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Immigration Removals to Third Countries

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Introduction

The Immigration and Nationality Act (INA, codified in Title 8 of the *U.S. Code*) sets forth rules governing the selection of the country to which an alien ordered removed may be transferred. Aliens found in the interior of the United States who have been ordered removed generally must be removed to the countries they designate (typically their home countries) or, if that is not possible, other countries to which they have connections. The INA also provides that the Secretary of the Department of Homeland Security (DHS) may potentially remove aliens to other countries willing to accept them—referred to as third countries—when removal to the designated country or a country to which the alien has a connection would be "impracticable, inadvisable, or impossible."

These country-selection rules operate alongside separate, humanitarian-based protections against removal to specific countries. The INA provides for withholding of removal to countries where an alien's life or freedom would be threatened on account of a statutorily protected ground, and the Convention Against Torture (CAT) and its implementing rules bar the transfer of aliens to countries where they would more likely than not face torture. These considerations may inform and constrain removal options.

President Trump's January 2025 Executive Order "Securing Our Borders" states that it is the policy of the United States to "promptly" remove "all aliens who enter or remain in violation of the law" and directs the Secretary of State to coordinate with the Attorney General and DHS Secretary to "take all appropriate action to facilitate additional international cooperation and agreements … including [by entering into safe third-country agreements] or other agreements under any other applicable provision of law."

DHS has not made data publicly available on the total number of third-country agreements or the number of aliens transferred to third countries. Based on information requests and public reporting, two advocacy groups—Refugees International and Human Rights First—are jointly tracking third-country agreements and removals. They estimate that, as of September 2026, more than 25,000 individuals have been removed during the second Trump Administration by formal or informal agreements reached with more than 30 countries, including Cameroon, Costa Rica, the Democratic Republic of Congo, El Salvador, Eswatini, Guatemala, Honduras, Panama, Paraguay, Poland, Uzbekistan, and Mexico, with Mexico receiving the most individuals.

The U.S. government has used the third-country removal process in the past, but reportedly its current utilization substantially outpaces past practices. Many such individuals lack citizenship, legal status, social ties, a common language, or cultural familiarity in these third countries.

Standard Removal Process

Aliens in the interior of the United States who are identified for removal by DHS are typically placed in standard removal proceedings in immigration court within the U.S. Department of Justice's Executive Office for Immigration Review (EOIR). Standard removal proceedings begin when DHS files a charging document (a *Notice to Appear*) with an immigration court. During removal proceedings, an alien has the right to apply for relief or protection from removal and present evidence and testimony before an immigration judge (IJ), who ultimately decides whether to grant relief or protection (such as asylum) or order removal. If relief or protection is denied, the IJ generally issues an *order of removal*, which becomes final in specified circumstances—for example, after any administrative appeal is dismissed or when the time to appeal has expired and the alien does not file an appeal within that time period.

Within DHS, Immigration and Customs Enforcement (ICE) is generally responsible for the detention of aliens, including those ordered removed. The U.S. Supreme Court has generally limited the period of detention after a final removal order is issued to six months, after which the individual may be released.

Selection of Removal Country

Most aliens ordered removed in standard removal proceedings may select the country of removal. If the individual cannot be returned to that country, he or she generally must be removed to an alternative country "of which the alien is a subject, national, or citizen." If removal to that alternative country is not possible, additional removal countries may be considered, including—as a last option—"a country whose government will accept the alien into that country" if removal to certain other countries to which the alien has some connection is "impracticable, inadvisable, or impossible."

DHS may remove foreign nationals to third countries willing to accept them and to which they have few or no ties for several reasons. Some countries may simply refuse to accept the return of their nationals or refuse to issue travel documents permitting their repatriation. Some countries will not accept their own nationals if they have engaged in criminal activity or may limit the total number of persons they are willing to accept. Other countries may have poor or nonexistent relations with the U.S. government. Additionally, removal to a particular country may not be an option if an alien has been granted withholding of removal or CAT protection with respect to that country.

Expanding Third-Country Removal

In February 2025, DHS issued internal policy guidance identifying several categories of foreign nationals with final removal orders that should be considered for third-country removals. They include, for example, aliens who cannot be removed to their home countries because the IJs determined that

they qualified for withholding of removal or CAT. The guidance also applies to aliens who were previously released from ICE custody due to "no significant likelihood of removal in the reasonably foreseeable future" to the originally designated country.

Legal Challenge

Following issuance of the DHS guidance, then-DHS Secretary Kristi Noem issued a March 2025 memorandum clarifying DHS's third-country removal policy. A class action lawsuit challenging the policy ensued. A federal district court judge issued a preliminary injunction requiring, among other things, that aliens be provided written notice and a "meaningful opportunity" to raise CAT claims before removal to third countries. In June 2025, the U.S. Supreme Court stayed the injunction while the case continued in the lower courts, enabling DHS to resume third-country removals. In July 2025, then-ICE Acting Director Todd Lyons issued a memorandum to ICE employees clarifying the agency's implementation of earlier guidance and outlining revised third-country removal procedures. In February 2026, the district court dissolved its injunction and vacated DHS's third-country removal policy. The U.S. Court of Appeals for the First Circuit granted the government's motion to stay that decision pending appeal and largely affirmed the district court's judgment. The Supreme Court granted the government's petition seeking review of the lower court decisions and stayed the district court's ruling pending disposition of the case, allowing the third-country policy to remain in effect for the time being. The Supreme Court scheduled oral arguments for December 9, 2026.

Procedures for Third-Country Removals

The July 2025 ICE memorandum specifies that the United States must determine prior to a third-country removal whether the intended country has provided diplomatic assurances that the alien will not be persecuted or tortured. If the U.S. Department of State finds the assurances credible, the ICE memorandum states that "the alien may be removed without the need for further procedures."

If the State Department does not find such assurances credible, or they are not provided, ICE then issues a *Notice of Removal* that states the intended third country to which the alien will be removed, conveyed in a language the individual comprehends. ICE does not ask whether the alien fears being removed to that country; rather, the individual must proactively express fear. ICE must wait 24 hours after issuing the Notice of Removal before carrying out the removal. However, in undefined "exigent circumstances," ICE can effectuate removal six hours after serving the notice, provided the individual is afforded "reasonable means and opportunity to speak with an attorney." Exigent removals must be approved by senior DHS attorneys.

If the alien affirmatively expresses to ICE a fear of removal to the intended third country, ICE is to refer the alien to DHS's U.S. Citizenship and Immigration Services (USCIS) for an eligibility screening for withholding of removal and CAT protection. USCIS must determine if it is more likely than not that the alien would face persecution based on a statutorily protected ground or be tortured in the third country. If the alien does not meet either standard, he or she is to be removed to the third country. If USCIS determines that the alien meets either standard, ICE follows different procedures depending on whether the alien has previously been in removal proceedings. If not, USCIS refers the case to an immigration court. Otherwise, USCIS notifies ICE, which moves to reopen the case before the immigration court or EOIR's Board of Immigration Appeals for further proceedings to determine the alien's eligibility for withholding of removal and CAT protection with respect to the third country. A grant of withholding of removal or CAT protection tied to a specific country does not bar DHS from designating another country for removal.

Issues for Congress

The Trump Administration has prioritized the enforcement of final orders of removal. It has justified third-country removals as a vital national security and enforcement tool necessary for removing aliens—particularly those with criminal records—who cannot be removed to their home countries. It also contends that third-country removals deter unlawful migration and encourage self-deportation of unlawfully present aliens.

Conversely, some contend that ICE undertakes these removals without providing foreign nationals "meaningful notice and an opportunity to seek protection." Some removed aliens have reportedly confronted human rights abuses and the absence of due process (e.g., at the CECOT maximum security prison in El Salvador), faced life-threatening civil conflict (e.g., in South Sudan), or been subsequently repatriated to the same home countries they fled. Some criticize the lack of transparency and congressional oversight of the agreements or the political pressure and financial assistance facilitating them.

Congress may consider options to address DHS's authority over third-country removals. For example, Congress could clarify that DHS may remove individuals with final removal orders to *any* designated third countries, or it may authorize removals to countries through which aliens transited to the United States. Congress could also codify into statute the July 2025 ICE memorandum or create a statutory third-country removal program for aliens with final removal orders, similar to existing safe third-country agreements.

To constrain third-country removals, Congress could require additional procedures for transfer decisions, clarify the meaning of diplomatic assurances, grant aliens the ability to contest removal to third countries before an IJ, limit authorization of third-country removals to EOIR IJs, require congressional reporting for third-country agreements, or require third-country agreements to prohibit subsequent repatriation to countries where U.S. law would have prohibited it.

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