

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

LIYANARA SANCHEZ, as next friend on behalf
of FRENGEL REYES MOTA, *et al.*,

Petitioners–Plaintiffs,

J.G.G., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States, *et al.*,

Respondents–Defendants.

Case No: 1:25-cv-00766-JEB

PLAINTIFFS’ RESPONSE TO DEFENDANTS’ REMEDIAL PROPOSAL¹

The Court directed Defendants to provide a proposal “to facilitate the return of Plaintiffs to the United States or to otherwise provide them with hearings that satisfy the requirements of due process.” Order, ECF No. 214. Defendants have failed to proffer any meaningful proposal. First, Defendants ignore obvious alternatives. For class members who are no longer in Venezuela or who may be able to travel to a third country (as some have), there is no obstacle: Defendants can facilitate remote proceedings, including from U.S. embassies and consulates overseas—just as DHS’s own policies contemplate—and they can also facilitate class members’ transportation, return, and reentry to the United States from third countries. Second, Defendants’ conclusory

¹ In light of the court’s closure yesterday due to inclement weather, Plaintiffs understand the deadline for this response to have been extended by one day. *See Fed. R. Civ. P. 6(a)(3).*

explanations for why it is not feasible at this time to provide due process for those class members in Venezuela are insufficient.

I. DEFENDANTS HAVE FAILED TO ADDRESS ALTERNATIVES THAT CAN PROVIDE RELIEF FOR CLASS MEMBERS.

Even setting aside Defendants' contention that, at this time, they cannot ensure due process for those in Venezuela (via remote hearings or their return to the United States), the government's claim that there is *no* feasible path forward for class members to obtain relief fails to account for ways in which Defendants routinely facilitate access to immigration proceedings from outside the United States. Thus, even if the Court were to credit Defendants' claims about Venezuela at present, any such issues are plainly surmountable for class members who are able to reach a third country.

ICE guidance contemplates the possibility of remote immigration proceedings, stating that ICE may "arrang[e] for video teleconferencing or telephonic testimony, if appropriate." Third Supplemental Declaration of Oscar Sarabia Roman, Exh. 1. The guidance observes: "Most courts and many foreign embassies have the technology to support your participation in your immigration hearing by either video teleconferencing or by phone." Sarabia Roman Third Supp. Decl., Exh. 2. Indeed, "Venezuelan applicants for nonimmigrant visas can apply at any U.S. Embassy or Consulate around the world." Sarabia Roman Third Supp. Decl., Exh. 3. Many Venezuelans apply at the U.S. Embassy in Bogota where the U.S. Department of State's Venezuela Affairs Unit has been housed since 2019.

Class members could likewise travel from a third country to the United States directly and be paroled into the United States. That is consistent with ICE Directive 11061.1, which says that ICE will:

engage in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and . . . parole the alien into the United States upon his or her arrival at a U.S. port of entry.

Sarabia Roman Third Supp. Decl., Exh. 4.²

None of Defendants' objections to remote proceedings from Venezuela have any relevance to proceedings from a third country. For example, Defendants complain that they "could not meaningfully enforce perjury laws against witnesses in Venezuela" due to the lack of an extradition treaty. Defs.' Resp. 3. The D.C. Circuit has previously rejected an almost identical argument. *See El-Hadad v. United Arab Emirates*, 496 F.3d 658, 669 (D.C. Cir. 2007) (permitting video testimony despite argument that, "with no extradition treaty between the United States and Egypt," witness "could not be prosecuted for perjury"). And in any event, Colombia and other countries to which class members may be able to travel do have extradition treaties with the United States.

Accordingly, the Court should order Defendants to provide options from third countries for class members immediately.

II. DEFENDANTS' EXPLANATION FOR WHY THEY CANNOT PROVIDE DUE PROCESS FOR THOSE IN VENEZUELA IS UNPERSUASIVE.

Even for those class members in Venezuela, Defendants' conclusory explanations for why it is not feasible to provide due process are unpersuasive. Some, perhaps many, cases can likely be resolved on the papers, without the need for live testimony. And Defendants' speculative and conclusory objections provide no basis to find live testimony infeasible. Finally, the Rubio

² This Directive specifically describes ICE policy for "facilitating the return to the United States" of individuals who were "lawfully removed" while their petition for review (PFR) was pending. Sarabia Roman Third Supp. Decl. Exh. 4. If their PFR is "granted by a U.S. court of appeals or the U.S. Supreme Court," the policy describes how ICE may facilitate their return. *Id.* There is no reason similar procedures cannot be followed as to individuals, like class members, *unlawfully* removed.

Declaration's explanation for why it is not possible at this time to allow class members to return from Venezuela is too conclusory to warrant deference without further elaboration.

1. As an initial matter, habeas proceedings need not proceed to an evidentiary stage: "on the facts admitted, it may appear that, as matter of law, the prisoner is entitled to the writ and to a discharge." *Walker v. Johnston*, 312 U.S. 275, 284 (1941). And, like other civil cases, habeas claims may be granted upon a motion for summary judgment. 1 Fed. Habeas Corpus Practice & Proc. § 17.3 (describing the appropriateness of petitioner-initiated summary proceedings where "no facts are in dispute"); Fed. R. Civ. P. 81(a)(4) (describing applicability of the Federal Rules of Civil Procedure to habeas corpus proceedings); *e.g.*, *Foster v. Barbour*, 613 F.2d 59, 60-61 (4th Cir. 1980) (granting writ without evidentiary hearing where such a hearing would "not have developed any further facts" to affect the court's decision).

It is likely that in many cases there will be no genuine dispute of material fact after the petitioner puts forward their petition and seeks summary judgment on the basis that the government was wrong to designate them as a member of TdA. *See, e.g., Bacha v. Obama*, 2009 WL 2365846, at *1 (D.D.C. July 30, 2009) (granting habeas relief after government conceded that it "no longer treat[ed] petitioner as detainable"); *Abdah v. Obama*, 717 F. Supp. 2d 21, 36 (D.D.C. 2010) (granting habeas relief because government presented "no evidence that [petitioner] has any connection to Al Qaeda").

To begin, the evidentiary record and independent reporting show that there is no indication that the overwhelming majority of class members have any connection to TdA whatsoever, and that the government's criteria for designation were arbitrary and irrational—such that mass erroneous designations were entirely predictable. Scores of individuals appear to have been designated as TdA based largely on innocuous tattoos. But experts who study TdA explain that

TdA “has never had . . . identity marks such as tattoos that identify its members.” Antillano Decl. ¶ 14 (ECF No. 67-4); Hanson Decl. ¶¶ 22, 24 (ECF No. 67-3) (“Tattoos are not a reliable way to identify members of the group.”); Dudley Decl. ¶ 25 (ECF No. 67-12) (tattoos are not a “reliable means” of identifying TdA); *see also* Sarabia Roman Decl., Exh. 20 (ECF No. 67-21) (“Venezuelan gangs are not identified by tattoos.”). Rather, tattoos are commonplace within Venezuelan culture, particularly among young people, irrespective of gang affiliation. *See* Hanson Decl. ¶¶ 22, 24; Antillano Decl. ¶ 14; *see also* Sarabia Roman Decl., Exh. 20 (ECF No. 67-21) (“gang members also sport tattoos considered culturally popular at the moment and popular among the general public”).

The government’s own documents reveal the patent absurdity of using tattoos and attire as indicators of TdA membership, as they have done for many class members. For instance, the Chicago Homeland Security Investigations office identified wearing a Chicago Bulls jersey, particularly one bearing Michael Jordan’s name, as a TdA marker. *See* Sarabia Roman Decl., Exh. 2. Experts characterize this theory as “close to laughable,” given the Bulls’ status as Chicago’s home team and Jordan’s universal popularity. Sarabia Roman Decl., Exh. 20 (“The idea that a Jordan tattoo or jersey would be used to link someone with Tren de Aragua is close to laughable.”); Hanson Decl. ¶ 24 (same). Even the government’s own intelligence contradicts the practice. *See, e.g.*, Sarabia Roman Decl. Exh. 3 (“EPT HUMINT-Gang Unit collections determined that the Chicago Bulls attire, clocks, and rose tattoos are typically related to the Venezuelan culture and not a definite indicator of being a member or associate of the TDA.”).

Nor has the government’s reliance on hand gestures, symbols, logos, graffiti, or manner of dress fared any better. Experts agree that TdA lacks consistent iconography, unifying symbols, or a distinctive style of clothing. Hanson Decl. ¶¶ 23-24 (TdA does not have “iconography or unifying

cultural motifs, such as symbols, insignias, logos, notations, graffiti tags, music, or drawings” nor “a typical manner of dress . . .” “associated with them”); Antillano Decl. ¶ 14 (no “symbol” or “identity mark” to identify TdA members). And there is no evidence whatsoever that TdA maintains a constitution or issues membership documentation—yet these too were treated as purported indicators of affiliation. *See* Antillano Decl. ¶ 14.

Moreover, approximately 75 percent of individuals sent to El Salvador had no criminal record in the United States or abroad, and many entered the United States lawfully, including several who arrived as highly vetted refugees. *See* Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-prison; Documents Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025), <https://perma.cc/DE3L-BLKN>; Mica Rosenberg et al., *Trump Administration Knew Vast Majority of Venezuelans Sent to Salvadoran Prison Had Not Been Convicted of U.S. Crimes*, ProPublica (May 30, 2025), <https://perma.cc/KF7N-KY9K>; Bloomberg News, *About 90% of Migrants Sent to El Salvador Lacked U.S. Criminal Record*, Los Angeles Times (Apr. 10, 2025), <https://perma.cc/Q5LW-8JZC>; Veronica Egui Brito, *Despite Refugee Status in the U.S., Young Venezuelan Was Deported to Salvadoran Prison*, Miami Herald (Mar. 21, 2025), <https://perma.cc/D6UJ-TLE3>; David J. Bier, *50+ Venezuelans Imprisoned in El Salvador Came to US Legally, Never Violated Immigration Law*, Cato Institute (May 19, 2025), <https://perma.cc/M68R-2KJS>; *Agelviz-Sanguino v. Noem*, No. 25-cv-2116, ECF No. 1 ¶ 1 (S.D. Tex. May 9, 2025) (Venezuelan noncitizen “was previously approved for refugee resettlement,” yet the government “unlawfully removed him to El Salvador”). Even the government’s own declarant in this litigation has conceded “that many of the TdA members removed under the AEA do not have criminal records in the United States.” Cerna Decl. ¶ 9 (ECF No. 26-1).

In short, even if remote hearings were not feasible, *but see infra*, many—and perhaps most—cases could be resolved on a paper record given that the government will likely have little or no evidence to connect class members to TdA.

2. Defendants’ objections to remote hearings from Venezuela are conclusory and speculative, at best. Defendants claim, for instance, that they “may not be able to verify the identity of individuals” testifying in such proceedings. Defs.’ Resp. 3. But class members were in Defendants’ custody prior to being sent to torture in El Salvador, and Defendants typically collect personal information, including photographs that would allow them to identify an individual in remote video proceedings. Indeed, it is incredible to imagine that Defendants did *not* collect such information for individuals that they designated under the AEA. Defendants’ additional assertions regarding hurdles to remote proceedings in Venezuela—claims about lack of access to counsel, “a serious risk of intentional interference,” and that such proceedings “may prompt diplomatic issues,” *id.* at 3—are speculative and unsubstantiated. Secretary Rubio’s conclusory statements do not provide a meaningful basis for the Court to determine why this remedial process is in fact infeasible. And concerns based on access to evidence due to “the fluid and volatile situation in Venezuela,” *id.* at 3, describe the kind of hurdles that individuals coming from countries in turmoil regularly face in the immigration context. Moreover, if any individual class member believes that he lacks access to the needed evidence, he can always choose not to go forward at this time.

3. Secretary Rubio’s declaration states that the situation is too delicate at this time to facilitate the return of class members. But as to these men, the declaration conspicuously fails to explain why there is any reason to believe the current head of Venezuela—Maduro’s former Vice President—would not honor the specific agreement made by the Maduro regime to “not impose

obstacles to [their] travel” to the United States as appropriate for legal proceedings. Harper Decl. ¶ 9 (ECF No. 168-1).

Defendants additionally argue—but not in a sworn affidavit—that they “are unable to retrieve class members from Venezuela at this time, as civilian travel into and out of Venezuela has become heavily restricted.” Defs.’ Resp. 3. But as of January 10, “[s]ome commercial airlines have resumed operations from Venezuela”—according to the State Department itself. U.S. Embassy Caracas, *Do Not Travel to Venezuela; Depart Immediately* (Jan. 10, 2026), <https://perma.cc/B96Y-R7Q9>. Moreover, Defendant DHS has expanded deportation flights to Venezuela since the ouster of Maduro, sending three flights in the past week and expecting to regularly send three flights per week. In a statement, DHS attributed the increased flights to the President’s “actions bringing stability to Venezuela”—contrary to Defendants’ argument that Venezuela’s *instability* prevents class members from receiving meaningful relief. Annie Correal et al., *Facing U.S. Pressure, Venezuela Agrees to Take More Deportees*, N.Y. Times (Jan. 23, 2026), <https://perma.cc/N43J-FRM5>.

Given that Defendants have been able to negotiate and implement expanded deportation flights from the United States following Maduro’s ouster, Defendants provide no meaningful basis for concluding that facilitating the return of class members from Venezuela via U.S. transport would be infeasible. *See* Supp. Decl. of Sec’y of State Marco Rubio (ECF No. 229-1) ¶ 4 (providing no reasoned explanation for assertion that a “proposal . . . to transport class members to a U.S. jurisdiction” would harm “U.S. foreign policy interests in Venezuela”).

It is not unusual for a court to order the executive branch to take specific steps to facilitate an individual’s return where, as here, the removal was patently unlawful. These steps may include: purchasing airline tickets; working with relevant airlines to pre-clear an individual’s flight;

working with third-country immigration authorities to facilitate transit through those countries; and providing documentation necessary for re-entry into the United States. *See, e.g., Yaide v. Wolf*, No. 19-cv-7874, 2019 WL 6896148, at *4 (N.D. Cal. Dec. 18, 2019); *Rantesalu v. Cangemi*, No. 04-cv-1375, 2004 WL 898584, at *7 n.8 (D. Minn. Apr. 23, 2004); *see also, e.g., Walters v. Reno*, 145 F.3d 1032, 1050–51 (9th Cir. 1998) (requiring parole into country or other arrangement for hearing attendance for class of noncitizens); *Dennis v. INS*, No. 01-cv-279, 2002 WL 295100, at *3 (D. Conn. Feb. 19, 2002) (noting that cost of plane ticket was “not great in any sense”); *Abrego Garcia v. Noem*, 348 F.R.D. 589, 592 n.1 (D. Md. 2025) (detailing government’s efforts in other cases to facilitate return). Defendants make the blanket objection that they “are unable to retrieve class members from Venezuela at this time,” Defs.’ Resp. at 3, but they offer no explanation as to why they cannot take each of these steps.

Additionally, Defendants should retrieve and immediately return class members’ passports and identity documents that were confiscated by U.S. authorities and never returned. Possession of such papers will assist class members in traveling to the United States or to third countries where their habeas petitions can be adjudicated.

PROPOSED RELIEF

This Court should require that:

- Defendants expeditiously submit a new proposal providing for remote proceedings in third countries and travel by class members to the United States from third countries.
- For class members who are currently unable to travel to a third country, the Court should allow individual habeas actions to proceed on written submissions.
- For class members who are currently unable to travel to a third country, the Court should also require Defendants to more fully explain why Plaintiffs cannot return or have remote

hearings from Venezuela. If, however, the Court concludes that Defendants need not facilitate Plaintiffs' return from Venezuela or provide remote hearings from Venezuela, the Court should require Defendants to provide regular status reports as the situation in Venezuela evolves, so that the Court may assess the availability of relief for class members who remain in Venezuela.

- Defendants should immediately return class members' passports and identity documents.

Dated: January 27, 2025

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Case No: 1:25-cv-00766-JEB

THIRD SUPPLEMENTAL DECLARATION OF OSCAR SARABIA ROMAN

I, Oscar Sarabia Roman, declare as follows:

1. I am over eighteen years of age and am competent to make this declaration.
2. I am a lawyer at the American Civil Liberties Union Immigrants' Rights Project. I represent the Petitioners in this case.
3. Attached hereto as exhibits are true and correct copies of the following:

Exhibit Documents

Ex. 1. FAQs: Facilitating Return for Lawfully Removed Aliens: What happens if I win my case and the court of appeals grants my petition for review after I have been removed? *Available at* <https://perma.cc/5MU6-9DMF> (visited Jan. 26, 2026).

Ex. 2. FAQs: Facilitating Return for Lawfully Removed Aliens: What if I believe I need to be present in the United States for my case after I have been removed? *Available at* <https://perma.cc/5MU6-9DMF> (visited Jan. 26, 2026).

Ex. 3. U.S. Visa Services: Additional Information---Venezuelan Applicants, *available at* <https://perma.cc/BU2Y-SY4E> (visited Jan. 26, 2026).

Ex. 4. ICE Policy 11061.1 (Feb. 24, 2012), *available at* <https://perma.cc/TMA7-XMTS> (visited Jan. 26, 2026).

I hereby declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 27th of January, 2026, in San Francisco, California.

/s/ Oscar Sarabia Roman
Oscar Sarabia Roman

EXHIBIT 1



FAQs: Facilitating Return for Lawfully Removed Aliens

- + I was ordered removed and am scheduled to be removed soon, but have a petition for review pending...

- What happens if I win my case and the court of appeals grants my petition for review after I have been removed?

That will depend on the nature of the court order and the posture of your proceedings.

If you were a lawful permanent resident (LPR) prior to entry of the final removal order in your case, and the court's decision voids your removal order, U.S. Immigration and Customs Enforcement (ICE) will consider your LPR status to be reinstated. LPRs are permitted to enter and reside in the United States. Absent extraordinary circumstances, ICE will facilitate your return to the United States.

If you were not an LPR before being removed, absent extraordinary circumstances ICE will facilitate your return to the United States if your presence is necessary for continued adjudication of your case. This may be because the court of appeals specifically ordered your presence, or because the nature of the court's order requires you to return for further testimony. ICE may explore other options in lieu of facilitating your return, such as arranging for video teleconferencing or telephonic testimony, if appropriate.

ICE will also facilitate your return to the United States, absent extraordinary circumstances, if, at the conclusion of proceedings for which your presence was not necessary, the Board of Immigration Appeals or Immigration Court enters a final and unreviewable decision that permits you to be physically present in the United States.

- + What constitutes "extraordinary circumstances"?

- + What if I believe I need to be present in the United States for my case after I have been removed?

- + Is it my responsibility to request assistance from DHS once I learn that a court of appeals has granted my petition for review?

- + How do I request assistance from DHS in facilitating my return to the United States after a court of appeals has granted my petition for review?

- + Can my lawyer, legal representative, family member, or other advocate contact the Custody Programs Division on my behalf?

- + Will the Custody Programs Division let me know if ICE has agreed to facilitate my return to the United States?

- + What does the Custody Programs Division do when I request ICE's assistance to return to the United States after a court grants my petition for review?

- + Will I be provided a point of contact in ICE throughout the return process?

- + Do I need to fill out any forms to start the process?

- + If the ICE point of contact tells me that ICE will facilitate my return to the United States, what happens?

- + What do I need to return to the United States?

- + What is a transportation/boarding letter?

- + What if my country will not issue me a passport?



- ⊕ Am I responsible for making my own travel arrangements to return to the United States?
- ⊕ Who is responsible for paying for my return trip?
- ⊕ I provided the U.S. Embassy or Consulate with my passport and received a transportation/boarding letter. I just bought an airline ticket...
- ⊕ I am in Mexico or Canada and would enter the United States by land at the border crossing. Will I need a transportation/boarding letter?
- ⊕ How long will it take from the time I request ICE to facilitate my return until my arrival in the United States?
- ⊕ If ICE facilitates my return to the United States after my petition for review has been granted, what will my immigration status be, if any?
- ⊕ When ICE facilitates my return to the United States, after my petition for review has been granted, will I be detained upon my return?
- ⊕ Do I need to pay a fee for ICE to consider whether to facilitate my return to the United States?
- ⊕ Who do I contact for status regarding my request to return to the United States?



Updated: 02/02/2024

CONTACT

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EXHIBIT 2



FAQs: Facilitating Return for Lawfully Removed Aliens

⊕ I was ordered removed and am scheduled to be removed soon, but have a petition for review pending...

⊕ What happens if I win my case and the court of appeals grants my petition for review after I have been removed?

⊕ What constitutes "extraordinary circumstances"?

⊕ What if I believe I need to be present in the United States for my case after I have been removed?

Most courts and many foreign embassies have the technology to support your participation in your immigration hearing by either video teleconferencing or by phone. However, if these alternatives are not available to you in the country to which you were removed, and your presence is required by court order or is otherwise necessary to continue your case, you may request that the Department of Homeland Security (DHS) facilitate your return to the United States. You will need to contact ICE to request return to the United States.

⊕ Is it my responsibility to request assistance from DHS once I learn that a court of appeals has granted my petition for review?

⊕ How do I request assistance from DHS in facilitating my return to the United States after a court of appeals has granted my petition for review?

⊕ Can my lawyer, legal representative, family member, or other advocate contact the Custody Programs Division on my behalf?

⊕ Will the Custody Programs Division let me know if ICE has agreed to facilitate my return to the United States?

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⊕ What is a transportation/boarding letter?

⊕ What if my country will not issue me a passport?

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⊕ I am in Mexico or Canada and would enter the United States by land at the border crossing. Will I need a transportation/boarding



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- If ICE facilitates my return to the United States after my petition for review has been granted, what will my immigration status be, if any?
- When ICE facilitates my return to the United States, after my petition for review has been granted, will I be detained upon my return?
- Do I need to pay a fee for ICE to consider whether to facilitate my return to the United States?
- Who do I contact for status regarding my request to return to the United States?

Updated: 02/02/2024

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EXHIBIT 3

Visas - U.S. Embassy in Colombia

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— APPLYING FOR A VISA

What type of visa do you need?

If you are unsure what type of visa you need, please use the Visa Wizard below to learn more.

The type of visa you must obtain is defined by U.S. immigration law and relates to the purpose of your travel. You can use this wizard to find out what visa type may be most appropriate for your purpose of travel. If applying from some countries, you will be redirected to a third-party site to help you determine what visa type is best for you. Please answer all questions as the applicant.

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EXHIBIT 4

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens****Issue Date:** February 24, 2012**Effective Date:** February 24, 2012**Superseded:** N/A**Federal Enterprise Architecture Number:** 306-112-002b

1. **Purpose/Background.** Under the Immigration and Nationality Act (INA), as amended, aliens who petition the circuit courts of appeals for review of their administrative removal orders may continue to litigate their petitions after their removal from the United States. Absent a court-ordered stay of removal, U.S. Immigration and Customs Enforcement (ICE) may lawfully remove such aliens while their petitions for review (PFRs) are pending. This Directive describes existing ICE policy for facilitating the return to the United States of certain lawfully removed aliens whose PFRs are granted by a U.S. court of appeals or the U.S. Supreme Court. This Directive applies only to supervisors in Enforcement and Removal Operations (ERO), Homeland Security Investigations (HSI), and the Office of the Principal Legal Advisor (OPLA). This Directive does not apply to bargaining unit employees.
2. **Policy.** Absent extraordinary circumstances, if an alien who prevails before the U.S. Supreme Court or a U.S. court of appeals was removed while his or her PFR was pending, ICE will facilitate the alien's return to the United States if either the court's decision restores the alien to lawful permanent resident (LPR) status, or the alien's presence is necessary for continued administrative removal proceedings. ICE will regard the returned alien as having reverted to the immigration status he or she held, if any, prior to the entry of the removal order and may detain the alien upon his or her return to the United States. If the presence of an alien who prevails on his or her PFR is not necessary to resolve the administrative proceedings, ICE will not facilitate the alien's return. However, if, following remand by the court to the Executive Office for Immigration Review (EOIR), an alien whose PFR was granted and who was not returned to the United States is granted relief by EOIR or the Department of Homeland Security (DHS) allowing him or her to reside in the United States lawfully, ICE will facilitate the alien's return to the United States.
3. **Definitions.** The following definitions apply for purposes of this Directive only:
 - 3.1. **Facilitate an Alien's Return.** To engage in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parole the alien into the United States upon his or her arrival at a U.S. port of entry. Facilitating an alien's return does not necessarily

include funding the alien's travel via commercial carrier to the United States or making flight arrangements for the alien.

- 3.2. **Petition for Review (PFR).** A request for a U.S. court of appeals to review a removal order entered by ICE or EOIR under 8 U.S.C. § 1252, INA § 242. The U.S. courts of appeals' PFR decisions are subject to review by the U.S. Supreme Court through a petition for writ of certiorari.
- 3.3. **Restore an alien to lawful permanent resident (LPR) status.** To enter a judicial decision which renders non-final an administrative removal order against an LPR. *See Matter of Lok*, 18 I&N Dec. 101 (BIA 1981) (holding that an LPR retains such status until the entry of a final administrative order of removal), *aff'd*, 681 F.2d 107 (2d Cir. 1982). Practically speaking this means that, when a PFR is granted that returns a former LPR to the posture of a pre-order alien, the alien will once again, in contemplation of law, be an LPR even though removal proceedings may still be pending before EOIR on remand from the circuit court.
- 3.4. **Stay of Removal.** An order issued by EOIR or a federal court which prevents ICE from executing a removal order.

4. **Responsibilities.**

- 4.1. ERO, HSI, and OPLA supervisors must fully coordinate at the local, international, and Headquarters levels to effectuate this policy.

5. **Procedures/Requirements.** None

6. **Authorities/References.**

- 6.1. INA § 101(a)(20), 8 U.S.C. § 1101(a)(20).
- 6.2. INA § 212(d)(5), 8 U.S.C. § 1182(d)(5).
- 6.3. INA § 242, 8 U.S.C. § 1252.
- 6.4. 8 Code of Federal Regulations (CFR) § 212.5.
- 6.5. DHS Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement" (November 13, 2004).
- 6.6. Memorandum of Agreement (MOA) between United States Citizenship and Immigration Services (USCIS), ICE, and Customs and Border Protection (CBP), "Coordinating the Concurrent Exercise by USCIS, ICE, and CBP, of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States" (September 29, 2008).

- 6.7. MOA between ICE and CBP, "Significant Public Benefit Parole Protocol for U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement for Law Enforcement Purposes" (September 22, 2005).
- 6.8. *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), *aff'd*, 681 F.2d 107 (2d Cir. 1982).

7. **Attachments.** None

8. **No Private Right.** This Directive is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



John Morton
Director
U.S. Immigration and Customs Enforcement