



Practice Advisory<sup>1</sup>

## **Protecting Noncitizens Granted Withholding of Removal or CAT Protection Against Deportation to Third Countries Where They Fear Persecution/Torture**

January 29, 2025

### **Introduction**

This practice advisory addresses limits on the government’s authority to deport noncitizens to countries that were not designated by an immigration judge in removal proceedings either as the primary or alternative country of removal, and, thus, are commonly referred to as “third countries.” During oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Office of the Solicitor General represented to the Supreme Court that the Department of Homeland Security (DHS) will not deport noncitizens who have already been granted withholding of removal under 8 U.S.C. § 1231(b)(3) or the United Nations Convention Against Torture (CAT) to a third (non-designated) country until *after* the individual receives meaningful notice of the pending deportation and an opportunity to assert a fear-based claim against removal *to that third country*. While that is a correct statement of the law, subsequent litigation under the Freedom of Information Act (FOIA) and Federal Tort Claims Act (FTCA) has revealed that DHS has ***no written policy*** to provide noncitizens either with notice or an opportunity to present a fear-based claim before DHS deports them to a third country where they face persecution and/or torture. The absence of a policy is particularly concerning given the administration’s stated intention to pressure third countries to accept noncitizens ordered deported from the United States.<sup>2</sup>

This advisory first reviews the law mandating meaningful notice of deportation to a third country and an opportunity to contest such deportation based on a fear of persecution and/or torture as well as the representations made to the Supreme Court. Next, the advisory details how FOIA

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<sup>2</sup> See, e.g., Julia Ainsley, [Incoming Trump administration plans to deport some migrants to countries other than their own](#) (Dec. 5, 2024); Commonwealth of the Bahamas, [Statement from the Office of the Prime Minister on the Trump Administration Transition Team Proposal](#) (Dec. 5, 2024) (rejecting Trump transition team proposal to “to accept deportation flights of migrants from other countries”); CBS News, [Trump eyes asylum agreement with El Salvador to deport migrants there](#) (Jan. 27, 2025).

litigation revealed previous government efforts to create a policy to provide these protections to individuals granted withholding or CAT protection—efforts that were never completed and thus did not result in any written policy. The advisory then addresses FTCA litigation in which the government acknowledges that DHS has no written policy governing either notice of a third-country deportation or the opportunity to contest removal to a third country by presenting a fear-based claim. Finally, the advisory suggests actions to try to prevent third-country deportations to countries where a noncitizen fears persecution/torture.

Accompanying this advisory, are a template letter to DHS articulating a fear of removal to a third country(ies) for detained individuals and template emergency motions to reopen and to stay removal (along with a template exhibit list, declarations, and proposed order).<sup>3</sup>

### **DHS’s Obligation to Provide Notice and an Opportunity to Pursue a Protection Claim Prior to Deportation to a Third Country**

Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. §§ 1231(b)(1)-(3).<sup>4</sup> Subsection (b)(1) concerns noncitizens who arrive in the United States by vessel or aircraft.<sup>5</sup> Subsection (b)(2) sets forth the procedure for all other noncitizens. Critically, Subsection (b)(3)(A) (the withholding statute), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” prohibits removal to a country where a noncitizen faces persecution or torture. It reads:

**Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion.**

*Id.* § 1231(b)(3)(A) (emphasis added). Pursuant to § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an immigration judge (IJ) if they have a fear of persecution or torture in that country.<sup>6</sup>

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<sup>3</sup> The templates are available on the [practice advisories page](#) of NILA’s website and can be downloaded in Word format.

<sup>4</sup> References to the Attorney General in Section 1231(b) refer to the Secretary of the Department of Homeland Security (DHS) for functions related to carrying out a removal order and to the Attorney General for functions related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney General has delegated the latter functions to the immigration courts and Board of Immigration Appeals. *See* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31, 1240.10(f), 1240.12(d).

<sup>5</sup> Section 1231(b)(1) applies to noncitizens “arriving at the United States,” including from a contiguous territory, but expressly contemplates arrival via a “vessel or aircraft.” *See also* 8 U.S.C. § 1231(c)(1) (stating preference for removal on same “vessel or aircraft” on which the noncitizen arrived).

<sup>6</sup> *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) (“Failing to notify individuals who are subject to deportation that they have the right to apply . . . for withholding of deportation to the country to which they will be deported violates both INS regulations and the

Subsection 1231(b)(2) sets out a 4-step process for designating countries of removal. This procedure is also addressed in *Jama v. ICE*, 543 U.S. 335, 338-41 (2005). First, in the removal hearing, subject to Subsection 1231(b)(3), the noncitizen is entitled to select a country of removal. *Id.* § 1231(b)(2)(A); 8 C.F.R. § 1240.10(f).

Second, subject to Subsection 1231(b)(3), the IJ or DHS may disregard a designation if the noncitizen “fails to designate a country promptly,” the designated country is nonresponsive or unwilling to accept the person, or removal to the designated country would prejudice U.S. interests. *Id.* § 1231(b)(2)(C).

Third, still subject to Subsection 1231(b)(3), the IJ may designate, or DHS may select, an alternative country of removal where the person “is a subject, national, or citizen,” unless such country is nonresponsive or unwilling to accept the person. *Id.* § 1231(b)(2)(D).

Fourth, subject to Subsection 1231(b)(3), the IJ may designate or DHS may select, certain specified additional alternative countries, including the country: (i) from which the noncitizen was admitted; (ii) of the noncitizen’s port of departure for the United States or a foreign contiguous territory; (iii) where the noncitizen resided before entering the United States; (iv) where the noncitizen was born; (v) having sovereignty over the noncitizen’s place of birth at the time of birth; or (vi) where the noncitizen’s birthplace is located at the time of the removal order. *Id.* § 1231(b)(2)(E)(i)-(vi). Only if removal to one of these countries is “impracticable, inadvisable, or impossible” may DHS remove the noncitizen to “another country whose government will accept [the noncitizen].” *Id.* § 1231(b)(2)(E)(vii). For this last step, DHS counsel must provide evidence to the immigration court that the foreign government “will accept” the individual. *El Himri*, 378 F.3d at 939.

Critically, Congress carved Subsection 1231(b)(3) out from the designation statutes, i.e., Subsections 1231(b)(1) and (b)(2). *See id.* § 1231(b)(1)-(2) (providing that both subsections are “subject to paragraph (3)”).<sup>7</sup> For persons in removal proceedings, the IJ must designate countries

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constitutional right to due process.”); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998) (failure to provide notice of and hearing on deportation to third country was a “fundamental failure of due process”); *see also Hadera v. Gonzales*, 494 F.3d 1154, 1159 (9th Cir. 2007); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam) (failure to give “proper notice of a potential country of deportation” and a subsequent order of removal to that country may constitute a violation of due process, citing *Kossov*).

<sup>7</sup> *See also Jama*, 543 U.S. at 348 (noncitizens who “face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum, [8 U.S.C.] § 1158(b)(1); withholding of removal, § 1231(b)(3)(A); relief under an international agreement prohibiting torture, *see* 8 C.F.R. §§ 208.16(c)(4), 208.17(a)”); *Andriasian*, 180 F.3d at 1041 (IJ must provide sufficient notice and an opportunity to apply for relief from designated country of removal); *Kossov v. INS*, 132 F.3d 405 (7th Cir. 1998) (due process violation to order deportation to Russia after a claim of asylum as to Latvia where uncounseled noncitizen was provided insufficient notice of Russia possibility).

on the record, with enough notice and time to permit a noncitizen who fears persecution or torture in the designated country or countries to file an application for protection.<sup>8</sup>

Providing such notice and opportunity to present a fear-based claim prior to deportation also implements the United States' obligations under international law.<sup>9</sup>

Meaningful notice and opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment.<sup>10</sup>

In 2005, in jointly promulgating regulations implementing 8 U.S.C. § 1231(b), the Departments of Justice and Homeland Security assumed that “[a noncitizen] will have the opportunity to apply for protection as appropriate from any of the countries that are identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” 70 Fed. Reg. 661, 671 (Jan. 5, 2005) (codified at 8 C.F.R. pt. 241) (supplementary information). Furthermore, the Departments contemplated that, in cases where DHS sought removal to a country that was not designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv) or (b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow the noncitizen to apply for protection. *Id.*

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<sup>8</sup> See *Hadera*, 494 F.3d at 1156 (“After determining that a noncitizen is removable, an IJ must assign a country of removal.”); *El Himri*, 378 F.3d at 938 (IJ designates countries of removal); 8 C.F.R. § 1240.10(f) (the “immigration judge shall notify the [noncitizen]” of proposed countries of removal); 8 C.F.R. § 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the immigration judge shall . . . [a]dvice . . . that he or she may apply for asylum in the United States or withholding of removal to those countries.”).

<sup>9</sup> See United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations 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)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United Nations Protocol”); see also United Nations 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, 114; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, div. G, tit. XXII, § 2242(a), 112 Stat. 2681, 2681-822 (1998) (codified at Note to 8 U.S.C. § 1231) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”).

<sup>10</sup> See *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019) (“DHS may designate a removal country outside of removal proceedings but . . . it must provide due process and comply with 8 U.S.C. § 1231(b) when doing so”); see also *Andriasian*, 180 F.3d at 1041 (a “last minute” IJ designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due process.”).

For these reasons, if DHS designates a new country of removal *after* the completion of removal proceedings, the Immigration and Nationality Act (INA), the Due Process Clause, and binding international agreements obligate DHS to provide meaningful notice and an opportunity to present a fear-based claim *prior to* carrying out the deportation. Notice is only meaningful if it is presented sufficiently in advance of the deportation to stop the deportation, is in a language the person understands, and provides for an automatic stay of removal to permit the filing of a motion to reopen removal proceedings if the person claims a fear of removal to the third country.<sup>11</sup> Likewise, an opportunity to present a fear-based claim is only meaningful if the noncitizen is not deported before removal proceedings are reopened.<sup>12</sup> While in some cases DHS has properly filed a motion to reopen removal proceedings to designate a new country to allow the noncitizen to pursue a fear-based claim, it has not done so in all such cases. Although DHS *should* bear the burden of moving to reopen or initiating new proceedings given their role in the prosecution and execution of removal orders, in the event DHS abdicates their duty, a template motion to reopen accompanies this advisory.

### Representation to the Supreme Court

At oral argument in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General acknowledged the government’s obligation to provide notice and an opportunity to present a fear-based claim before a noncitizen can be deported to a non-designated third country. Specifically, the following exchange took place between Justice Kagan and Vivek Suri, Assistant to the Solicitor General:

JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was willing to accept [a noncitizen]. If . . . that [noncitizen] was currently in withholding . . . proceedings, you couldn't put him on a plane to that third country, could you?

MR. SURI: We could after we provide the [noncitizen] notice that we were going to do that.

JUSTICE KAGAN: Right.

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<sup>11</sup> See *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 (“A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.”); *Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (“However, should circumstances change such that Azerbaijan is the designated country of removal, the agency must provide Sadychov with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from Azerbaijan.”).

<sup>12</sup> See *Aden*, 409 F. Supp. 3d at 1010 (merely giving petitioner an opportunity to file a discretionary motion to reopen “is not an adequate substitute for the process that is due in these circumstances;” ordering reopening); *Dzyuba*, 540 F.3d at 957 (remanding to BIA to determinate whether designation is appropriate).

MR. SURI: But, without notice --

JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have to provide him notice, and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country. Isn't that right?

MR. SURI: Yes, that's right.

JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in withholding proceedings, you can't put them on a plane to anywhere right now, isn't that right?

MR. SURI: Certainly, I agree with that, yes.

JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you put it, in the eyes of the law. In the eyes of the law, you cannot put one of these [noncitizens] on a plane to any place, either the ... country that's referenced in the removal order or any other country, isn't that right?

MR. SURI: Yes, that's right.

[Transcript of Oral Argument](#), *Pham v. Guzman Chavez*, No. 19-897, at 20-21 (U.S. Jan. 11, 2021). While this exchange concerned the hypothetical case of a noncitizen whom DHS might seek to remove to a third country during the pendency of withholding-only proceedings, its logic extends to individuals already granted withholding of removal or CAT protection. Indeed, the need for adequate notice of the *third* country prior to removal is heightened for individuals granted withholding or CAT protection because they already have proven that they merit protection from removal to the *designated* country.

### FOIA Litigation

In 2022, the National Immigration Litigation Alliance (NILA) filed litigation under FOIA seeking records relating to guidance or policies regarding ICE's screening and/or processing of noncitizens who have been granted withholding of removal or CAT protection. *See Nat'l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022). U.S. Immigration and Customs Enforcement (ICE) did not produce any existing written guidance or policies for providing either notice of a third-country removal or an opportunity to present a fear claim.

Rather, the litigation revealed that, in 2001, the former INS created, but *never* published, a draft "Notice to Alien of Removal to Other than Designated Country (Form I-913)." *See Appendix A*. Then, in June 2020, DHS drafted, but never adopted, a model "Notice of Removal to Other than Designated Country" based on the earlier draft Form I-913. *See Appendix B*. Both affirmatively provide *written* notice of the agency's intention to deport a noncitizen to a previously non-designated third country and state that, if the noncitizen has a fear of removal to such country,

INS/DHS would stay removal for fifteen (15) days to allow the noncitizen an opportunity to file an unopposed motion to reopen and Form I-589 (application for withholding of removal/CAT protection) with the immigration court. *Id.*<sup>13</sup>

### **FTCA Litigation**

The issue of deportation to a third country without notice and an opportunity to present a fear claim is also at the crux of pending litigation under the Federal Tort Claims Act that is presently on appeal to the Ninth Circuit.<sup>14</sup> The plaintiff alleges that, after winning withholding of removal to Cuba, DHS deported him to Mexico without adequate notice or opportunity to have his claim of feared persecution there heard, notwithstanding that he expressed his fear in immigration court filings and to several DHS agents prior to deportation. In discovery, the government repeatedly admitted it has no obligation to provide written or oral notice if it intends to deport a noncitizen to a third country, and no written policy requiring such written notice; instead, the government witnesses claimed that notifications are usually oral. In addition, the government admitted it has no policy to ensure a noncitizen has an opportunity to seek fear-based protection from removal to a third country before that removal takes place.<sup>15</sup>

### **Suggestions for Protection Against Deportation to A Third Country Where the Person Faces Persecution or Torture**

As both the FOIA and FTCA cases establish, DHS, which includes ICE and U.S. Customs and Border Protection (CBP), has not implemented a policy requiring officers to notify noncitizens of a third-country deportation and/or to provide an opportunity for them to contest removal based on a fear of removal to that country. As a practical matter, even when oral notice is provided, noncitizens may be informed of an imminent third-country removal as little as one hour before that removal takes place.

Accordingly, especially in the current climate, advocates should take care to advise clients of the possibility of deportation to a third country, identify third countries where a client fears persecution or torture, and prepare the client to articulate the fear orally or in writing if the situation arises. In addition, they should document this fear at every possible juncture of representation. Documentation might include:

- Listing all countries on Form I-589 (Application for Asylum and for Withholding of Removal) to which the applicant would have a fear of removal, requesting protection from deportation to those countries, and indicating that the person requests either a

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<sup>13</sup> The entire ICE production from the FOIA suit is available on the [Transparency Litigation](#) page of NILA's website.

<sup>14</sup> *Ibarra-Perez v. United States*, No. 24-631 (9th Cir.). The plaintiff is represented by NILA and the Florence Immigrant & Refugee Rights Project with amicus support from the Northwest Immigrant Rights Project.

<sup>15</sup> The discovery consisted of responses to requests for admission and for production, and two depositions of DHS witnesses conducted pursuant to Federal Rule of Civil Procedure 30(b)(6).

hearing or reopening to present their fear-based claim should DHS seek to deport them to any of the listed countries.

- In direct testimony and/or cross-examination, have the person state on the record all nondesignated countries to which the applicant has a fear of removal, that they request protection from deportation to those countries, and request either a hearing and/or reopening to present their fear-based claim should DHS seek to deport them to any of the listed countries.
- After a removal order is entered, if the individual is detained, inform DHS in writing of all nondesignated countries to which the person would have a fear of removal and demand a stay of removal and reopening if DHS intends to deport the person to any of the identified countries. A template letter accompanies this advisory. *See supra* n.3.
- If DHS already has indicated an intention to deport the person to a third country to which they fear removal, DHS should move to reopen to designate the third country. However, because DHS may abdicate this duty, it may be necessary to file an emergency motion to reopen and motion to stay removal. A template emergency motion to reopen and motion to stay removal (along with a template exhibit list, declarations, and proposed order) accompanies this advisory. *See supra* n.3.



**Notice to Alien of Removal to Other than Designated**

Alien's Name \_\_\_\_\_ A# \_\_\_\_\_ Detention Facility \_\_\_\_\_

You have been ordered removed to \_\_\_\_\_, as you or the immigration judge designated during your removal proceeding. The immigration judge has ordered, in the alternative, that you be removed to \_\_\_\_\_. The INS has made a formal request(s) to the government(s) of this/these country(ies) for a travel document.

The government of \_\_\_\_\_ :

- has formally responded to the INS request by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

In the alternative, the government of \_\_\_\_\_ :

- has also responded by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

Since your removal to the country(ies) designated in the removal order is not possible, you are hereby notified that the INS intends to disregard the designation in accordance with section 241(b)(2)(C) of the Immigration and Nationality Act (Act). Pursuant to section 241(b)(2)(D) or (E) of the Act, the INS is making arrangements to remove you to an alternate country, specifically \_\_\_\_\_, which is:

- the country of which you are a subject, national, or citizen;
- the country from which you were last admitted to the United States;
- the country in which is located the foreign port from which you left for the United States;
- the country of which you last resided before entering the country from which you entered the United States;
- the country of your birth;
- whose government is willing to accept you.
- the country that had sovereignty over your birthplace when you were born;

If you believe that your life or freedom would be threatened in the alternate country of removal, due to your race, religion, nationality, membership in a particular social group, or political opinion, or that you would be tortured in that country, you may file a motion to reopen with the immigration court or the Board of Immigration Appeals, as applicable, for the purpose of applying for withholding of removal or relief under the Convention Against Torture. Your motion must be accompanied by your application (Form I-589) and any supporting documentation. If you fail to file a motion to reopen within fifteen (15) days of the date you are served with this notice, you will be considered to have waived any opportunity to contest removal to that country, and the INS will proceed with your removal. The INS may extend the fifteen (15) day time period for good cause.

Sincerely,

\_\_\_\_\_  
Name Title

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Alien's Name \_\_\_\_\_ A# \_\_\_\_\_ Detention Facility \_\_\_\_\_

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You have been ordered removed to \_\_\_\_\_, as you or the immigration judge designated during your removal proceeding. The immigration judge has ordered, in the alternative, that you be removed to \_\_\_\_\_. The INS has made a formal request(s) to the government(s) of this/these country(ies) for a travel document.

The government of \_\_\_\_\_ :

- has formally responded to the INS request by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

In the alternative, the government of \_\_\_\_\_ :

- has also responded by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

Since your removal to the country(ies) designated in the removal order is not possible, you are hereby notified that the INS intends to disregard the designation in accordance with section 241(b)(2)(C) of the Immigration and Nationality Act (Act). Pursuant to section 241(b)(2)(D) or (E) of the Act, the INS is making arrangements to remove you to an alternate country, specifically \_\_\_\_\_, which is:

- the country of which you are a subject, national, or citizen;
- the country from which you were last admitted to the United States;
- the country in which is located the foreign port from which you left for the United States;
- the country of which you last resided before entering the country from which you entered the United States;
- the country of your birth;
- whose government is willing to accept you.
- the country that had sovereignty over your birthplace when you were born;

If you believe that your life or freedom would be threatened in the alternate country of removal, due to your race, religion, nationality, membership in a particular social group, or political opinion, or that you would be tortured in that country, you may file a motion to reopen with the immigration court or the Board of Immigration Appeals, as applicable, for the purpose of applying for withholding of removal or relief under the Convention Against Torture. Your motion must be accompanied by your application (Form I-589) and any supporting documentation. If you fail to file a motion to reopen within fifteen (15) days of the date you are served with this notice, you will be considered to have waived any opportunity to contest removal to that country, and the INS will proceed with your removal. The INS may extend the fifteen (15) day time period for good cause.

Sincerely,

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Name \_\_\_\_\_ Title \_\_\_\_\_

Alien's Name \_\_\_\_\_ A# \_\_\_\_\_ Detention Facility \_\_\_\_\_

You have been ordered removed to \_\_\_\_\_, as you or the immigration judge designated during your removal proceeding. The immigration judge has ordered, in the alternative, that you be removed to \_\_\_\_\_. The INS has made a formal request(s) to the government(s) of this/these country(ies) for a travel document.

The government of \_\_\_\_\_ :

- has formally responded to the INS request by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

In the alternative, the government of \_\_\_\_\_ :

- has also responded by stating that it is not willing to accept you; or
- has failed to respond to the INS request in a timely manner.

Since your removal to the country(ies) designated in the removal order is not possible, you are hereby notified that the INS intends to disregard the designation in accordance with section 241(b)(2)(C) of the Immigration and Nationality Act (Act). Pursuant to section 241(b)(2)(D) or (E) of the Act, the INS is making arrangements to remove you to an alternate country, specifically \_\_\_\_\_, which is:

- the country of which you are a subject, national, or citizen;
- the country from which you were last admitted to the United States;
- the country in which is located the foreign port from which you left for the United States;
- the country of which you last resided before entering the country from which you entered the United States;
- the country of your birth;
- whose government is willing to accept you.
- the country that had sovereignty over your birthplace when you were born;

If you believe that your life or freedom would be threatened in the alternate country of removal, due to your race, religion, nationality, membership in a particular social group, or political opinion, or that you would be tortured in that country, you may file a motion to reopen with the immigration court or the Board of Immigration Appeals, as applicable, for the purpose of applying for withholding of removal or relief under the Convention Against Torture. Your motion must be accompanied by your application (Form I-589) and any supporting documentation. If you fail to file a motion to reopen within fifteen (15) days of the date you are served with this notice, you will be considered to have waived any opportunity to contest removal to that country, and the INS will proceed with your removal. The INS may extend the fifteen (15) day time period for good cause.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Certificate of Service**

Alien's Name \_\_\_\_\_ Alien's A-Number \_\_\_\_\_

- I hereby certify that I served this notice on the above-named alien.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I have read this notice to the above-named alien in the \_\_\_\_\_ language, which the alien understands.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I hereby certify that I served this notice on the attorney or personal representative of record, if any, of the above-named alien.

Attorney's/Representative's Name: \_\_\_\_\_

Method of Service (*Check one*):  
 By personal delivery  
 By fax  
 By first class mail

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

**Alien's Acknowledgment of Service**

- I have been personally served with the attached Notice to Alien of Removal to Other than Designated Country and have been read this Notice in the \_\_\_\_\_ language, which I understand.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)

**Certificate of Service**

Alien's Name \_\_\_\_\_ Alien's A-Number \_\_\_\_\_

- I hereby certify that I served this notice on the above-named alien.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I have read this notice to the above-named alien in the \_\_\_\_\_ language, which the alien understands.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I hereby certify that I served this notice on the attorney or personal representative of record, if any, of the above-named alien.

Attorney's/Representative's Name: \_\_\_\_\_

Method of Service (Check one):  
 By personal delivery  
 By fax  
 By first class mail

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

**Alien's Acknowledgment of Service**

- I have been personally served with the attached Notice to Alien of Removal to Other than Designated Country and have been read this Notice in the \_\_\_\_\_ language, which I understand.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)

**Certificate of Service**

Alien's Name \_\_\_\_\_ Alien's A-Number \_\_\_\_\_

- I hereby certify that I served this notice on the above-named alien.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I have read this notice to the above-named alien in the \_\_\_\_\_ language, which the alien understands.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

- I hereby certify that I served this notice on the attorney or personal representative of record, if any, of the above-named alien.

Attorney's/Representative's Name: \_\_\_\_\_

Method of Service (Check one):  
 By personal delivery  
 By fax  
 By first class mail

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)  
\_\_\_\_\_  
(Name) \_\_\_\_\_ (Title)

**Alien's Acknowledgment of Service**

- I have been personally served with the attached Notice to Alien of Removal to Other than Designated Country and have been read this Notice in the \_\_\_\_\_ language, which I understand.

\_\_\_\_\_  
(Signature) \_\_\_\_\_ (Date)



[Alien Name and A#]

**APPENDIX B**

**Notice of Removal to Other than Designated Country**

In a decision dated [REDACTED], the Immigration Court ordered you removed to [REDACTED], but subsequently granted withholding of removal to that country under section 241(b)(3) of the Immigration and Nationality Act (Act). By this notice, the Department of Homeland Security (DHS) formally advises you that it is pursuing your removal to [REDACTED] as an alternate country pursuant to section 241(b)(2) of the Act.

If you believe that your life or freedom would be threatened in the alternate country of removal, due to your race, religion, nationality, membership in a particular social group, or political opinion, or that you would be tortured in that country, you may wish to apply with the Immigration Court for withholding of removal under section 241(b)(3) of the Act, or protection pursuant to the regulations implementing the U.S. obligations under Article 3 of the Convention Against Torture.<sup>1</sup>

Accordingly, assuming that you do so within fifteen (15) days of the date of service of this notice, DHS will not oppose your filing of a motion to reopen with the Immigration Court for this purpose accompanied by a properly completed Form I-589 and any supporting documentation. DHS reserves the right to contest your applications for protection from removal on the merits.

If you believe that you need more time to prepare and file any such motion to reopen, please contact the undersigned immediately and explain why you need additional time and how much additional time is needed.

If you fail to file a motion to reopen as set forth above, DHS will assume that you do not wish to seek protection from removal to the alternate country of removal and will proceed with your removal.

[OPLA Signature Bloc]

[cc: Immigration Court]

[Certificate of Service on Alien's Counsel]

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<sup>1</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature Dec. 10, 1984, G.A. Res. 39/46. 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) (implemented in the removal context in principal part at 8 C.F.R. §§ 1208.16(c) - .18).