



Extradition to the United States, Part 2: Current Status of Third Country Removals

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Third country removals are occurring most often where a noncitizen has a final order of removal, but they have protection from removal to their country of origin (e.g., Withholding of Removal under the Immigration and Nationality Act or protection under the Convention Against Torture (“CAT”)). Historically, it was extremely rare for the U.S. government to remove noncitizens with Withholding of Removal or CAT protection to a third country, but the current administration has aggressively ramped up third country removal efforts.

Third Country Removal Policies

The following policy memoranda outline the current priorities and processes the Department of Homeland Security (“DHS”) is following to conduct third country removals.

Immigration and Customs Enforcement (“ICE”) Policy Directive on Third Country Removals (February 18, 2025)

This directive instructs ICE officers to review cases of noncitizens granted Withholding of Removal or CAT protection “to determine the viability of removal to a third country and accordingly whether the [noncitizen] should be re-detained.”

The directive also instructs ICE officers to review cases of noncitizens previously released due to no significant likelihood of removal in the reasonably foreseeable future for re-detention and removal “in light of the Administration’s significant gains with regard to previously recalcitrant countries and the potential for third country removals.”

DHS Secretary Kristi Noem’s Memo: Guidance Regarding Third Country Removals (March 30, 2025)

This memo states that if a country has provided diplomatic assurances that noncitizens removed to that country will not be persecuted or tortured, the noncitizen may be removed without further procedures.

If there are no diplomatic assurances, DHS will inform the noncitizen of the proposed third country and will not affirmatively ask whether the noncitizen has a fear of persecution in that country. An affirmative statement of fear will result in a fear interview with U.S. Citizenship and Immigration Services (“USCIS”) within 24 hours of referral to USCIS. The fear screening may be conducted remotely to determine whether it is more likely than not that the noncitizen would be persecuted or tortured in the proposed third country.

If the noncitizen passes the fear screening, they are to be referred to immigration court for further proceedings, or ICE may designate a different third country for removal.

ICE Acting Director Todd Lyons Memo to all ICE employees (July 9, 2025)

This memo is directed to all ICE employees and instructs ICE to adhere to Secretary Noem’s March 30, 2025 Memo and further clarifies the procedures to be applied when conducting third country removals.

Under this memo, if the U.S. government receives diplomatic assurances from a country that it will not persecute or torture U.S. deportees, and the Department of State confirms that the diplomatic assurances are credible, ICE will inform the noncitizen of the proposed country of removal and wait 24 hours before effectuating removal. However, ICE may effectuate removal within 6 hours of providing notice “in exigent circumstances” if the noncitizen is provided reasonable means and opportunity to speak with a lawyer. The memo does not define “exigent circumstances”.

If the noncitizen affirmatively states a fear of removal to the proposed country, USCIS will screen the individual to determine whether the noncitizen is more likely than not to be persecuted on a statutorily protected ground or tortured in the proposed country.

Countries with known or suspected agreements with the United States to accept third-country nationals:

- Costa Rica
- El Salvador
- Equatorial Guinea
- Eswatini
- Ghana
- Kosovo
- Liberia
- Mexico
- Panama
- Rwanda
- South Sudan

Additional countries who have accepted third-country nationals, but where the existence of an agreement is unknown:

- Egypt
- Israel
- Jordan
- Palau
- Uzbekistan
- Qatar

When would someone extradited to the United States risk removal to a third country?

As explained in Part 1 of this extradition blog series, under Board of Immigration Appeals precedent, extradited noncitizens should be given a fair and reasonable opportunity to depart the United States voluntarily, either at the conclusion of their criminal sentence or upon acquittal. *Matter of Badalamenti*, 19 I&N Dec. 623 (BIA 1988). If the noncitizen fails to leave within the allotted timeframe, DHS can lawfully initiate removal proceedings. However, as discussed in Part 1, in practice, DHS is likely to initiate removal proceedings without affording the foreign national an opportunity to depart voluntarily. In fact, under

current policy, DHS is incentivized to detain and deport noncitizens to meet daily quotas, increasing the likelihood that DHS would not afford the noncitizen an opportunity to depart the United States voluntarily. The onus would then be on the noncitizen to assert their right under *Badalamenti* to voluntarily depart.

In theory, an extradited foreign national should not be subject to third country removal because they should be given an opportunity to depart voluntarily. However, if the foreign national fails to depart voluntarily within the required timeframe and is placed into removal proceedings, or is subject to removal proceedings and fails to assert their right under *Badalamenti*, it is possible the foreign national could eventually be subject to third country removal if they assert a fear-based claim to their country of origin and are granted statutory withholding of removal or protection under the CAT. If the extradited noncitizen is found removable and does not have a fear-based claim, they would generally be deported to their country of origin.

In sum, an extradited foreign national would be most at risk of third country removal if they were placed into removal proceedings and were granted either withholding of removal or protection under the CAT. In less-common instances, we have seen foreign nationals with a final order of removal and no fear-based protection removed to a third country that has agreed to accept U.S. deportees rather than to their country of origin. This typically occurs when the noncitizen's country of origin is not accepting U.S. deportees, including their own citizens, due to a lack of diplomatic relationship with the United States.

Due Process Concerns with Third Country Removal Policies

In our experience, third country removals occur swiftly and without regard for noncitizens' credible fear claims. Our firm represented, along with co-counsel, West African nationals removed from the United States to Ghana without notice. Their removal occurred quickly in the middle of the night, and they were not informed about where they were being removed to until they were boarding the plane. Others were not informed until they were halfway to Ghana. Nearly all of the individuals deported on that flight had either Withholding of Removal or CAT protection to their countries of origin. You can read the complaint we filed and the clients' declarations about their experience here. See *D.A. v. Noem*, no. 1:25-cv-03135 (D.D.C. Sept. 11, 2025). This experience demonstrates that DHS often does not follow even the most limited process provided for in the three memos outlined above.

Alarming, we learned through the *D.A. v. Noem* litigation that while the government defended its actions because it had received diplomatic assurances from Ghana that Ghanaian authorities would not persecute or torture any third-country nationals deported to Ghana, once the government was confronted with evidence that Ghana had sent at least one Plaintiff to his home country, where he had been granted protection from removal, the U.S. government admitted that it took no further action to “keep Plaintiffs from being removed to Ghana to their country of origin or other countries where they fear persecution and torture.” Declaration of Jonathan G. Pratt, Senior Bureau Official.

Even when noncitizens are actually granted a fear screening upon request, we have received first-hand reports that the screening is rushed and inadequate. Clients have also reported being denied access to their attorneys during the screening and being told they could either proceed with the screening without an attorney or forfeit the screening altogether.

Conclusion

While the state of third country removals is extremely alarming, the risk that extradited foreign nationals will be subject to third country removal is low, particularly if the foreign national asserts their right under *Badalamenti* to be given a fair and reasonable opportunity to voluntarily depart. However, the risk of third country removal increases if the noncitizen fails to depart after being given a reasonable opportunity to do so and either cannot be removed to their country of origin or asserts a fear-based claim and is granted protection of removal to their country of origin.