opportunity to state any fears of torture or persecution.

III. AN OVERVIEW OF THIRD COUNTRY REMOVALS

Individuals who have final removal orders, including persons granted protection under the Convention Against Torture and statutory withholding of removal, are at risk of third country removal. This is because they have removal orders entered in their cases and are not granted any affirmative status in the United States. Simply put, for individuals granted protection under the Convention Against Torture or statutory withholding of removal, the grant is a narrow promise: the United States will not deport to the named country where it is more likely than not that they will experience torture or persecution, but makes no promises about deportation to a third country.

Before January 2025, third country removals were somewhat rare.⁹⁶ Recently, however, the Trump administration has dramatically expanded third country removals. The administration removes individuals to third countries even when the third country has a record of human rights abuses and even when DHS has not yet demonstrated why removal to a country of greater connection is “impracticable, inadvisable, or impossible.”⁹⁷

In this article, the term “third country” follows the definition provided by class counsel in *D.V.D. v. DHS*: “[A] third country is a country not previously designated for removal by either an immigration judge (IJ) or DHS in the underlying removal proceedings.”⁹⁸ A third country *removal* occurs when the

94. INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) (“Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened.”); 8 C.F.R. § 208.18.

95. See *D.V.D. v. Dep’t Homeland Sec.*, No. 25-cv-10676, 2026 WL 521557, at *27 (D. Mass. Feb. 25, 2026) (describing how the statute requires personalized notice and opportunity to respond before removal to a third country because “[i]t is unrealistic to imagine that an officer could conceivably have enough information about [a noncitizen’s risk of torture or persecution] . . . absent some kind of input from the individual”), *stayed by Order*, *D.V.D. v. Dep’t Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026).

96. See, e.g., *What are Third-Country Removals? Understanding Their Use in U.S. Immigration Policy*, AM. IMMIGR. COUNCIL (Dec. 5, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/what-are-third-country-removals-factsheet/> [<https://perma.cc/DWS8-LR8J>] (“Historically, the U.S. government rarely conducts third-country deportations.”).

97. INA § 241(b)(2)(E)(vii), 8 U.S.C. § 1231(b)(2)(E)(vii); see Exec. Order No. 14,159, *supra* note 8; Cooke & Hesson, *supra* note 18. In oral arguments for *D.V.D. v. Dep’t Homeland Sec.*, the Court asked the Government counsel: “[T]he Government can decide right now that someone who is in their custody is getting deported to a third country, give them no notice and no opportunity to say, I will be killed the moment I arrive there, and, as long as the Department doesn’t already know that there’s someone standing there waiting to shoot him, that that’s fine?” 2026 WL 521557, at *27. The Government counsel respondent replied, “In short, yes.” *Id.*

98. Complaint, *supra* note 9, at ¶ 91; see also July 9, 2025, ICE Third Country Removals Policy Memo, *supra* note 9; Practice Alert, NILA et al., *Third Country Deportations and D.V.D. v. DHS* (June

Department of Homeland Security deports someone from the United States to a “third country.”⁹⁹ Third country removals as described here are similar to, but separate from, the previously described “catchall” removal provision, which permits deportation to “another country whose government will accept the [non-citizen] into that country” when deportation to a country of direct or lesser connection, such as country of birth or citizenship, is “impracticable, inadvisable, or impossible.”¹⁰⁰ A third country removal occurs when the government removes a noncitizen to a country described in that provision *and* the country of removal is not the country that was designated by the immigration judge or DHS officer.¹⁰¹ DHS can pursue third country removal after most administrative immigration processes, including removal proceedings under INA Section 240 and withholding-only and Convention Against Torture-only proceedings.

The statutory basis and goals of third country removals align with the broader goals of modern immigration law: legalized differentiation and exclusion of certain groups from the United States. For example, prior to the passage of the INA, noncitizens could be deported to “the country whence they came,” the

27, 2025) [hereinafter *Third Country Deportations Practice Advisory*]; Sherman-Stokes, *supra* note 38, at 339 (defining “third country deportations” as “when the government seeks to remove noncitizens to a third country without judicial process, though courts previously refused to remove them to their country of origin due to the threat of torture”). Third country removal, as defined here, does not include removals under Asylum Cooperative Agreements (ACAs). Asylum Cooperative Agreements are agreements between the United States and allegedly “safe” third countries that create a bar to asylum. *See* INA § 208(a)(2)(A), 8 U.S.C. § 1158(a)(2)(A). Historically, the United States and Canada had a safe third country agreement: individuals who traveled through Canada were required to seek asylum there (and not in the United States), and vice versa. Safe Third Country Agreement, Can.-U.S., Mar. 24, 2023, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html> [<https://perma.cc/D7LE-YUS9>]. Today, the United States has signed ACAs with countries such as Ecuador, Honduras, and Uganda; unlike the agreement with Canada, a noncitizen does not need to have traveled through these countries for the agreement to apply. *See Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador*, 90 Fed. Reg. 51,376 (Nov. 17, 2025) (Ecuador); *Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests*, 90 Fed. Reg. 30,076 (July 8, 2025) (Honduras); *Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests*, 90 Fed. Reg. 42,597 (Sept. 3, 2025) (Uganda). DHS thus uses these agreements to prepermit, or end before being heard, asylum applications and instead deport noncitizens to the “safe” third country to seek asylum there. *See In re C-I-G-M & L-V-S-G-*, 29 I&N Dec. 291 (B.I.A. 2025). To avoid prepermission and deportation to the ACA country, a noncitizen generally must demonstrate that they will experience persecution or torture (eligibility for statutory withholding of removal or protection under the Convention Against Torture) in the country. *See* 8 C.F.R. § 1240.11(h)(2). Although third country removals, as discussed in this article, do not include ACA prepermissions, the solutions proposed remain relevant to individuals affected by ACA prepermissions. In fact, one significant risk of ACA prepermissions is that DHS will then deport the individual to a different country. *See, e.g., What are Third-Country Removals?*, *supra* note 96. For example, if a Bolivian client with fear of deportation to Bolivia were ordered removed to Ecuador under the ACA agreement, then that client may still be at risk of deportation to Bolivia if DHS cannot actually effectuate removal to Ecuador. This makes the country of removal designation, and a noncitizen’s clear expression of fear of deportation during the removal hearing, even more important. *See infra* Section V.

99. Third country removals and third country deportations are used interchangeably in this article.

100. INA § 241(b)(2)(E)(vii), 8 U.S.C. § 1231(b)(2)(E)(vii).

101. *See* sources cited, *supra* note 9.

country where they were subjects or citizens, or the country of last residence.¹⁰² When Congress drafted the INA, the options for country of removal were intentionally expanded to ensure that the United States government would be able to deport people even if countries did not agree to receive their citizens.¹⁰³ Third country removals are thus another tool for the government to deport as many people from the United States as possible. Nonetheless, the United States still cannot deport someone to a country where they will be tortured or persecuted.¹⁰⁴

While third country removals used to occasionally happen, DHS now frequently seeks to deport people to countries where they have no connections and where they often face dangerous conditions.¹⁰⁵ Among others, these countries include South Sudan, Eswatini, Honduras, and Uganda.¹⁰⁶ The expansion of third country removal has included sudden arrests and deportations of, among others, individuals who have lived in the United States for years with withholding of removal or protection under the Convention Against Torture.¹⁰⁷

As the government seeks to remove as many people as possible as quickly as possible, DHS has drastically changed its third country removal procedures.¹⁰⁸ To start, ICE has promulgated to its attorneys and officers policy guidance that “if the United States receives diplomatic assurances from the country of removal” that the noncitizen will not be persecuted or tortured, then the noncitizen “may be removed without the need for further procedures” if the Department of State believes the assurances.¹⁰⁹ Unfortunately, diplomatic assurances are unreliable and should not be used as a rationale for the United States to breach its *non-refoulement* obligations.¹¹⁰

102. Adam L. Fleming, *Around the World in the INA: Designating a Country of Removal in Immigration Proceedings*, 7 IMMIGR. L. ADVISOR 1, 2 (2013) (citing H.R. CONF. REP. NO. 81-1192, at 7 (1949)).

103. *Id.*

104. Convention Relating to the Status of Refugees, *supra* note 80; Protocol Relating to the Status of Refugees, *supra* note 80; Refugee Act § 203(e), 94 Stat. at 107; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 80 at 2681–822.

105. *See, e.g.*, Singh, Craft & Witherspoon, *supra* note 11 (describing how more than 8,100 people were deported to third countries between January 2025 and June 2025); *see* Complaint, *supra* note 9, at ¶¶ 54–61 (describing how “until January 20, 2025, the number of individuals subjected to DHS’ [third country removal] policy or practice was relatively small” and that on January 20, 2025, the administration began looking into third country removals, including agreements with countries and reviewing cases for third country deportations).

106. *See* GUARDIAN, *U.S. Completes Deportation to South Sudan*, *supra* note 1; Imray, Gumedé & Santana, *supra* note 12; Camilo Montoya-Galvez, *U.S. Broadens Search for Deportation Agreements, Striking Deals with Honduras and Uganda, Documents Show*, CBS NEWS (Aug. 21, 2025), <https://www.cbsnews.com/news/us-deportation-agreements-honduras-uganda/> [https://perma.cc/WQA4-HXGA].

107. *See* Complaint, *supra* note 9, at ¶ 12 (describing plaintiff E.F.D., who was granted protection under the Convention Against Torture in 2018 and was arrested by ICE in 2025).

108. Policy Memo., Kristi Noem, Sec. of Homeland Sec., Dep’t of Homeland Sec., Guidance Regarding Third Country Removals (Mar. 30, 2025); July 9, 2025, ICE Third Country Removals Policy Memo, *supra* note 9.

109. July 9, 2025, ICE Third Country Removals Policy Memo, *supra* note 9.

110. *See, e.g.*, ‘Diplomatic Assurances’ – No Protection Against Torture or Ill-Treatment, AMNESTY INT’L (2005), <https://www.amnesty.org/en/wp-content/uploads/2021/08/act400212005en.pdf> [https://perma.cc/ZUJ6-T5FB]; ‘Diplomatic Assurances Against Torture’ Questions and Answers, HUMAN RTS. WATCH (2006), <https://www.hrw.org/legacy/backgrounder/eca/ecaqna1106/ecaqna1106web.pdf>

If the United States does not receive diplomatic assurances, then DHS procedure is as follows: the Enforcement and Removal Operations (ERO), an office within ICE dedicated to the removal process (including arrest, detention, and deportation), will notify a noncitizen that they intend to remove them to a named third country, but “ERO will not affirmatively ask whether the [noncitizen] is afraid of being removed to the country of removal.”¹¹¹ Thus, a noncitizen only has twenty-four hours to affirmatively state their fear of persecution or torture in the named third country before being deported.¹¹² After that notice, ERO will “generally wait at least 24 hours” but can execute a removal in as few as six hours after notice in undefined exigent circumstances.¹¹³ Although a noncitizen theoretically must be provided “reasonable means and opportunity to speak with an attorney,” six hours renders effective intervention practically impossible.¹¹⁴ If someone states a fear of deportation to the named third country, then USCIS “will generally screen the [noncitizen] within 24 hours of referral,” which again is not enough time for counsel and advice.¹¹⁵

Following issuance of the expanded third country removal procedures, noncitizens sued the government in a class action lawsuit challenging DHS’s policy or practice of “deporting, or seeking to deport, [noncitizens] to a *third* country—a country *never* designated for removal— without first providing them with notice or opportunity to contest removal on the basis that they have a fear of persecution, torture, and even death if deported to that third country.”¹¹⁶ On July 9, 2025, however, DHS’s third country procedures went into effect after the Supreme Court stayed the district court’s preliminary injunction. DHS therefore is not required to provide noncitizens facing third country removal with meaningful notice or opportunity to contest the removal while litigation continues.¹¹⁷ Although litigation continues on DHS’s third country removal policy, the policy itself demonstrates the administration’s intent to

[<https://perma.cc/27S6-G7ZB>] (“The growing weight of evidence and international expert opinion indicates that diplomatic assurances cannot protect people at risk of torture from such treatment on return. Sending countries that rely on such assurances are either engaging in wishful thinking or using the assurances as a fig leaf to cover their own complicity in torture.”). See also *D.V.D. v. Dep’t Homeland Sec.*, No. 25-cv-10676, 2026 WL 521557, at *35 (D. Mass. Feb. 25, 2026) (“While a country could theoretically promise, in the abstract, not to commit torture, it cannot plausibly rule out private torture . . . without knowing at least the *name* of the person whom it is purportedly pledging to protect, let alone the individualized risks they might face.”); *id.* (“Concomitantly, it follows that there must be an ‘individualized determination’ that the foreign assurances are sufficient.”) (citation omitted); *id.* (“In 2011, the DHS Inspector General reported that there had only ever been four DHS assurances cases: three Rwandan nationals, whom the DHS Secretary had not yet decided whether to remove, and an Egyptian national, presumably Khouzam.”) (citing U.S. Dep’t of Homeland Sec., Office of Inspector Gen. OIG-11-100, *DHS Detainee Removals and Reliance on Assurances* 14–15 (2011)).

111. July 9, 2025, ICE Third Country Removals Policy Memo, *supra* note 9 (emphasis in original).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. Complaint, *supra* note 9, at ¶ 1.

117. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2627 (2025).

deport noncitizens to any country regardless of ties,¹¹⁸ as well as the downsides of country of removal designation occurring so quickly and without meaningful consideration.

IV. PROBLEMS WITH THE CURRENT COUNTRY OF REMOVAL DESIGNATION PROCESS

The current process, in which the country of removal is established at the beginning of proceedings—usually after a noncitizen respondent declines to designate—and is never revisited, leaves people with final orders of removal vulnerable to third country removal. The problem with the current process is threefold. First, it has the practical effect of denying noncitizens in removal proceedings a meaningful opportunity to exercise their right to designate a country of removal. Second, it limits access to counsel and creates judicial waste and inefficiency. Third, it is cruel.

A. *Denial of the Opportunity to Exercise Rights*

The United States deportation system is lengthy,¹¹⁹ complicated,¹²⁰ and dehumanizing.¹²¹ Noncitizen respondents carry the burden in applications for relief, but the process is designed to disincentivize meaningful participation.¹²² Likewise, decisions about country of removal are treated as a routine administrative matter wherein immigration judges quickly walk through the designation; the process deprives noncitizens of a meaningful opportunity to participate in their removal proceedings and exercise their rights.¹²³

118. Although not technically a form of third country removal as discussed here, the use of Asylum Cooperative Agreements to prepermit applications for asylum also demonstrates the administration's goal of deporting noncitizens quickly to any country with little-to-no process. *See What are Third-Country Removals?*, *supra* note 96.

119. *Immigration Court Backlog*, TRAC IMMIGRATION, <https://tracreports.org/phptools/immigration/backlog/> [<https://perma.cc/MHH6-KFTK>] (showing the historical backlog and that the average immigration case has been pending for more than two years) (last visited Apr. 4, 2026).

120. *See, e.g., Padilla v. Kentucky*, 559 U.S. 356, 369 (2010) (“Immigration law can be complex, and it is a legal specialty of its own.”); *Romero v. Bondi*, No. 24-1154, 2025 WL 2328351 (4th Cir. 2025) (“[T]he proliferation of immigration laws and regulations has aptly been called a labyrinth that only a lawyer could navigate.”) (quoting *Nehad v. Mukasey*, 535 F.3d 962, 967 (9th Cir. 2008)); Liz Balck Monsma, *Resources for the Immigration Law Practice Novice*, 97 MICH. B.J. 48 (2018).

121. *See* Reginald Oh, *Dehumanization, Immigrants, and Equal Protection*, 56 CAL. W. L. REV. 103 (2020); Ilse Ramirez, *6 Deaths in ICE Custody and 2 Fatal Shootings: A Horrific Start to 2026*, AM. IMMIGR. COUNCIL (Feb. 11, 2026), <https://www.americanimmigrationcouncil.org/blog/ice-deaths-shootings-2026/> [<https://perma.cc/8SVM-Z9AQ>] (describing multiple deaths by ICE officers and in ICE custody within the first six weeks of 2026, including the murder of Mr. Lunas Campos, who “was handcuffed while at least five [ICE] guards held him down and one guard squeezed his neck until he was unconscious”).

122. *See, e.g.,* 1 U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL, pt. E, ch. 4, <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-4> [<https://perma.cc/7KRS-6MT8>] (“The burden of proof to establish eligibility for an immigration benefit always falls solely on the benefit requestor.”); *In re S-Y-G-*, 24 I&N Dec. 247 (B.I.A. 2007); *In re Jean*, 27 I&N Dec. 373 (B.I.A. 2002).

123. *Jacinto v. INS*, 208 F.3d 725 (9th Cir. 2000) (holding that that Norma Antonia Jacinto Carrillo, a noncitizen respondent, and her son did not receive a full and fair hearing, and were prejudiced by that

Although the Fifth Amendment applies to noncitizens (including in the designation of a country of removal), in practice, a noncitizen respondent's ability to engage and self-advocate in removal proceedings is effectively curtailed by an increasingly anti-immigrant legal environment, personnel, and ever-changing EOIR and DHS policies that incentivize and demand deportation.¹²⁴ As of June 2025, there were more than 3.7 million pending cases before EOIR.¹²⁵ In response to the ever-growing backlog, administrations have, in addition to other strategies, demanded that immigration judges decide cases quickly,¹²⁶ set quotas for the number of cases immigration judges need to decide and with what metrics,¹²⁷ and have made it more challenging for noncitizen respondents to request continuances.¹²⁸ Specifically, since January 2025, the second Trump administration has fired judges who it thinks will not pursue its deportation agenda,¹²⁹ rehired judges who were let go during the Biden administration due to bias and complaints,¹³⁰ demanded that judges and OPLA prosecutors pursue dismissal so noncitizens can be deported more quickly,¹³¹ significantly expanded mandatory detention,¹³² began arresting

denial, when the immigration judges repeatedly cut her off, failed to explain legal processes, and denied her a "reasonable opportunity" to present her evidence).

124. *Id.*; see, e.g., Nate Raymond, *Immigration Court Bond Hearings Plummet Amid Trump Detention Policy, Analysis Finds*, REUTERS (Mar. 23, 2026), <https://www.reuters.com/legal/government/immigration-court-bond-hearings-plummet-amid-trump-detention-policy-analysis-2026-03-23/> [https://perma.cc/4EDJ-UWNV] (describing how immigration judges held 7% fewer bond hearings in February 2026 than in January 2026, and that "only 326 people were granted bond, compared with 1,086 a month prior").

125. *Workload and Adjudication Statistics, Pending Cases, New Cases, and Total Completions*, EXEC. OFF. FOR IMMIGR. REV., <https://www.justice.gov/eoir/workload-and-adjudication-statistics> [https://perma.cc/YW4D-NSYQ] (last visited Apr. 6, 2026).

126. See, e.g., *Rushing Immigration Court Cases Through "Rocket Dockets" Deprives Families of Due Process*, AM. IMMIGR. COUNCIL (Aug. 9, 2019), <https://www.americanimmigrationcouncil.org/blog/immigration-court-rocket-dockets-due-process/> [https://perma.cc/42D7-W42U].

127. *Imposing Numeric Quotas on Judges Threatens the Independence and Integrity of Courts*, AM. IMMIGR. LAW. ASS'N (Oct. 12, 2017), <https://www.aila.org/library/aila-policy-brief-imposing-numeric-quotas-judges> [https://perma.cc/PMA8-AZA4]; Joshua Breisblatt, *Immigration Judge Quotas Could Result in Assembly Line Justice*, AM. IMMIGR. COUNCIL (Apr. 14, 2018), <https://www.americanimmigrationcouncil.org/blog/immigration-judge-quotas/#.XUwgGXdfwnU> [https://perma.cc/PX6S-YJDS]. See also Raymond, *supra* note 124 (describing biased bond hearings following the Trump administration's efforts to expand immigration detention and exert political pressure on the immigration bond process).

128. See *In re L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); EXEC. OFF. FOR IMMIGR. REV., PM 21-23, CONTINUANCES (2021).

129. See, e.g., Ximena Bustillo, *More Immigration Judges are Being Fired Amid Trump's Efforts to Speed Up Deportations*, NPR (July 15, 2025), <https://www.npr.org/2025/07/14/nx-s1-5467343/immigration-judges-doj-trump-enforcement> [https://perma.cc/FFD5-NQ4E]; Joshua Goodman, *Military Lawyer Swiftly Fired from Immigration Bench After Defying Trump Deportation Push*, TIMES UNION (Dec. 19, 2025), <https://www.timesunion.com/news/politics/article/military-lawyer-swiftly-fired-from-immigration-21252504.php> [https://perma.cc/ZJ8W-346Y].

130. Memorandum from Sirce E. Owen, Acting Director, Exec. Off. for Immigr. Rev., Adjudicator Personnel Matters (Feb. 28, 2025); see also Ximena Bustillo, *He was Fired Under Biden. Under Trump, He's Now Leading an Immigration Court*, NPR (June 6, 2025), <https://www.npr.org/2025/06/06/nx-s1-5409057/trump-immigration-judge-rehiring> [https://perma.cc/C5JE-EY4A].

131. Julia Ainsley, *Trump Admin Tells Immigration Judges to Dismiss Cases in Tactic to Speed up Arrests*, NBC NEWS (June 11, 2025), <https://www.nbcnews.com/politics/national-security/trump-admin-tells-immigration-judges-dismiss-cases-tactic-speed-arrest-rcna212138> [https://perma.cc/AAB8-69QP].

132. See *In re Q Li*, 29 I&N Dec. 66 (B.I.A. 2025); *In re M-S-*, 27 I&N Dec. 509 (A.G. 2019); *In re Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

noncitizens in courthouses (sometimes midway through their hearings),¹³³ and threatened attorneys representing noncitizen respondents with civil charges and sanctions.¹³⁴

These policies create a tense, high-stakes, and antagonistic environment wherein many immigration judges chastise or yell at noncitizen respondents and their lawyers for seeking meaningful participation and holding DHS to its few burdens of proof.¹³⁵ Furthermore, recent efforts to limit the time allocated to trials and mandate the number of cases that a judge must decide in a single day cut off the amount of time that a noncitizen respondent, or their witnesses, can present testimony and arguments.¹³⁶ Indeed, even lawyers representing noncitizen respondents, whether intentionally or not, often succumb to the external pressures to move quickly, decide quickly, and not cause problems—at the expense of their clients’ participation and voice in their own removal proceeding.¹³⁷

All these factors disincentivize and curtail a noncitizen respondent’s ability to participate in their removal process, including the designation of a country of removal. The designation process happens so quickly that there is rarely an opportunity to even address whether someone is, in fact, a citizen, national, or native of the named country or countries.

Furthermore, as explained in the section on fear-based relief, the country of removal and a noncitizen respondent’s connection to that country of removal have significant consequences on the legal case and what happens after a grant or denial of fear-based relief. Suppose, for example, someone was born in the Georgian Soviet Socialist Republic (GSSR) during its incorporation into the Soviet Union, then left before the GSSR became the modern-day country of Georgia, and later became a Russian citizen. That individual would be a *native* of Georgia (born in the territory that became modern-day Georgia) and a *citizen* of Russia. In this scenario, removal might be designated to Russia

133. See Exec. Order No. 14,159, *supra* note 8; Memorandum from Benjamin C. Huffman, Acting Sec’y, Dep’t of Homeland Sec., Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025).

134. *Presidential Memorandum on Preventing Abuses of the Legal System and the Federal Courts*, AM. IMMIGR. COUNCIL (Mar. 21, 2025), <https://www.aila.org/library/presidential-memo-on-preventing-abuses-of-the-legal-system-and-the-federal-court> [<https://perma.cc/JD82-ZQMY>].

135. See, e.g., Katie Shepherd, ‘Your Client is Going Bye-Bye.’ *New Investigation Details Immigration Judges’ Cruel Behavior in El Paso Court*, AM. IMMIGR. COUNCIL (Apr. 3, 2019), <https://www.americanimmigrationcouncil.org/blog/client-going-bye-immigration-judges-behavior/> [<https://perma.cc/923R-F9U3>]; Noah Lanard, *Judge Promoted by Trump Administration Threatened a 2-Year-Old with an Attack Dog*, MOTHER JONES (Sep. 10, 2019), <http://motherjones.com/politics/2019/09/judge-promoted-by-trump-administration-threatened-a-2-year-old-with-an-attack-dog/> [<https://perma.cc/GS5S-KMS5>] (describing how a judge who threatened to sic a dog on a toddler during a hearing has been promoted by the Trump administration).

136. See Memorandum from Sirce E. Owen, Acting Director, Exec. Off. for Immigr. Rev., PM 25-39, Cancellation of Operating Policies and Procedures 93-1 (Aug. 8, 2025) (requiring immigration judges to quickly decide cases the same day as the hearing); *In re A-M-Z-F-*, 29 I&N Dec. 551 (B.I.A. 2026) (holding no right to a closing statement unless the denial would violate due process).

137. See, e.g., Michael Kagan, *supra* note 33, at 201–07 (discussing reasons why lawyers encourage clients to concede during pleadings, including concern about angering judges, lawyers who don’t want to challenge the government when challenges have a low chance of success, and conflict-adverse lawyers).

with Georgia in the alternative. If that person is granted asylum from Russia, then they should not have to demonstrate an additional fear of return to Georgia because they are a *native* of that country and not a national. Unless the question of nationality were confirmed at the start of proceedings, however, it may be unclear whether DHS intends to raise a dual nationality bar by arguing that they are also a national of Georgia. Thus, country of removal designation often affects what substantive arguments a noncitizen respondent needs to make at trial. In this hypothetical, the designation process affects whether the noncitizen respondent needs to prove fear of return to Russia and Georgia, or just Russia.¹³⁸

Removal proceedings are a system in which every step facilitates and furthers deportations as an end goal.¹³⁹ This reality has only increased since January 2025, when the second Trump administration began expanding mandatory detention, among other changes.¹⁴⁰ Within this context, the structure of removal proceedings deprives noncitizen respondents, and particularly *pro se* noncitizen respondents, of the power and agency to make decisions about their cases and their futures. Designation of a country of removal, although in most cases not a choice that noncitizen respondents want to make, provides an important moment when they can state what they want before DHS and the immigration court. There is harm in attorneys automatically assuming

138. Although indirectly connected to third country removals, the increase in global migration and dual nationality raises another reason why slowing down and considering the country of removal designation is increasingly important. With surging conflicts, climate change, and shifting borders, people increasingly face displacement and forced migration through multiple countries. The very question of identity—where someone was born and what their country of citizenship or nationality is—is becoming more complicated, and immigration judges and DHS adjudicators are not experts on the citizenship and immigration laws of other countries. These identities thus have legal significance, including what someone needs to prove to be allowed to remain in the United States and where they could be deported. Meaningfully engaging in and asserting rights during pleadings, including choosing a country of removal, is one way to demand that adjudicators more carefully consider these questions.

139. See, e.g., Ingrid Eagly & Steven Shafer, *Detained Immigration Courts*, 110 VA. L. REV. 691, 700 (2024) (describing how “[d]etention [d]rives [d]eportation”) (quoting Juliet P. Stumpf, *Civil Detention and Other Oxymorons*, 40 QUEEN’S L.J. 55, 96 (2014)).

140. On January 20, 2025, President Trump signed an executive order that, among other things, expanded expedited removal from the borders into the United States. Exec. Order No. 14,159, *supra* note 8. This expansion allows the administration to target any noncitizen anywhere in the United States who cannot prove that they have lived in the United States for at least two years. *Id.*; See also Memorandum from Benjamin C. Huffman, Acting Sec’y, Dep’t of Homeland Sec., Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025); *Know Your Rights: Expedited Removal Expansion*, NAT’L IMMIGR. L. CTR. (Jan. 24, 2025), <https://www.nilc.org/resources/know-your-rights-expedited-removal-expansion/> [<https://perma.cc/SM6V-D8JE>]. If arrested, these noncitizens are put into a fast-track administrative process wherein they are deported by a Customs and Border Patrol (CBP) or ICE officer without immigration court oversight or order. *Id.* In or around May 2025, the Trump administration told immigration judges to dismiss cases so that ICE officers, who have been present in many immigration courts since January 2025, can quickly arrest and detain more noncitizens. See Ainsley, *supra* note 131; Press Release, Dep’t of Homeland Sec., Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse> [<https://perma.cc/35MT-CWMB>] (“The first directive rescinds the Biden Administration’s guidelines for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) enforcement actions that thwart law enforcement in or near so-called “sensitive” areas.”). This expansion limits the ability of noncitizen respondents to even pursue their fear-based and other immigration claims.

that someone should decline to designate because it is yet another choice that is taken away from individuals trapped in this system.¹⁴¹

B. *Access to Counsel and Judicial Inefficiency*

Next, in the context of third country removals, the current designation process is inefficient and denies many noncitizens meaningful access to counsel. As described above, noncitizens might face third country removal following a variety of administrative immigration processes, including removal proceedings under INA Section 240, withholding-only or protection under the Convention Against Torture-only proceedings, and expedited removal proceedings.¹⁴² Particularly for noncitizens who have been granted statutory withholding of removal or protection under the Convention Against Torture, third country removal is a lifelong risk that could materialize at any time. This means that noncitizens could face third country removal years after the removal proceedings when a judge designated a different country of removal. That risk existed prior to the second Trump administration, but it was not as high. Now, however, noncitizens who have been granted withholding of removal or protection under the Convention Against Torture have a significant risk of detention and deportation to a third country.

The current DHS policy on third country removal, which provides for only six to twenty-four hours' notice, compounds the risk. Noncitizen respondents, particularly individuals in immigration detention (as someone facing imminent third country deportation would be), already face huge obstacles to accessing counsel.¹⁴³ Immigration detention centers are frequently in remote locations with few local immigration lawyers, individuals who are detained are often hard to locate because DHS routinely transfers people across the country, and if someone manages to find counsel, detention centers severely restrict attorney access to their clients.¹⁴⁴ It is highly unlikely that someone detained would be able to find a lawyer who is able to respond within twenty-four hours. For someone facing those unnamed "exigent circumstances," the successful intervention within six hours is nearly impossible.¹⁴⁵

Furthermore, someone facing third country removal will need fast emergency intervention on multiple levels, including motions to reopen proceedings, additional applications for asylum, withholding of removal, and protection under the

141. See Joel Sati, *Privacy and the Impossibility of Borders*, 72 UCLA L. REV. 192, 200 (2025) (discussing *The Ethics of Immigration* by Joseph Carens and the difference between "the formal grant of rights and its substantive exercise").

142. See *Third Country Deportations Practice Advisory*, *supra* note 98, at 2.

143. INA § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) ("[T]he [noncitizen] shall have the privilege of being represented, at no expense to the Government, by counsel of the [noncitizen]s] choosing who is authorized to practice in such proceedings."); see also Eagly & Shafer, *supra* note 23.

144. See ALINA DAS, NO JUSTICE IN THE SHADOWS: HOW AMERICA CRIMINALIZES IMMIGRANTS (2020); Eagly & Shafer, *supra* note 139, at 754.

145. There is also no requirement that notice be provided during working hours. It is therefore possible that someone could be notified at midnight and on a plane by 6:00am before their attorney has even received notice of the imminent deportation.

Convention Against Torture that address the intended removal country (to the extent it is known), federal habeas litigation, correspondence and advocacy with DHS Enforcement and Removal Operations officers, and more. These are emergency interventions that require legal representation. Unfortunately, many people who have been granted statutory withholding or protection under the Convention Against Torture will no longer have an immigration lawyer or representative; representation typically ends at the end of immigration court proceedings. Furthermore, many immigration lawyers are not admitted to federal courts and lack habeas or federal litigation experience. While lawyers can and should learn the skills, most lawyers will not be able to quickly learn them within the timeframe required by a third country removal case. Thus, access to counsel is a significant problem in these cases.

Moreover, cases that are successfully litigated are judicially inefficient; these cases require reopening of cases that may have been closed for years or longer, parallel immigration court and federal court cases, and potentially even multiple separate claims for fear-based protection if DHS has not clearly stated the intended third country removal.

C. *The Cruelty*

Finally, third country removal, and particularly the Trump administration's current use of third country removal, is a cruel process. Some reading the news might ask, why does it matter where someone goes if they have no legal right to remain in the United States?

First, as referenced above, third country removals of the kind that the Trump administration is pursuing violate the United States' *non-refoulement* obligations, which are implemented through the 1980 Refugee Act and the Convention Against Torture.¹⁴⁶ Many noncitizens have already been deported to countries where they are at high risk of persecution or torture.¹⁴⁷ For example, O.C.G., a plaintiff in *D.V.D. v. DHS*, was granted statutory withholding of removal to Guatemala and then deported to Mexico, without any notice or opportunity to present his claim that he fears torture or persecution there.¹⁴⁸ Some noncitizens have also been deported to countries where U.S. immigration courts have already found that they would experience persecution or torture.¹⁴⁹ For

146. See Allain, *supra* note 79.

147. See Isaac Chotiner, *Can Trump Deport People to Any Country that will Take Them?*, NEW YORKER (July 16, 2025) (describing how the administration is developing its third country removals policy to first deport individuals convicted of crimes to third countries (to desensitize people to these deportations) and then expand to deport anyone to a third country). Indeed, the Trump administration has also started altering the Department of State Human Rights reports to minimize descriptions of human rights abuses in allied countries, including countries that accept people deported from the United States. See sources cited, *supra* note 4.

148. Complaint, *supra* note 9, at ¶ 13.

149. The Trump administration's deportation of more than 230 Venezuelan men to CECOT, a maximum-security prison in El Salvador, is another form of deporting noncitizens to a third country. The men, nearly half of whom were in the midst of their immigration cases at the time of deportation, experienced torture, including beatings, sexual assaults, deprivation of food, and being told to commit suicide, at the

example, Kilmar Abrego Garcia was deported to El Salvador in March 2025 in violation of a 2019 immigration court order granting him statutory withholding of removal and protecting him from deportation to El Salvador.¹⁵⁰ While incarcerated in El Salvador's notorious CECOT prison, "[Mr.] Abrego Garcia was stripped naked, had his head shaved, was beaten, forced to kneel for hours overnight, and lost over thirty pounds."¹⁵¹ Thus, the United States has already violated its international obligations and domestic laws in deporting people to countries where they will experience persecution or torture.

Second, while there are objectively some countries that will be safer options for noncitizen respondents than others, there is actual harm in deporting someone to a country where they have no connections and limited-to-no opportunity to respond. That harm exists even if that country is relatively safe and not, for example, one that the United States Department of State has identified as unsafe for travel due to violence and government-sponsored torture.¹⁵² That harm comes from the deportation itself and from the lack of notice, volition, and opportunity to respond.

Although immigration proceedings are civil processes, there are many parallels between immigration court and criminal court. Indeed, courts often analogize between immigration and criminal procedures due to the "particularly severe 'penalty'" of deportation.¹⁵³ The Supreme Court has described deportation as "a drastic measure and at times the equivalent of banishment o[r] exile."¹⁵⁴

Not only is deportation a severe punishment, "deportation *is* violence," as aptly described by Professor Angélica Cházaro.¹⁵⁵ Deportation necessarily requires ICE, CBP, immigration judges, and other law enforcement offices, "the deportation violence worker[s]," to "rel[y] on the threat of violence to carry out the arrests, detentions, and removals that constitute the nuts and bolts of deportation."¹⁵⁶ Professor Cházaro further describes how, for noncitizens facing torture or persecution in the country of removal, there is additional violence,

prison. See Daniella Silva & Didi Martinez, *Venezuelans Describe Being Beaten, Sexually Assaulted and Told to 'Commit Suicide' During El Salvador Detention*, NBC NEWS (July 28, 2025), <https://www.nbcnews.com/news/us-news/venezuelans-cecot-el-salvador-returned-abuse-rcna220924> [https://perma.cc/29DG-VUA9]; *The Men Deported to a Salvadoran Prison*, PROPUBLICA (July 23, 2025), <https://projects.propublica.org/venezuelan-immigrants-trump-deported-cecot/> [https://perma.cc/54LD-TG84].

150. Marlene Lenthang, Gary Grumbach, & Chloe Atkins, *Kilmar Abrego Garcia Suffered Psychological and Physical Torture in El Salvador Prison, Attorneys Say*, NBC NEWS (July 3, 2025), <https://www.nbcnews.com/news/us-news/kilmar-abrego-garcia-suffered-psychological-physical-torture-el-salvad-rcna216685> [https://perma.cc/8Y78-FNCQ].

151. *Id.*

152. See Barbara Buckinx & Alexandra Filindra, *The Case Against Removal: Jus Noci and Harm in Deportation Practice*, 3 MIGRATION STUD. 393, 399–400 (2015).

153. See, e.g., *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893)); see also Eagly & Shafer, *supra* note 139, at 696 ("Although immigration proceedings are legally characterized as 'civil,' the parallels between pretrial detention in immigration court and criminal court are striking.")

154. *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948) (citing *Delgado v. Carmichael*, 332 U.S. 388, 391 (1947), which uses "banishment or exile").

155. Cházaro, *supra* note 41, at 1071.

156. *Id.* at 1072–73.

and thus harm, in the very threat and risk of deportation.¹⁵⁷ She explains that violence is apparent in every step of the deportation process: identification and arrest,¹⁵⁸ physical detention exacerbated by the inhumane and dangerous conditions that include physical and sexual abuse, deprivation of medical services, and withholding of basic necessities,¹⁵⁹ family separation,¹⁶⁰ the conditions of deportation flights,¹⁶¹ and the resounding impunity of government actors to complaints.

Psychological research also reveals the violence inherent in this process. Studies demonstrate that “among asylum-seekers and undocumented migrants in situations of indefinite waiting for asylum, over one third experienced PTSD, over a third experienced an anxiety disorder, and about half of them experienced depression.”¹⁶² The “threat of deportation, uncertainty about the future, exclusion from society, and experiences of stigma” were the main stressors identified by those facing deportation.¹⁶³ The threat and experience of deportation also have significant effects on health, both for the person deported (or at risk of deportation) and for their relatives.¹⁶⁴

As Professor Cházaro explains, most discussions about deportation address the amount of process due.¹⁶⁵ Indeed, this article proposes alternative strategies to protect against third country removal *because* not enough process is provided. Directly addressing the centrality of violence to deportations, however, requires acknowledgment of the cruelty of the process and the flimsy justifications provided. Those justifications are weaker, and the cruelty even starker, when considering deporting someone to a country where they have no ties.

Conceptually, this makes sense: the cruelty of forcing noncitizen children and young adults out of the United States, where they grew up, to countries of birth or citizenship that they may not have seen in years or decades, is part of what led to support for Deferred Action for Childhood Arrivals.¹⁶⁶ The

157. *Id.* at 1074.

158. *Id.* at 1076.

159. *Id.* at 1077.

160. *Id.* at 1075–76.

161. *Id.* at 1077–78; *see also* REBECCA A. SHARPLESS, SHACKLED: 92 REFUGEES IMPRISONED ON ICE AIR 1–30, 77–81 (Univ. of California Press 2024) (describing the physical and mental abuse of 92 refugees who immigration officers held shackled and held for two days on an ICE airplane while the U.S. government tried to deport them to Somalia).

162. Rosalind Ghafar Rogers, *The Dire Mental Health Effects of Restrictive Immigration Policies*, U.S. COMM. FOR REFUGEES AND IMMIGRANTS (Feb. 5, 2025), <https://refugees.org/the-dire-mental-health-effects-of-restrictive-immigration-policies/> [<https://perma.cc/3D6F-L4KR>]. Michelle Castañeda describes the terror of individuals going to an ICE check-in at the “removal room” of the New York City immigration court: “Yet, as Ravi reminds accompaniment trainees, that risk assessment does nothing to reduce the terror of entering the ninth floor. When your life has been transformed into ‘perpetual traumatic stress disorder,’ as he calls it, the reasoning of calculated risk feels more abstract the closer you get to the building.” MICHELLE CASTAÑEDA, *DISAPPEARING ROOMS: THE HIDDEN THEATERS OF IMMIGRATION LAW* 21 (2023).

163. Ghafar Rogers, *supra* note 162.

164. *See id.*

165. Cházaro, *supra* note 41, at 1071.

166. *See* Press Release, Office of the Press Sec’y, The White House, Remarks by the President on Immigration (June 15, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration> [<https://perma.cc/J4EX-PC7U>] (“These are young people who study in our schools, they play in our neighborhoods, they’re friends with our kids, they pledge allegiance to our flag. They are

current process of third country removals—with little-to-no notice or opportunity to respond and deportation to countries known for civil strife, human rights abuses, and torture—is just as cruel and exacerbates that violence with deportation to a country where the person deported has no support and potentially faces continued incarceration and/or torture or persecution.

All of the forms of violence that Professor Cházaro identified also apply to third country removals, particularly as implemented by the Trump administration. Third country removals create a constant specter of rapid arrest and deportation, particularly for persons granted protection under the Convention Against Torture or statutory withholding, even if noncitizens have been living in the community without problem for years.¹⁶⁷ After arrest, individuals targeted for third country deportation face an additional form of violence: the chilling uncertainty of being sent to a country unknown to them without family or community. Even the environment after removal raises the threat of violence, as many noncitizens sent to third countries have been transferred from U.S. custody and incarceration to custody and incarceration in the third country. For example, the eight men deported to South Sudan in July were immediately transferred into South Sudanese government custody.¹⁶⁸ They are held in a prison by a government that the United States Department of State has stated tortures its citizens.¹⁶⁹

Finally, the cruelty described in this section is intentional, particularly as it relates to the Trump administration's third country removal expansion and processes. The administration has launched a multimillion-dollar ad campaign to convey its message: “[I]f you are here illegally, we will find you and deport you. You will never return.”¹⁷⁰ The administration wants to scare communities, deter noncitizens from coming to the United States and staying here, and punish anyone they label as “criminal.”¹⁷¹ For these reasons, even if there is no legal mechanism for someone to remain in the United States, individuals should have a voice in where they are sent.

Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents – sometimes even as infants – and often have no idea that they’re undocumented until they apply for a job[,] or a driver’s license, or a college scholarship. Put yourself in their shoes. Imagine you’ve done everything right your entire life – studied hard, worked hard, maybe even graduated at the top of your class – only to suddenly face the threat of deportation to a country that you know nothing about, with a language that you may not even speak.”)

167. Sherman-Stokes, *supra* note 38, at 334 (describing how DHS officials suddenly detained her client without notice after he had been living in New England with protection under the Convention Against Torture for seven years).

168. Schwartz & Ward, *supra* note 3.

169. See *id.*; U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, H. RTS. AND LAB., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2023: SUDAN 1, 6–8, 20 (2023).

170. See Press Release, Dep’t of Homeland Sec., DHS Launches International Ad Campaign Warning Illegal Aliens to Self-Deport and Stay Out (Mar. 15, 2025), <https://www.dhs.gov/news/2025/03/15/dhs-launches-international-ad-campaign-warning-illegal-aliens-self-deport-and-stay> [<https://perma.cc/KYV9-DX7N>].

171. See generally Press Releases, Dep’t of Homeland Sec., <https://www.dhs.gov/news-releases/press-releases> [<https://perma.cc/5A44-ZDHN>] (using antagonistic and vitriolic language to describe noncitizens in press releases, particularly beginning January 20, 2025).

V. AN ALTERNATIVE PROPOSAL

As noncitizen respondents face ever-increasing risks of third country removal, noncitizens and, for those who have them, lawyers on their behalf, should more meaningfully engage in the country of removal designation to build a record that can protect against future third country removal. First, noncitizens in removal proceedings should consider exercising the right to designate a country of removal. Naming a country of removal will provide noncitizen respondents with opportunities to assert their right to decide where they will go if forced to leave the United States. Second, noncitizens in removal proceedings should revisit the question of country of removal at the end of proceedings, after the immigration judge has either ordered removal or granted withholding of removal or protection under the Convention Against Torture. Revisiting the country of removal designation will help confirm the country of removal, create an initial record of whether DHS intends to pursue third country removal, and allow a noncitizen respondent to clearly state any fear of deportation to a named country.

Third country removals can follow a number of administrative removal processes, including removal proceedings under INA Section 240, withholding-only or protection under the Convention Against Torture-only proceedings, proceedings to reinstate a prior removal order, administrative proceedings (fast-track deportation processes following conviction of an aggravated felony), or expedited removal proceedings.¹⁷² These solutions will be most effective in INA Section 240 proceedings and withholding-only and Convention Against Torture-only proceedings. However, they could theoretically be implemented in any removal process in which a noncitizen has the right to designate a country of removal and/or needs to state a fear of deportation to a third country.

A. *Exercising the Right to Designate a Country of Removal*

Noncitizen respondents should, on a case-by-case basis, exercise their right to designate a country of removal instead of declining to designate. Naming a country of removal is a substantive right that creates an opportunity for someone in removal proceedings to say on the record what they want and where, if forced to leave the United States, they would prefer to be sent.¹⁷³

To be clear, naming a country of removal under INA Section 241(b)(2) is not a panacea and will not solve the underlying problems of mass arrests and detention. First, there are many restrictions on the countries that noncitizen respondents can name. For example, there are limits on when they can name

172. See *Third Country Deportations Practice Advisory*, *supra* note 98, at 1.

173. See *Rodriguez-Augustin v. INS*, 765 F.2d 782, 784 (9th Cir. 1985) (holding that the right to designate a country of removal is a substantive right and ordering the INS to resubmit the noncitizen respondent's deportation request to the Mexican consulate); *Bui v. INS*, 76 F.3d 268, 270-71 (9th Cir. 1996) (finding that INS and BIA erred in not allowing Bui to designate a country of removal and then based refusal on presumption that he could not be removed to named country).

a country that is geographically next to the United States.¹⁷⁴ Someone cannot just name another unrelated, but safer, country (Canada, for example) without having a connection to that country. Even if there were no statutory limitations on which country or countries someone can name, in practice, many people can only designate their country of citizenship because that is the only country that would accept them as a deportee from the United States.

Nonetheless, although designating a country of removal will not prevent third country removal for every noncitizen, making the country of removal designation a more meaningfully addressed question in the removal proceeding at least expands the options available to a noncitizen respondent. Considering every option available is important, particularly when the future choices may be removal to a third country with a high risk of harm or continued incarceration in the immigration detention system.¹⁷⁵ Moreover, there is inherent value in exercising one's rights. As described by Joel Sati, "to have rights in name only is to have no rights at all."¹⁷⁶ If a noncitizen has the right to name a country of removal but can never effectively utilize that right, then the right has no meaning.¹⁷⁷

Applicants for asylum, withholding of removal, and protection under the Convention Against Torture warrant particularized attention when considering designation of a country of removal. Immigration lawyers routinely counsel noncitizen respondents who fear return to a country that they should "decline to designate" a country of removal.¹⁷⁸ The concern is that DHS will deem country of removal designation a waiver of the asylum, withholding, and/or Convention Against Torture claims because the argument is that someone who is afraid to return to a country should, under no circumstances, want to return there. However, this argument legally and logically fails for the reasons set out below.

First, the idea of waiver does not come from statute, regulation, or case law. Although the regulations give noncitizens the option to "designate or decline to designate," there is no codified language about the connection between a noncitizen respondent designating a country of removal and applications for fear-based relief.¹⁷⁹ Indeed, the only real connection in the statute and regulations is

174. INA § 241(b)(1), 8 U.S.C. § 1231(b)(1); see *In re Linnas*, 19 I&N Dec. 302, 304, 307 (B.I.A. 1985) (holding that, under the predecessor statute to INA § 241(b)(2), a noncitizen respondent must designate a country and cannot designate offices maintained by the Republic of Estonia in New York City).

175. To be clear, I am not suggesting that designation of a country of removal be used as a form of self-deportation. To the contrary, designation of a country of removal should be a way for a noncitizen to exercise more control over their removal process and, if facing deportation, the destination of deportation. This designation is particularly important given the DHS's increasing use of ACA pretermission motions to deny asylum applications at the outset and removal of noncitizens to third countries. See *Convention Relating to the Status of Refugees* art. 32(2), *supra* note 80; *Protocol Relating to the Status of Refugees*, *supra* note 80, at art. 32(2).

176. Sati, *supra* note 141, at 200.

177. *Id.* (discussing liberal egalitarianism and the importance of "securing the necessary economic and social conditions so people can exercise their rights and liberties (law in action)").

178. Kagan, *supra* note 33, at 170.

179. U.S. DEP'T OF JUST. EXEC. OFF. FOR IMMIGR. REV., IMMIGRATION COURT PRACTICE MANUAL § 4.15 (2016). There is also some case law, although not directly discussing the question, that indicates that designation of a country of removal does not waive an application for asylum, withholding of removal, or protection under the Convention Against Torture. See, e.g., *Hussan F. v. Sessions*, 897 F.3d 707, 714 (6th

that the country of removal determines the focus of a claim for mandatory protection under INA Section 241(b)(3) and the Convention Against Torture. For asylum claims, however, the country of removal may, but need not, overlap with the country of feared persecution. In practice, DHS may argue that the designation should waive the applications, but this waiver is neither mandatory nor set out in the law.

Second, even if a country of removal designation does not formally waive applications for asylum, withholding of removal, and/or protection under the Convention Against Torture, noncitizen respondents and lawyers may worry that the designation will prejudice the applications. The concern is that a judge or OPLA attorney may deem the fear of return less genuine or acute if they designate a country of removal.

Although immigration judges or OPLA attorneys could perceive the designation in this way, the underlying logic will often be factually and logically flawed. The analysis that someone who designates a country of removal must not be afraid to return, or as afraid to return, oversimplifies the myriad of scenarios that might lead someone to prefer removal to their home country. For example, imagine a thirteen-year-old who is alone in the United States and in removal proceedings. That child may have a very genuine fear of returning but, if forced to leave the United States, would prefer to return home to family or friends rather than to an unknown third country with no community or support.

Likewise, an adult might be afraid to return but, if stuck between a rock (danger in their home country) and a hard place (removal from the United States), would prefer to live in hiding in their home country, or return briefly before fleeing elsewhere. It is impossible to summarize the countless factual scenarios that lead someone to leave home. Thus, the determination of a country of removal, and whether a noncitizen will designate or decline to designate, merits an individualized assessment and risk analysis like any other legal question. In certain circumstances, noncitizens may want to designate a country *and* pursue applications for asylum, withholding of removal, and/or protection under the Convention Against Torture. Should DHS raise an argument about designation waiving or prejudicing the fear-based claims, then a noncitizen can address the argument during testimony and argument like any other DHS argument.

A second, less commonly considered, form of waiver regards the possibility that an application for asylum, withholding of removal, or protection under the Convention Against Torture could subsequently be considered a waiver of the noncitizen respondent's prior designation of a country of removal. In practice, lawyers generally do not consider this concern; the focus instead is on waiver or prejudice to the asylum, withholding, or Convention

Cir. 2018) (where noncitizen respondent "denied the three charges of removability and designated Syria as the country of removal based on his Syrian citizenship" but was granted asylum, withholding of removal, and a waiver of removal under 8 U.S.C. § 1227(a)(1)(H)).

Against Torture applications. This waiver could, however, render the proposal moot if a designation were undone by a subsequent application.

In *Matter of Niesel*, the Board of Immigration Appeals held that “the designation of a country followed by a request for withholding deportation to that country is, in effect, a withdrawal of the designation.”¹⁸⁰ However, this 1962 decision provides no citation or explanation for why the withholding request was a withdrawal of the designation.¹⁸¹ Furthermore, the context of the decision is relevant. In *Niesel*, the noncitizen was from East Germany, which the United States did not recognize as a country. The noncitizen first declined to designate a country, then the government designated the Federal Republic of Germany (West Germany), and then the noncitizen designated East Germany and applied for withholding under then-INA Section 243(h). Importantly, the decision here should not bind courts today. First, INA Section 243(h) has been superseded by the Refugee Act of 1980 and the codification of the Convention Against Torture. Second, the removal scheme was modified in 1994 to give the government greater control over the country of removal. Thus, *Niesel’s* analysis would have stopped the moment that the noncitizen respondent declined to designate. Third, unlike the proposal below, the respondent in *Niesel* did not make a record of *why* the withholding application should not withdraw the country of removal designation.

B. *Revisiting the Country of Removal at the End of the Hearing*

Beyond considering the designation of a country of removal, noncitizens in removal proceedings, or their lawyers on their behalf, should also request that the Court revisit the country of removal question at the end of removal proceedings after decisions on relief have been made. Revisiting the country of removal question will increase notice and transparency and create a stronger protective administrative record for future third country removal attempts. Furthermore, revisiting this question after a merits decision on an application for relief makes structural sense within the framework of immigration court proceedings.

Immigration judges must at least address country of removal during pleadings at the start of proceedings, as required by federal regulation.¹⁸² Nothing in the regulations, however, restricts immigration judges from revisiting the country of removal question at the end of proceedings. Indeed, the statute itself pairs country of removal, INA Section 241(b)(1) and (b)(2), with withholding of removal, mandatory fear-based protection under INA Section 241(b)(3). Furthermore, nothing in the regulations requires that applications for fear-based relief, all of which are filed using Form I-589, be submitted after the country of

180. 10 I&N Dec. 57, 58 (B.I.A. 1962).

181. *Id.* at 59.

182. 8 C.F.R. §§ 1240.10(a), (c), (d), (f) (2021) (describing preliminary matter requirements in a removal hearing).

removal designation. To the contrary, applications for relief are frequently submitted *before* the country of removal is decided upon, when, among other situations, cases are referred to EOIR from USCIS, a noncitizen's I-589 filing deadline falls before the master calendar hearing, or the immigration judge sets a filing deadline before a master calendar hearing. The timing of the country of removal designation and submission of the application for relief matters because, as explained in the prior sections, the country of removal may impact where a noncitizen respondent needs to demonstrate a fear of return. Thus, the country of removal can and should be revisited after its initial designation.

Reviewing the country of removal at the end of proceedings will also increase transparency and efficiency because noncitizen respondents and their lawyers can then ask DHS whether it intends to pursue a third country removal. In most removal cases, the country of removal will have been designated months or years before the final decision in the application for relief. Particularly for someone granted withholding of removal under INA Section 241(b)(3) or protection under the Convention Against Torture, this inquiry can have valuable practical effects. At a time when many noncitizens are being arrested following their immigration court proceedings, the inquiry creates a record of DHS's response. If DHS responds "yes," they intend to pursue third country removal, then there is an opportunity to respond, ask where they intend to remove, and, if applicable, immediately state a fear of torture in the named countries on the record. If necessary, a noncitizen can state their fear to any number of the countries known to be accepting third country removals.¹⁸³ If DHS responds "no," then that could, at a minimum, create an argument against third country removal if there were reliance interests and if no other meaningful circumstances have changed.

Furthermore, even if DHS declines to respond, a noncitizen can still use the opportunity to state any fears of deportation and create a record. For example, imagine someone whose designated country of removal is a country like Cuba that historically has not accepted deportees from the United States. If that person is ordered removed (whether or not also granted *non-refoulement* protection), then that person is at risk of third country removal. At the end of merits proceedings on the application for relief from deportation, that person might ask the Court to inquire into the DHS's intentions regarding third country removal. Whatever the response, there are only so many countries that accept third country removals from the United States.¹⁸⁴ It is possible for individuals to strategically state a fear of third country removal on the record.¹⁸⁵ Then a noncitizen can point to that

183. See NEW IMMIGRANT RTS. PROJECT, THIRD COUNTRY DEPORTATIONS *D.V.D. v. DHS* 4 (2026), <https://www.nwirp.org/our-work/practice-advisory/> [<https://perma.cc/EJW2-DV7Q>].

184. See, e.g., Dan Gooding, *Map Shows Which Countries Refuse to Take Back Deported Migrants*, NEWSWEEK (Jan. 6, 2025), <https://www.newsweek.com/map-shows-which-countries-refuse-take-back-deported-migrants-2010464> [<https://perma.cc/CDW5-FJYA>].

185. Importantly, the goal of revisiting the country of removal topic is not to place the onus on a noncitizen to predict every country where they might face removal. Instead, it is to create a record of asking about the Department's intentions and an opportunity to respond to those intentions. Indeed, "a noncitizen cannot properly raise a fear-based claim regarding a third country before receiving notice of removal to that country. Until then, such claims are purely hypothetical and cannot be raised either in the original

record if DHS attempts to pursue third country removal in the future or if an intervention through federal litigation becomes necessary.¹⁸⁶

At a time when government attorneys have repeatedly provided federal courts with unreliable information, there are many concerns about the reliability of OPLA statements.¹⁸⁷ What is there to keep an OPLA attorney from saying that they do not intend to pursue third country removal on one day and then detaining and attempting to remove someone to South Sudan the following day?

First, OPLA attorneys are still bound by the ethical rules, including candor to the tribunal, and must be held to those standards.¹⁸⁸ Second, the value in revisiting the question comes in the record it creates, and not in the guarantees of the Department of Homeland Security. Occasionally, an OPLA attorney might honestly report that they intend to pursue third country removal to a certain country. If that is the case, then at least the noncitizen respondent has notice and an opportunity to respond. If not, however, they can still create a record of having asked and responded for if and when they pursue third country removal.

Another benefit of revisiting the country of removal designation at the end of proceedings is that it becomes another opportunity to inform clients about their rights. Under the Trump administration, anyone with a removal order could face third country removal. Attempts to deport to a third country could happen at any time, even years in the future. Treating the designation as a more substantive right and talking with clients about their options, including how they feel about the possibility of deportation to certain countries, helps prepare them to exercise their rights if they are detained by ICE in the future.

Moreover, the country of removal designation should be revisited after the immigration judge has issued order(s) on the application for relief because that is when the court and noncitizen respondent know that deportation is a real probability barring a successful appeal. Take, for example, an application for protection under the Convention Against Torture. If a noncitizen respondent is granted Convention Against Torture relief, then an immigration judge will have issued two separate orders: (1) a removal order, which must include

immigration proceedings or on a motion to reopen.” *D.V.D. v. Dep’t Homeland Sec.*, No. 25-cv-10676, 2026 WL 521557, at *30 (D. Mass. Feb. 25, 2026), *stayed by Order*, *D.V.D. v. Dep’t Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026).

186. Although removals under ACAs are a separate form of third country removal, *see sources cited, supra* note 98, revisiting the country of removal designation at the end of proceedings is particularly important for individuals facing prepermission and removal to an ACA country. As EOIR seeks to limit immigration judges’ ability to scrutinize the application of these decisions, *see In re C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291, 298–99 (B.I.A. 2025), it is likely that DHS cannot actually deport individuals to the ACA country. Thus, someone might be ordered removed to Honduras through an ACA, then face deportation to the very country where they fear persecution or torture if DHS cannot effectuate removal to Honduras. Noncitizens and their attorneys should therefore revisit the country of removal designation and inquire into DHS’s actual removal intentions.

187. *See, e.g., D.V.D.*, 2026 WL 521557, at *7, *9 (describing how “the Government repeatedly violated, or attempted to violate, this Court’s orders” and “misrepresented material facts”); *see Transcript of Show Cause Hearing, Segundo A.P.G. et al. v. Bondi*, No. 26-cv-603, at 11 (D. Minn. Feb. 3, 2026) (ECF No. 19) (describing the Government’s failure to comply with orders and that it takes “repeat, after repeat, after follow-up, after follow-up with the Government” to receive information and ultimate compliance).

188. *See MODEL RULES OF PRO. CONDUCT R. 3.3* (A.B.A. 1983).

a country of removal,¹⁸⁹ and (2) a Convention Against Torture order,¹⁹⁰ which withholds removal to that country.¹⁹¹ Both the removal order and Convention Against Torture order necessarily involve the country of removal, and an immigration judge cannot sign those orders until the end of the proceeding when relief has been granted. When the judge signs the removal order, there is then an opportunity to raise issues and object as needed. Indeed, Supreme Court Justice Sonia Sotomayor, in oral arguments for *Riley v. Bondi*, compared the final order of removal and Convention Against Torture order to sentencing in criminal proceedings:

Justice Sotomayor: So this [final orders of removal and Convention Against Torture] is almost like a conviction and a sentence, meaning the conviction is final in a court – in a district court, until you appeal it, and the – but you wait for the sentence for the appeal because you want the court to finish with everything at once.

Mr. Bradley: I – I think you have it exactly right, that – that analogy. And Nasrallah was familiar with that analogy, of course.¹⁹²

The analogy of immigration proceedings to criminal proceedings extends back to cases including *Nasrallah v. Barr*, which compared the two proceedings for purposes of assessing the ability of a court of appeal to review a Convention Against Torture order.¹⁹³ To extend the analogy, if a finding that someone is removable is the conviction, then removal—and the withholding of that removal through a Convention Against Torture or statutory withholding grant—is the sentence that comes after. The country of removal should therefore be reviewed and confirmed at the end of the merits proceedings.

Finally, revisiting the country of removal at the end of proceedings also increases judicial efficiency. As described above, current strategies to avoid third country removals include notifying DHS of the fear in writing, filing a motion to reopen and motion to stay removal, filing a habeas petition in federal court, and filing applications for protection from removal to all possible countries of removal.¹⁹⁴ These legal interventions are incredibly time-sensitive and labor-intensive, particularly in litigation which is outside the scope of

189. See *Nasrallah v. Barr*, 590 U.S. 573, 579 (2020) (citations omitted). (“[I]n the deportation context, a ‘final order of removal’ is a final order ‘concluding that the alien is deportable or ordering deportation.’”)

190. See *id.* at 582 (citations omitted). (“A [Convention Against Torture] order is not itself a final order of removal because it is not an order ‘concluding that the [noncitizen] is deportable or ordering deportation.’ An order granting [Convention Against Torture] relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country.”)

191. See, e.g., *id.* at 587.

192. Transcript of Oral Argument at 8, *Riley v. Bondi*, 606 U.S. 259 (2025).

193. *Nasrallah*, 590 U.S. at 573.

194. *Id.* at 579–81.

practice for many immigration lawyers.¹⁹⁵ Revisiting the country of removal and creating a record around third country removal at least allows noncitizen respondents to more proactively create a protective record and not completely rely on access to counsel for emergency litigation after arrest.

VI. CONCLUSION

As DHS expands third country removals, the Supreme Court has limited the government's procedural obligations to screen for fear of persecution or torture in effectuating these removals. Furthermore, the United States has already violated its *non-refoulement* obligations through these third country removals. Noncitizens and lawyers advocating on their behalf should therefore more meaningfully engage in the country of removal designation throughout the removal process. Thinking strategically about questions of removal from the start of proceedings may help noncitizen respondents who face third country removal months or years in the future. On a case-by-case basis, designating a country of removal and arguing against waiver of fear-based claims may increase the options available to a noncitizen facing removal to an unknown third country. Likewise, asking the court to revisit the country of removal question and asking DHS about intended third country removals, at the end of proceedings, will help create a protective record and establish any fears of deportation during the initial administrative proceeding. With only six to twenty-four hours' notice of an intended third country removal, a strong administrative record might be the only protection against removal to a third country where a noncitizen has no connections and may experience torture or persecution.

195. See sources cited, *supra* note 25.