DECLARATION IN SUPPORT OF MOTIONS FOR STAYS OF REMOVAL

Frances Hartmann and Zahrah Devji, hereby declare under penalty of perjury:

1. We are legal interns at New York University Immigrant Rights Clinic ("IRC") working under the supervision of Nancy Morawetz, Esq. We submit this declaration in support of motions for stays of removal. In preparing this declaration, we reviewed documents obtained through Freedom of Information Act ("FOIA") litigation as well as other background materials. The documents reveal what the government means by its policy of "facilitating" the return of prevailing petitioners who have been deported, including whose return is facilitated, and what happens to petitioners who are deported while their petitions for review are pending.

2. The National Immigration Project of the National Lawyers Guild ("NIPNLG") has worked with IRC since 2009 on stay advocacy. NIPNLG, along with other advocacy groups, filed FOIA requests with the Department of Justice ("DOJ"), Department of Homeland Security ("DHS"), and the Department of State ("DOS") to determine what the government's policy was for facilitating the return of removed petitioners.[1]

3. This declaration addresses the following main points:
   - Motions for stays of removal are urgent since a petitioner without a stay can be deported any time after the Board of Immigration Appeals ("BIA") issues a decision.
   - Immigration and Customs Enforcement's ("ICE") policy of "facilitation" of return presents the following obstacles:
     1) Deported petitioners who wish to return must contact ICE.
     2) ICE then decides whether to authorize travel and contacts the DOS, who may issue travel papers through their embassies.
     3) ICE's policy requires petitioners to pay for their return and obtain a passport in their country of origin.
     4) Travel papers give petitioners a very short window of time, often seven days, to buy a one-way ticket to a specific port of entry.
     5) U.S. Customs and Border Patrol ("CBP") may, in its discretion, grant or deny the petitioner parole or admission into the country.

[1] *See generally* Nat'l Immigration Proj. of Nat'l Lawyers Guild v. U.S. Dep't of Homeland Sec., 842 F. Supp. 2d 720, 722 (S.D.N.Y. 2012).

- ICE will not facilitate return for non-lawful permanent residents ("LPRs") unless ICE deems a non-LPR's return to be "necessary" for continued proceedings. ICE has the discretion to block the return of any petitioner, including LPRs.
- If petitioners are deported while their petitions for review are pending and they ultimately prevail on their petitions for review, their cases may subsequently be administratively closed, terminated because they are in absentia, or denied. In this way prevailing petitioners are denied effective relief.
- Prevailing petitioners often cannot be located once they have been deported.

4. The government has stated that these obstacles are relevant to the adjudication of stays:

> [I]f a person like [the petitioner] or any alien who is in litigation over a stay believes that they will be unable to pay for their own return, they're certainly free to raise that in their stay motion to the courts, and the courts could fully vet that.[2]

5. The Supreme Court reaffirmed the standard for stays in *Nken v. Holder*.[3] At that time, the Supreme Court accepted the government's representation that "[a]liens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return."[4] The Supreme Court has never considered the adequacy of these procedures and how the obstacles to return bear on the issuance of stays.

6. Emails obtained through the FOIA litigation show that prior to *Nken*, the policy for returning removed petitioners was not memorialized in any formal directive. At the time, the government limited return in the same way as the current directive. An email dated January 16, 2009 describes

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[2] Transcript of Oral Argument at 19, Nat'l Immigration Project of Nat. Lawyers Guild v. U.S. Dep't of Homeland Sec. (hereinafter "FOIA Oral Argument"), No. 11-CV-3235, 2014 WL 6850977 (S.D.N.Y. Dec. 3, 2014), ECF No. 87 (Exhibit A).
[3] Nken v. Holder, 556 U.S. 418 (2009).
[4] *Id.* at 420.

DHS's "latest answer on the issue of returning aliens who are removed while a PFR [Petition for Review] is pending":

> If the alien was lawfully residing in the US, or the alien's presence is required for continued proceedings, then yes, DHS will facilitate the alien's return to the US. But, where cases can be resolved without the alien's return, then we don't facilitate the alien's return . . . The alien is responsible for paying his way back if the removal was proper at the time it occurred. As a matter of internal institutional convenience, DHS paroles the alien back into the US.[5]

These limitations on return were not presented to the Supreme Court in *Nken*.

I. Urgency of Motions for Stays of Removal

7. The petitioner's motion for a stay of removal is necessarily an urgent one and an important one. As soon as the BIA makes a decision on a removal case, ICE has the discretion to remove a petitioner. ICE often receives notice of BIA decisions immediately, while petitioners must wait to receive the decision by mail. As a result, ICE may deport the petitioner prior to the petitioner even receiving notice of the BIA's decision.[6]

[5] Transmittal Letter from Preet Bharara, U.S. Att'y for the S.D.N.Y (April 24, 2012) regarding document production in *Nat'l Immigration Project of Nat. Lawyers Guild v. U.S. Dep't of Homeland Sec.*, attachment p. 17 (Exhibit E-1).
[6] *See, e.g.* Campbell v. Att'y Gen. U.S., No. 15-1276 (3d Cir. filed Jan. 30, 2015) (docket pictured).

Court of Appeals Docket #: 15-1276 Dalton Leon Campbell v. Attorney General United States Appeal From: Board of Immigration Fee Status: Due		Docketed: 01/30/2015 Termed: 03/04/2015
01/30/2015	0 pg, 0 KB	MOTION filed by Petitioner Dalton Leon Campbell to Stay Removal. Response due on 02/06/2015. Certificate of Service dated 01/24/2015. (MLR)
02/02/2015	1 pg, 5.94 KB	ORDER (Clerk) It is noted that the petition for review and emergency motion to stay removal by Petitioner Dalton Leon Campbell were received by the Court on January 30, 2015. It appears that Petitioner was removed from the United States on January 29, 2015. Accordingly, the emergence motion is denied as moot, filed. (MLR)

8. Courts may issue a temporary stay while the motion for a stay is pending. In recognizing the urgency of stay applications, some circuits have implemented temporary automatic stay policies or forbearance policies. The Third and Ninth Circuits have automatic stay policies, while the Second Circuit has a forbearance policy where removals are not effectuated until an application for a stay has been adjudicated.[7] Some courts have issued temporary stays in individual cases so that they can consider the stay motions more carefully.[8]

II. What does the government mean by "facilitation" of return?

9. Under ICE's Directive, those who are deported and later prevail on their petitions for review must contact ICE to "facilitate" their return.[9]

[7] Standing Order Regarding Immigration Cases (3d Cir. Aug. 5, 2015), *available at* http://www.ca3.uscourts.gov/sites/ca3/files/BIA%20Standing%20Order%20final.pdf; In the Matter of Immigration Petitions for Review Pending in the U.S. Ct. App. 2d Cir., No. 12-4096 (2d Cir. Oct. 16, 2012), *available at* http://www.ca2.uscourts.gov/docs/12-4096_opn.pdf; U.S. Ct. App. 9th Cir. General Orders, "Motions for Stay of Deportation or Removal in Petitions for Review" at 61 (9th Cir. Apr. 7, 2016), *available at* http://cdn.ca9.uscourts.gov/datastore/uploads/rules/general_orders/GeneralOrdersRevisions_March_2016_4.7.16.pdf.

[8] *See, e.g. V.L. R-P v. Att'y Gen. U.S.*, No. 14-4083 (3d Cir. filed Oct. 17, 2014).

[9] Immigration and Customs Enforcement FAQs on Facilitating Return for Certain Lawfully Removed Aliens (hereinafter "ICE FAQs"), *available at*

10. ICE Directive 11061.1 and the ICE FAQs show that facilitating return is a multistep process that involves many different agencies: first, a deportee must reach out to ICE; ICE then has the discretion to authorize travel; the DOS, through local embassies, may issue travel papers; and finally CBP has the discretion to grant parole and admit a person into the country.[10]

11. The FOIA litigation revealed examples of the parole documents that permit reentry. ICE will assist with physical reentry by issuing a memorandum to DOS or ICE officials located in foreign embassies who then issue a travel document allowing the petitioner to travel to a specific port of entry within a short period of time, often seven days.[11]

12. On several occasions, the government has made it clear that "facilitation" does not include paying for the return of prevailing indigent petitioners. The government has made the following statements regarding payment:

    - DHS email regarding return policy from 2005, prior to *Nken*: "Our position here is identical to what it was in [redacted] and countless other cases—we will facilitate his return by clearing records or asking CBP to facilitate his entry. But we will not pay for his return."[12]

    - ICE FAQs: "In cases involving removal of an individual from the United States who was subject to an administratively final order and

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https://www.ice.gov/ero/faq-return-certain-lawfully-removed-aliens (Exhibit C) ("Is it my responsibility to contact DHS once I learn that a court has reversed or vacated my removal order? Yes. ICE will initiate efforts to facilitate your return only after you have communicated with the agency to request that we do so.").

[10] *See* U.S. Immigration and Customs Enforcement, Directive 11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens (February 24, 2012) (hereinafter "ICE Directive 11061.1") (Exhibit B); ICE FAQs, *supra* note 9 (Exhibit C).

[11] *See* Sample Documents Providing Parole and Authorizing Travel Documents, produced Oct. 31, 2012, *available at* http://www.nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/Sample%20Parole%20Documents.pdf (Exhibit D).

[12] Transmittal Letter from Thuylieu T, Kazaizan, U.S. Immigration and Customs Enforcement Associate Legal Advisor (January 27, 2012), attachment 2010FOIA1959.001267 (Exhibit E-2).

for whom there was no stay of removal in effect at time of his or her removal, that individual will be responsible for incurring the costs for returning to the United States[.]"[13]

- FOIA Litigation Oral Argument: "[T]he government has been consistent in saying, when a person is removed . . . making the travel arrangements and paying for the ticket, [are] not the government's responsibility."[14]

As Judge Rakoff of the U.S. District Court for the Southern District of New York has recognized, "[f]or many indigent aliens, the financial burden of removal may, as a practical matter, preclude effective relief."[15]

13. When petitioners cannot pay for their return, they can be stranded abroad. For example, Jo Desiré came to the United States in 1967 at the age of 14, served honorably in Vietnam, and was deported to Haiti in 2007 following a drug conviction.[16] After prevailing on his Petition for Review, Mr. Desiré was stranded in Haiti from 2007 to 2013 because he was unable to pay for his own return. As his attorney explained in an email to DHS officials:

> I spoke to my client. Although he will continue to try and procure funds to obtain travel, he has very little means of doing so. Your departments' insistence that my indigent client pay for his own travel to defend himself effectively denies him his due process rights to appear and defend himself at the removal proceeding. Your department removed my client to one of the poorest countries on the planet. He has no means of supporting himself, he is currently having trouble even buying food let alone procuring international travel. On the other hand, the cost to your department would be miniscule.[17]

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[13] ICE FAQs, *supra* note 9 (Exhibit C).
[14] FOIA Litigation Oral Argument, *supra* note 2 (Exhibit A).
[15] Nat'l Immigration Project of Nat. Lawyers Guild v. U.S. Dep't of Homeland Sec., No. 11-CV-3235, 2014 WL 6850977, at *5 (S.D.N.Y. Dec 3, 2014).
[16] *See* App. Opening Brief at 2, *Desiré v. Holder*, No. 11-15199 (9th Cir. May 4, 2011).
[17] Email from Joshua Zimmerman to Robert C. Bartlemay, Dep't of Homeland Sec. (Dec. 11, 2009, 02:18 MST) (Exhibit F-1).

14. The FOIA litigation revealed that the Office of Immigration Litigation ("OIL") did not know whether Mr. Desiré could litigate his case if he could not afford to return. The email correspondence between OIL, ICE, and EOIR shows that ICE reserved its right to contest the immigration court's jurisdiction, and OIL was considering how to move forward in light of its representations to courts.[18] The case was only settled after vigorous advocacy from Mr. Desiré's attorney, a habeas filing after a successful petition for review, an appeal to the Ninth Circuit, and an order from the Ninth Circuit requesting clarification from the government on jurisdictional issues.[19] Instead of responding to these questions, ICE paid for Mr. Desiré's return, and the issue of whether immigrants can pursue their cases from abroad was never answered. It took six years from the time Mr. Desiré was deported for him to finally return to the U.S.

15. The FOIA litigation revealed emails and parole documents showing that ICE usually gives petitioners seven days, and sometimes less time, to book travel directly to a specified port of entry, which can result in increased travel costs for petitioners. The petitioner will only be allowed entry if they enter at a specific port of entry and on a direct flight.[20]

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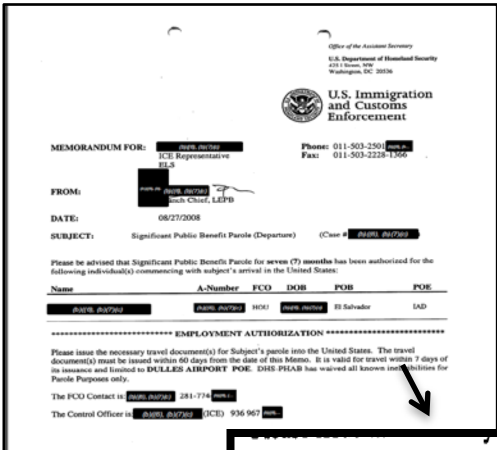
[18] *See* Transmittal Letter from James M. Kovakas, Attorney In Charge, FOI/PA Unit, Civil Division (February 21, 2014), attachment DOJ-Civil0002081 - DOJ-Civil0002083 (Exhibit F-2); Transmittal Letter from James M. Kovakas, Attorney In Charge, FOI/PA Unit, Civil Division (March 20, 2014), attachment DOJ-Civil0002659 - DOJ-Civil0002665 (Exhibit F-3) (asking for a meeting including OIL, the Office of the Solicitor General and EOIR to ''discuss the issues regarding how cases are handled at EOIR in circumstances – like those presented in the Desire case – where an alien is removed while a petition for review is pending; the alien prevails on the petition for review; and there are further immigration proceedings on remand?'').

[19] Ninth Circuit PACER Docket, *Desiré v. Holder*, No. 11-15199 (9th Cir. filed Jan. 24, 2011), ECF No. 39, 42 (Exhibit F-4).

[20] *See* Sample Parole Documents, *supra* note 11 (Exhibit D).



Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: (b)(6), (b)(7)(c)
ICE Representative
ELS

Phone: 011-503-2501
Fax: 011-503-2228-1366

FROM: (b)(6), (b)(7)(c)
[Bra]nch Chief, LEPB

DATE: 08/27/2008

SUBJECT: Significant Public Benefit Parole (Departure) (Case # (b)(6), (b)(7)(c))

Please be advised that Significant Public Benefit Parole for **seven (7) months** has been authorized for the following individual(s) commencing with subject's arrival in the United States:

Name	A-Number	FCO	DOB	POB	POE
(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	HOU	(b)(6), (b)(7)(c)	El Salvador	IAD

************************** **EMPLOYMENT AUTHORIZATION** **************************

Please issue the necessary travel document(s) for Subject's parole into the United States. The travel document(s) must be issued within 60 days from the date of this Memo. It is valid for travel within 7 days of its issuance and limited to **DULLES AIRPORT POE**. DHS-PHAB has waived all known ineligibilities for Parole Purposes only.

The FCO Contact is: (b)(6), (b)(7)(c) 281-774

The Control Officer is: (b)(6), (b)(7)(c) (ICE) 936 967

Document ID: 0.7.100.6679

document(s) must be issued within 60 days from the date of this Memo. It is valid for travel within 7 days of its issuance and limited to **DULLES AIRPORT POE**. DHS-PHAB has waived all known ineligibilities for

16. It is ICE's position that petitioners cannot return to the U.S. without a valid passport or other travel documentation, and ICE does not assist petitioners in obtaining these documents. ICE gives the local embassy a short period of time to issue a removed petitioner's travel document and provides the removed petitioner an even shorter amount of time to obtain travel documents. Petitioners may have trouble obtaining a passport or acceptable documentation in their country of origin, especially if they fear persecution from the government in that country. Although ICE will seek travel documents from other countries' embassies in order to effectuate deportations, they will not do the same to facilitate return. [21]

What do I need to return to the United States?

In order to return to the United States by air or sea, you must have with you a valid passport or equivalent documentation and either a valid immigrant/nonimmigrant visa or a transportation/boarding letter authorizing your return to the United States for purposes of participating in your immigration case. If returning by land, you must have with you appropriate identity documentation, which could include a passport or other government-issued documents.

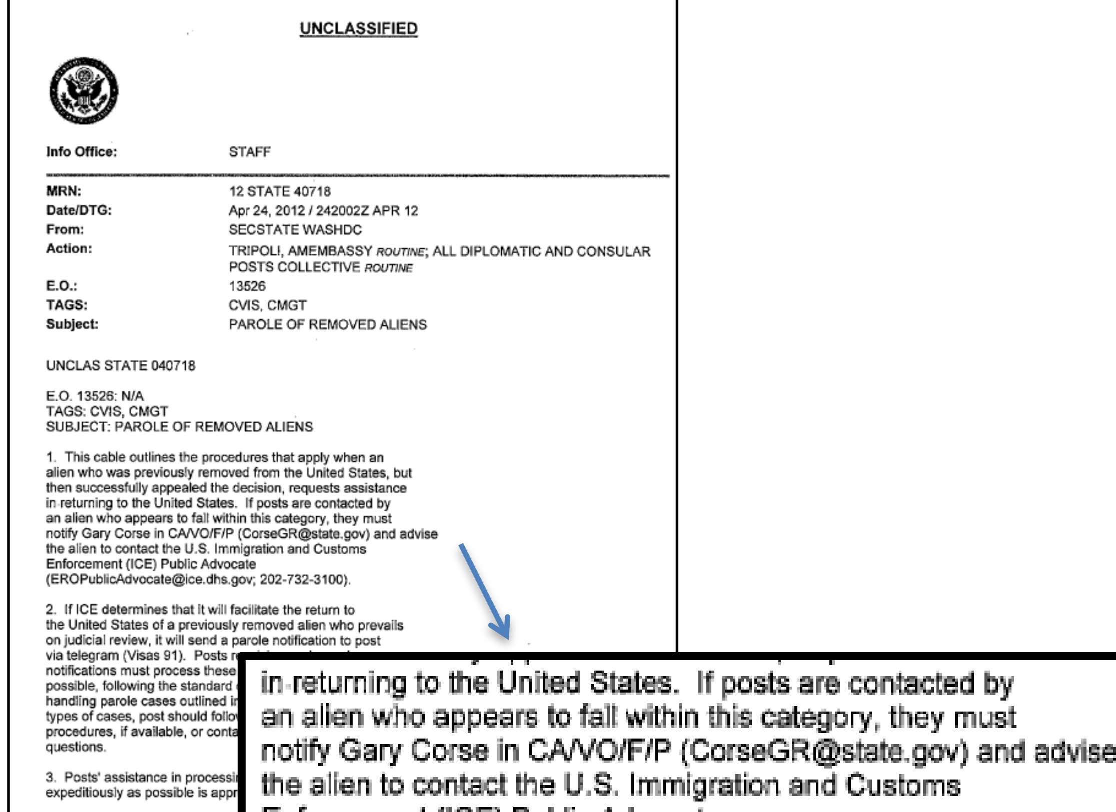
What if my country will not issue me a passport?

You will not be able to return to the United States via commercial air carrier or maritime vessel without a valid passport or equivalent travel document, and the United States Government cannot compel another country to issue such documentation. The U.S. Embassy/Consulate will not issue a transportation/boarding letter authorizing your admission without a valid passport or equivalent travel document.

[21] ICE FAQs, *supra* note 9 (pictured) (Exhibit C).

17. Deported petitioners may also be unable to obtain a passport and may suffer additional hardships if they are deported to a country to which they are not a citizen. If DHS is unable to obtain travel documents to an individual's country of citizenship or birth, the individual may be deported to a country that is willing to accept them. *See* 8 U.S.C. § 1231(b)(2)(E)(vii).

18. Petitioners also have to navigate the American Embassies in the countries to which they are deported. Despite the central role that DOS plays in the return process, no current policies about working with ICE to return noncitizens exists as is evidenced by the lack of a formal policy in the Foreign Affairs Manual.[22] The only guidance issued by DOS was in 2012, directing aliens to contact the ICE Public Advocate; however, Congress defunded the position of the Public Advocate in 2013 and the position no longer exists.[23]



UNCLASSIFIED

Info Office: STAFF

MRN: 12 STATE 40718
Date/DTG: Apr 24, 2012 / 242002Z APR 12
From: SECSTATE WASHDC
Action: TRIPOLI, AMEMBASSY *ROUTINE*; ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE *ROUTINE*
E.O.: 13526
TAGS: CVIS, CMGT
Subject: PAROLE OF REMOVED ALIENS

UNCLAS STATE 040718

E.O. 13526: N/A
TAGS: CVIS, CMGT
SUBJECT: PAROLE OF REMOVED ALIENS

1. This cable outlines the procedures that apply when an alien who was previously removed from the United States, but then successfully appealed the decision, requests assistance in returning to the United States. If posts are contacted by an alien who appears to fall within this category, they must notify Gary Corse in CA/VO/F/P (CorseGR@state.gov) and advise the alien to contact the U.S. Immigration and Customs Enforcement (ICE) Public Advocate (EROPublicAdvocate@ice.dhs.gov; 202-732-3100).

2. If ICE determines that it will facilitate the return to the United States of a previously removed alien who prevails on judicial review, it will send a parole notification to post via telegram (Visas 91). Posts r[illegible] notifications must process these [illegible] possible, following the standard [illegible] handling parole cases outlined i[illegible] types of cases, post should follo[illegible] procedures, if available, or conta[illegible] questions.

3. Posts' assistance in processi[illegible] expeditiously as possible is appr[illegible]

4. Minimize considered.
CLINTON

in returning to the United States. If posts are contacted by an alien who appears to fall within this category, they must notify Gary Corse in CA/VO/F/P (CorseGR@state.gov) and advise the alien to contact the U.S. Immigration and Customs Enforcement (ICE) Public Advocate (EROPublicAdvocate@ice.dhs.gov; 202-732-3100).

[22] *See generally Foreign Affairs Manual* (FAM), *available at* https://fam.state.gov/Fam/FAM.aspx (no guidance has been published in the FAM, which explains the responsibilities, functions and authorities of the DOS).
[23] *See* H.R. 3732, 113th Cong. § 1 (2013), 2013 CONG US HR 3732 (Westlaw).

19. Getting to an embassy and obtaining the right documents can be difficult. For example, a transportation memo from ICE authorizing the petitioner's return sat in the mailroom of an embassy for days before staff discovered that the noncitizen was authorized by ICE to return. The petitioner, who later was granted cancellation of removal under the Violence Against Women Act, a type of relief for victims of domestic violence, was scheduled to return to the U.S. after winning her case before a circuit court. A local ICE officer mailed the transportation letter to the embassy eleven days before the petitioner was scheduled to return. It was only through the attorney's follow-up calls and pressure that the embassy attaché found the letter on the day that the petitioner was scheduled to leave. The petitioner's hearing in immigration court in the U.S. was the next day. Had she missed her hearing, she could have faced serious consequences, including removal in absentia—losing her removal case.[24]

20. Finally, once a petitioner obtains a passport, permission to travel, a one-way ticket to particular port of entry in a short window of time, ICE's policy states that CBP is responsible for paroling the petitioner into the United States.[25] CBP then has the discretion to permit or deny the petitioner's entry into the U.S., and "[g]enerally, cases requiring parole authorization will present more complex circumstances than those in which a waiver would be considered . . . Parole is not regarded as an "admission"".[26]

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[24] *See* T. Luo and S. McMahon, "Victory Denied: After Winning on Appeal, An Inadequate Return Policy Leaves Immigrants Stranded Abroad," 19 *Bender's Immigr. Bull.* 1062, 1070 (Oct. 1, 2014); Email from Bruce Nestor, Criminal Defense Attorney, De Leon & Nestor, LLC, to Trina Realmuto, Litigation Director at the National Immigration Project (June 6, 2012, 12:16 CST) (Exhibit K).

[25] *See* ICE Directive 11061.1, *supra* note 10 (Exhibit B); CBP Directive 3340-043 (partially redacted) (Sept. 3, 2008), *available at* http://www.nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/CBP%20Parole%20Directive%20(Partially%20Redacted)%20-%20Sept%203%202008.pdf.

[26] CBP Directive 3340-043, *supra* note 25, at ¶ 8.2.1.

III. Whose return is facilitated under the government's return policy?

21. ICE reserves the right to decide whether they will facilitate the return of petitioners.[27] For those petitioners who were not LPRs at the time of their removal, their return will only be facilitated if such return is "necessary" for the continuation of their administrative proceedings, at the discretion of ICE.[28]

22. ICE, the very agency that removed the petitioner, has final discretion whether to facilitate an alien's return or not, and has discretion to block the return of an LPR under "extraordinary circumstances."[29]

IV. What happens if a petitioner's return is not facilitated?

23. Even if a petitioner prevails on his or her petition for review, in most instances, the case is remanded to the BIA or the immigration court for further proceedings.[30] Issues with jurisdiction and mootness may arise if an individual is deported. For example, in *Kaur v. Holder*, the government argued and the Ninth Circuit agreed that a petitioner's withholding claim was moot because the petitioner had been deported. 561 F.3d 957, 959 (9th Cir. 2009). In an unpublished decision, the BIA vacated its decision to reopen a Convention Against Torture ("CAT") claim because the petitioner had been deported, stating that, "[P]ursuing CAT protection requires presence in the United States, because that relief precludes removing an alien to another country."[31] In another pending case, the government is arguing that the Ninth Circuit has jurisdiction over the CAT claim of a deported petitioner and the panel has raised questions about the mootness

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[27] *See* ICE Directive 11061.1, *supra* note 10 (Exhibit B); ICE FAQs, *supra* note 9 (Exhibit C).

[28] ICE Directive 11061.1, *supra* note 10, at ¶ 2 ("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*." (emphasis added)) (Exhibit B).

[29] *See* ICE Directive 11061.1, *supra* note 10 (Exhibit B).

[30] *See* ICE FAQs, *supra* note 9 (Exhibit C).

[31] Matter of Dawel Rafael Lantigua, A058 491 837 (BIA Sept. 29, 2015) (Exhibit G); *see also* In re Linton (redacted decision) (BIA June 26, 2015) (Exhibit H).

irrespective of the government's position.[32] The panel also appears to be concerned about whether ICE's Directive covers the petitioner and whether the government would parole the petitioner into the U.S. if he prevails.[33]

24. Petitioners who are deported despite seeking asylum, withholding of removal, and CAT relief may be in hiding or in harm's way when they are deported. For example, the Fifth Circuit granted a petition for review for a man from El Salvador seeking Convention Against Torture relief.[34] The man feared being killed because he had previously been threatened at gunpoint and brutally beaten by individuals posing as government officials who were tracking him and demanding money.[35] Nevertheless, he was deported to El Salvador while his case was pending. Although he prevailed before the circuit, he was never heard from again.

25. In *Matter of Idowu*, an asylum-seeker was removed to Nigeria where he feared threats and persecution. He prevailed on his petition for review, but when the case was remanded to the immigration court, the Immigration Judge stated, "as the Court is without authority to order Respondent returned to the United States, the Court will not set another hearing as it appears that would be futile. Rather, the Court finds the best course of action is to administratively close Respondent's proceedings."[36] The petitioner was able to return to the U.S. to continue his asylum case only after vigorous advocacy by his attorney.[37]

26. Many petitioners whose motions for a stay of removal are denied ultimately go on to prevail on their petitions for review. A recent empirical study of

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[32] Oral Argument (Mar. 7, 2016), Marroquin v. Lynch, No. 13-71583 (9th Cir. 2013), *available at* http://www.ca9.uscourts.gov/media/view.php?pk_id=0000015476.
[33] *Id.*
[34] Garcia v. Holder, 756 F.3d 885, 893 (5th Cir. 2014).
[35] *Id.* at 888.
[36] Matter of Idowu, A70 904 015 (EOIR Apr. 1, 2013) (Exhibit I).
[37] Email from Jessica Chicco, Supervising Attorney at the Boston College Post-Deportation Human Rights Project, to Sean McMahon & Tianyin Luo, authors of "Victory Denied," (May 16, 2014, 10:23 EST) (Exhibit J).

937 petitions for review found that courts denied stays in about half (48%) of the appeals that were ultimately granted.[38]

27. Many petitioners who are removed cannot be located, especially if they are pro se. For those petitioners who are deported and pro se, “there is no one to represent [their] interests, and no one knows where [they are].”[39] For example, the FOIA litigation revealed that for three petitioners who won their cases after being deported, none had been returned a year after their cases had been remanded to the courts.[40]

28. During the *Nken* litigation, the government stated: “[b]y policy and practice, the government accords aliens who were removed pending judicial review but then prevailed before the courts effective relief by, inter alia, facilitating the aliens' return to the United States by parole under 8 U.S.C. 1182(d)(5) if necessary, and according them the status they had at the time of removal."[41] At that time, the government was well aware that there were severe limitations to their ability to return deported petitioners but did not reveal those limitations to the Supreme Court.[42] The same policy and the severe barriers to return are in place today.

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[38] Fatma Marouf et al., *Justice on the Fly: The Danger of Errant Deportations*, 75 OHIO ST. L.J. 337, 382 (2014).
[39] Geoffrey A. Hoffman et al., *Immigration Appellate Litigation Post-Deportation: A Humanitarian Conundrum*, 5 HOUS. L. REV. 143, 148 (2015).
[40] Transmittal Letter from Thuylieu T, Kazaizan, U.S. Immigration and Customs Enforcement Associate Legal Advisor (January 27, 2012), attachment ICEFOIA10-1959.000351 (Exhibit E-3).
[41] Brief for Respondent at 44, Nken v. Holder, 129 S. Ct. 1749 (2009) (No. 08-681), 2009 WL 45980 at *44.
[42] Transmittal Letter from James M. Kovakas (March 20, 2014), *supra* note 18. (Exhibit F-3).

29. We declare under penalty of perjury that this declaration is true and correct to the best of our knowledge.

Dated: April 13, 2016
New York, NY

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