

Submission to the United Nations Special Rapporteur's Report to the 80th session of the General Assembly on the Externalization of Migration and the Impact on the Human Rights of Migrants

On behalf of HIAS, Oxfam, the Global Strategic Litigation Council, the National Network for Immigrant and Human Rights, Hope Border Institute, and Americans for Immigrant Justice, we welcome the opportunity to submit a comment to the U.N. Special Rapporteur's report on the externalization of migration and its impact on human rights. In this comment, we detail the significant harm and lack of due process from the U.S.' attempts to remove individuals to third countries ("third country removals") with a focus on El Salvador, Libya, and South Sudan.¹ These policies place individuals who sought protection in the U.S. at significant risk of persecution and torture in countries with few if any viable pathways to safety and permanent status.

Practice and Legal Standard of Third Country Removals in the U.S.

In this comment, third country removals refer to the removal of individuals to countries where they lack citizenship or lawful status, and prior ties, and that are not designated on an order of removal issued by an immigration judge or official.² These removals are considered a form of externalization of migration because the U.S. fails to provide individuals with the required procedural protections from harm.³ These practices stray far from measures considered lawful transfers, including safe third country agreements, regional disembarkation mechanisms, and emergency or humanitarian evacuations or transfers.⁴

While third country removals are lawful under U.S. law, immigration officials must provide meaningful notice and adequately screen an individual's risk of persecution or torture before removal.⁵ U.S. courts have repeatedly affirmed the principle of due process in removal proceedings.⁶ These protections are also necessary to comply with the international legal obligations of *non-refoulement*⁷ and the Fifth Amendment of the U.S. Constitution which

¹ The practice is not limited to these three countries. In February 2025, the U.S. government expelled approximately 500 individuals, including young children and pregnant women, to Panama and Costa Rica where they were held in remote detention facilities. *See, e.g.*, Human Rights Watch, "The Strategy Is to Break Us: The US Expulsion of Third-Country Nationals to Costa Rica" (22 May 2025), available: <https://www.hrw.org/report/2025/05/22/strategy-break-us/us-expulsion-third-country-nationals-costa-rica>; *see also* Human Rights Watch, "US/Panama: Mass Expulsion of Third-Country Nationals" (April 24, 2025), available: <https://www.hrw.org/news/2025/04/24/us/panama-mass-expulsion-third-country-nationals>.

² 8 U.S.C. § 1231(b)(2)(E)(vii).

³ UNHCR, "UNHCR Note on the 'Externalization' of International Protection" (28 May 2021), available: <https://www.refworld.org/policy/legalguidance/unhcr/2021/en/121534> ("measures preventing asylum-seekers from entering safe territory and claiming international protection, or transfers of asylum-seekers and refugees to other countries without sufficient safeguards, can amount to externalization of international protection responsibilities").

⁴ *Id.*

⁵ 8 C.F.R. § 1240.10(f); 8 C.F.R. § 1240.11(c)(1)(i).

⁶ *See, e.g.*, *Bartolome v. Sessions*, 904 F.3d 803, 807 (9th Cir. 2018); *see* 8 USCS § 1231 and 8 C.F.R. § 208.31.

⁷ United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United

requires basic due process for all individuals in the U.S, regardless of immigration status.⁸ Alarming, in prior litigation in 2022, the U.S. represented it lacked a written policy to provide these mandatory procedures.⁹

The U.S.’ intent to remove individuals to third countries without respect for the rule of law is clear. In February 2025, Immigrations and Customs Enforcement (ICE) issued a directive instructing officers to review cases of individuals granted withholding of removal for possible re-detention and removal to third countries.¹⁰ Officers were also directed to review the cases of individuals ordered removed whose country of citizenship refused to accept them in the absence of diplomatic relations with the U.S.¹¹ Noticeably, the directive fails to mention the need for any procedural protections for individuals with fear of removal.

In March 2025, a second directive guaranteed that third country removals would not occur if the receiving country provided vaguely worded “diplomatic assurances” to the U.S. that individuals would not be persecuted or tortured.¹² Once again, the directive ignored the requirement to provide individualized procedural protections – one day *after* a federal judge ordered the U.S. to provide written notice and an opportunity for individuals to raise a claim of fear.¹³ In the ensuing weeks, the U.S. continued to defy the law and court orders while placing individuals at imminent risk of harm in El Salvador, Libya, and South Sudan.

Risk of Persecution and Torture in El Salvador, Libya and South Sudan

a. El Salvador

Over the course of 48 hours in late March, the U.S. engaged in a series of intentionally evasive and rapid-fire removals of four Venezuelan individuals to Guantanamo, Cuba and then to El Salvador.¹⁴ The four individuals, who were not advised of the opportunity to contest their removals, were “identified” without any evidence as members of the *Tren de Aragua* (TdA)

Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

⁸ See, e.g., *Trump v. J.G.G.*, 604 U.S. —, 2025 WL 1024097, at *2 (Apr. 7, 2025) (*per curiam*).

⁹ *Nat’l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022).

¹⁰ ICE Email Directive on Expedited Removal and Nondetained Docket (18 February 2025), available: <https://immpolicytracking.org/policies/ice-directs-review-on-non-detained-docket-for-redetention-and-removal/#/tab-policy-documents>.

¹¹ *Id.*

¹² DHS Guidance Regarding Third Country Removals (30 March 2025), available: <https://immpolicytracking.org/policies/potus-issues-executive-order-directing-dos-doj-and-dhs-to-enter-international-cooperation-agreements-including-safe-third-country-agreements/#/tab-policy-documents>.

¹³ *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, (D. Mass.), Temporary Restraining Order (28 March 2025), available: https://www.bloomberglaw.com/public/desktop/document/DVDetailvUSDepartmentofHomelandSecurityetalDocketNo125cv10676DMass/2?doc_id=X3UVC25N4EE8P1QOARUHSI1HO8D.

¹⁴ Nate Raymond, “Judge questions US Defense Department role in Venezuelans’ deportations” Reuters (28 April 2025), available: <https://www.reuters.com/world/us/judge-questions-us-defense-department-role-venezuelans-deportations-2025-04-28/>.

gang.¹⁵ Despite the court's clear order, the U.S. incredulously defended their unlawful actions on the basis the individuals were removed to El Salvador on planes operated by the Department of Defense (DOD) who, unlike the Department of Homeland Security (DHS), was not a party in the lawsuit.¹⁶

Many third-country nationals expelled to El Salvador are detained in the Terrorism Confinement Center (CECOT), where they face severe mistreatment and overcrowding. Frequent human rights abuses in CECOT include "torture, ill-treatment, incommunicado detention, severe violations of due process, and inhumane conditions, such as lack of access to adequate healthcare and food."¹⁷ In 2020, Human Rights Watch (HRW) reported widespread physical abuse of deportees by prison guards.¹⁸ Since 2022, a state of emergency has suspended due process rights in the country. In 2023, the U.S. Department of State (DOS) documented atrocities throughout El Salvador's detention centers.¹⁹ El Salvador's efforts to double CECOT's size further jeopardizes the ability to provide individualized treatment to detainees, contravening the UN Standard Minimum Rules for the Treatment of Prisoners.²⁰

b. *Libya*

On May 6, 2025, U.S. officials confirmed plans to remove individuals with final orders of removal to Libya.²¹ According to their attorneys, these individuals included nationals from Laos and Vietnam who were asked to sign documents in English agreeing to removal and handcuffed in separate rooms after they refused to sign.²² Despite the court order, officials again failed to provide notice in a language they understood and notify their attorneys of their imminent removal.

¹⁵ *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, (D. Mass.), Declaration of Tracy J. Huettl (23 April 2025), available: <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.72.1.pdf>. These deportations follow the March 15, 2025, secret removals of 238 Venezuelan individuals on three planes to CECOT in El Salvador. *See, e.g.*, Camilo Montoya-Galvez, "Here are the names of the Venezuelans deported by the U.S. to El Salvador," March 20, 2025, CBS News, available: <https://www.cbsnews.com/news/venezuelans-deported-el-salvador-names/>.

¹⁶ Avery Lotz, "Military deportations not covered by order halting DHS removals, admin claims" Axios (24 April 2025), available: <https://www.axios.com/2025/04/24/trump-deportations-el-salvador-dhs-military-flights>.

¹⁷ Human Rights Watch, "Declaration on prison conditions in El Salvador for the J.G.G. v. Trump case" (March 20, 2025), available: <https://www.hrw.org/news/2025/03/20/human-rights-watch-declaration-prison-conditions-el-salvador-jgg-v-trump-case>.

¹⁸ Human Rights Watch, "Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse" (2020), available: <https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>.

¹⁹ U.S. Department of State, "2023 Country Reports on Human Rights Practices: El Salvador" (2023), available: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/>.

²⁰ *Supra* at 17.

²¹ Eric Schmitt et al, "Trump Administration Plans to Send Migrants to Libya on a Military Flight" The New York Times (6 May 2025), available: <https://www.nytimes.com/2025/05/06/us/politics/trump-libya-migrants.html>.

²² Zohlan Kano-Youngs, "Judge Says Trump Plan to Send Migrants to Libya Would Violate Court Order" The New York Times (7 May 2025), available: <https://www.nytimes.com/2025/05/07/world/middleeast/libya-us-migrants-deal.html>.

Libya is notorious for its gross mistreatment of migrants. Over the past two decades, HRW has documented inhumane conditions in detention centers controlled by “abusive, unaccountable armed groups.”²³ Systemic violations include “severe overcrowding, beatings, torture, lack of food and water, forced labor, sexual assault and rape, and exploitation of children.”²⁴ In 2023, DOS reported that “migrant women and girls remained particularly vulnerable to rape and sexual violence, including commercial sexual exploitation in conditions amounting to sexual slavery.”²⁵ In June 2025, UNHCR described facilities in Tripoli as sites of “gross human rights violations” including torture, abuse, and extrajudicial killings.²⁶

c. *South Sudan*

On May 20, 2025, U.S. officials notified attorneys that at least eight of their clients had been placed on a plane destined for South Sudan.²⁷ Some of the individuals were from Cuba, Laos, Vietnam, and Mexico, and had lived in the U.S. for decades.²⁸ They were unable to communicate with counsel and only provided with a one-page notice in English, a language some did not understand, less than 16 hours before their removal.²⁹ Importantly, the notices lacked information about whether or how to seek protection based on fear of removal to South Sudan. While the plane was mid-air, the judge expeditiously issued an emergency order requiring the U.S. to maintain “custody and control” of the individuals.³⁰ The individuals were subsequently diverted to a U.S. military base in Djibouti where, as of June 10, 2025, they are held in a converted storage unit that U.S. officials described as “not suitable for detention of any length” due to extreme heat, poor air quality, and insufficient medical care.³¹

South Sudan is experiencing significant civil and political unrest and is “on the brink of civil war.”³² DOS lists South Sudan with a Level 4 “Do Not Travel” Advisory due to recurrent “crime,

²³ Human Rights Watch, “US: Don’t Forcibly Transfer Migrants to Libya” (9 May 2025), available: <https://www.hrw.org/news/2025/05/09/us-dont-forcibly-transfer-migrants-libya>.

²⁴ *Id.*

²⁵ U.S. Department of State, “2023 Country Reports on Human Rights Practices: Libya” (2023), available: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/libya/>.

²⁶ UN OHCHR Press Release, “Libya: Sites of gross human rights violations must be sealed and impartially investigated - Türk” (4 June 2025), available: <https://www.ohchr.org/en/press-releases/2025/06/libya-sites-gross-human-rights-violations-must-be-sealed-and-impartially>.

²⁷ *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, (D. Mass.), Emergency Motion for Temporary Restraining Order (20 May 2025), available: <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.72.1.pdf>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, (D. Mass.), Order (20 May 2025), available: https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.116.0_2.pdf.

³¹ *D.V.D. v. U.S. Department of Homeland Security*, 1:25-cv-10676, (D. Mass.), Declaration of Melissa B. Harper (4 June 2025), available: https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.151.0_1.pdf.

³² Kate Bartlett, “South Sudan is ‘on the brink,’ U.N. warns amid renewed violence,” NPR (22 March 2025), available: <https://www.npr.org/2025/03/22/nx-s1-5333648/south-sudan-on-the-brink-un-warns-amid-renewed-violence>.

kidnapping, and armed conflict.”³³ Detention conditions are “harsh and life threatening,” with severe overcrowding and insufficient food, water, sanitation, and medical care.³⁴ In 2020, HRW documented “serious human rights violations” in detention centers run by the National Security Service, including torture as well as prolonged and arbitrary detention.³⁵

Conclusion

Unlawful and secret removals to third countries with well documented human rights abuses and without sufficient and judicially required due process are part of a larger, coordinated strategy by the U.S. to externalize migration. These practices aim to generate fear and discourage migration while undermining the fundamental human right to seek humanitarian protection from forced displacement across the world. By highlighting the gross mistreatment in detention of individuals whom the U.S. unlawfully removed, the White House openly extols its goal to encourage “immigrants to actively self-deport.”³⁶ Ultimately, the purpose of any policy of externalization is to defer and deflect a nation’s responsibility and commitment to refugee protection under domestic and international law.

³³ U.S. Department of State, “South Sudan Travel Advisory” (8 March 2025), available:

<https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/south-sudan-travel-advisory.html>.

³⁴ U.S. Department of State, “2023 Country Reports on Human Rights Practices: South Sudan” (2023), available:

<https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/south-sudan/>.

³⁵ Human Rights Watch, “What Crime Was I Paying For? Abuses by South Sudan’s National Security Service” (2020), available: <https://www.hrw.org/report/2020/12/14/what-crime-was-i-paying/abuses-south-sudans-national-security-service>.

³⁶ James Wagner and Sarah Kerr, “Humiliation as Propaganda: Videos of Shackled Detainees Have History in El Salvador” (19 March 2025), available: <https://www.nytimes.com/2025/03/19/world/americas/deportation-videos-el-salvador.html>.