

# POLICY BRIEF

## Continued Detention of Noncitizens Who Win Immigration Relief

### How to Stop ICE's Arbitrary Practice

By Austin Rose, Esq., Senior Attorney, Immigration Impact Lab,  
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#### OVERVIEW

A concerning trend has developed in the last several years: Immigration and Customs Enforcement (ICE) continues to detain noncitizens for months after they win immigration relief that prohibits ICE from deporting them to their home countries. ICE detains these noncitizens while it purportedly—but rarely, if ever, successfully—attempts to deport them to alternative countries to which they have no connection.

This policy brief summarizes ICE's existing policy and practices for post-relief detention and recommends an updated national policy that will ensure noncitizens who do not have a connection to an alternative country are promptly released from custody upon being granted relief from deportation.



## When noncitizens win fear-based immigration relief, ICE tries to deport them to other countries.

Noncitizens in immigration proceedings can seek three main forms of relief from deportation based on their fear of returning to their home country: asylum, withholding of removal, and relief under the Convention Against Torture (CAT). [1] Noncitizens might be ineligible for asylum for several reasons, including failure to apply within one year of entering the United States or being subject to the Biden administration's new rules barring noncitizens from seeking asylum if they passed through a third country on the way to the U.S. southern border. There are fewer restrictions on eligibility for withholding of removal and no restrictions on eligibility for CAT deferral of removal.



When an Immigration Judge (IJ) grants a noncitizen withholding of removal or CAT relief, the IJ issues a deportation order and simultaneously withholds or defers that order with respect to the country for which the noncitizen demonstrated a sufficient risk of harm —typically their home country. If neither the noncitizen nor ICE appeals the IJ's decision, it becomes final, and ICE is legally barred from deporting the noncitizen to their home country.

Immigration law permits ICE to deport noncitizens to alternative countries. But the noncitizen must have some tangible connection to the alternative country, such as being born there or having resided there before entering the United States. If ICE identifies an appropriate alternative country, the noncitizen must have an opportunity to seek relief from deportation to that country. In practice, ICE manages to deport only a tiny fraction of noncitizens who are granted withholding of removal or CAT relief—between 1.6 and 3.3 percent. [2] Continued detention during this period of attempted removal is thus pointless because ICE very rarely finds an alternative country to which it can deport a noncitizen, and if it were to release the noncitizen and later identify an appropriate country, it could simply re-detain the noncitizen to carry out the deportation.

## ICE is detaining noncitizens after they win immigration relief more often and for longer.

In jurisdictions across the country, from Virginia to California, ICE is holding noncitizens for months after they win their

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[1] For more information on CAT relief, see CAIR Coalition's policy brief: *Convention Against Torture: An Essential Backstop for Humanitarian Protection* (Dec. 1, 2023), <https://www.caircoalition.org/sites/default/files/documents/CAT%20Policy%20Brief.pdf>.

[2] In FY 2017, "only 1.6% of noncitizens granted withholding-only relief were actually removed to an alternative country." *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2295 (2021) (Breyer, J., dissenting). An analysis by CAIR Coalition of updated statistics provided by ICE for FY 2019 through FY 2020 reveals that this percentage was at most 3.3% during that period, although it was likely even lower.

cases. The extent and consistency of ICE's post-relief detention practices varies between its regional field offices, but the problem appears to be worsening everywhere.

In Virginia, for instance, ICE's apparent practice since the beginning of 2022 has been to detain noncitizens for an average of three months after a final grant of withholding of removal or CAT relief. During this time, ICE purportedly contacts three to six alternative countries to request that they accept the noncitizen. The selection of alternative countries is seemingly random; for example, in one CAIR Coalition case, ICE asked the embassy of Portugal to accept a Guatemalan citizen with no connection to the country. Embassies routinely deny such requests, or never respond at all. It is not until several months have passed or the noncitizen takes extraordinary measures, such as challenging their detention in federal court, that ICE finally releases them.

**Several CAIR Coalition clients have waited more than six months after winning their cases to be released.**

Immigration detention in any circumstance is dehumanizing and traumatic, and continued detention after winning one's case takes a particularly onerous toll.

CAIR Coalition clients who won withholding of removal or CAT relief have described the devastation they felt when they learned they would be held indefinitely longer.

***"Imagine how the endless delay feels. I am here alone and I am going crazy."***

— CAIR Coalition client

**One CAIR Coalition client with mental illness and a traumatic brain injury remained in solitary confinement for more than six months after winning his case, during which time two of his siblings passed away and his family mourned at the funerals without him. And in December 2023, a Cameroonian man tragically died in ICE custody after winning CAT relief two months prior. [3]**

**ICE's practice of detaining noncitizens after they win immigration relief violates its own policy and the U.S. Constitution.**

Long-standing ICE policy, reiterated as recently as 2021, favors the prompt release of noncitizens granted withholding of removal or CAT relief. [4] Specifically, the policy instructs ICE field offices to release noncitizens as soon as they are granted relief unless there are "exceptional circumstances" warranting continued detention, such as national security concerns.

Unfortunately, most ICE field offices are not following this policy. For instance, at no point

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[3] Detention Watch Network, *Two deaths in ICE detention one week into December* (Dec. 13, 2023), <https://www.detentionwatchnetwork.org/pressroom/releases/2023/two-deaths-ice-detention-one-week-december>.

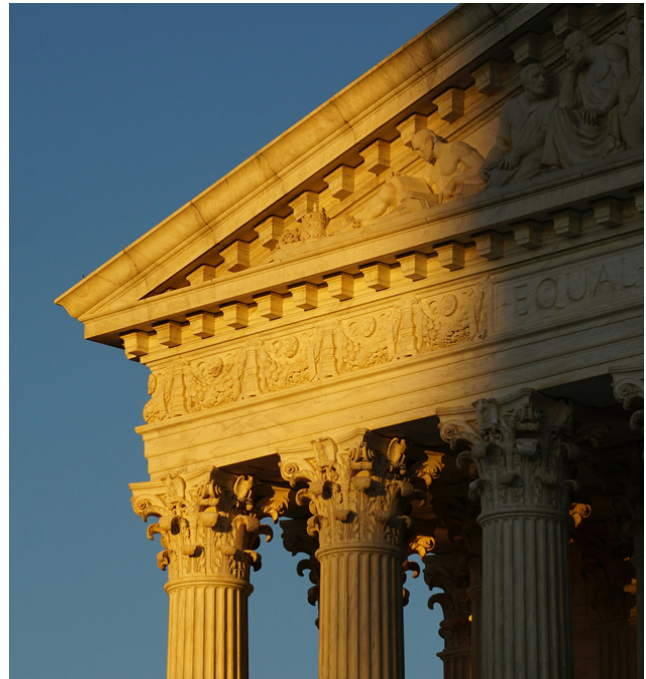
[4] There have been four iterations of ICE's policy since 2000, each time reiterating and elaborating on a policy favoring release of noncitizens granted relief from removal, including those with final grants of withholding of removal and CAT relief. See here: [https://www.acluva.org/sites/default/files/field\\_documents/all\\_ice\\_policies\\_on\\_post-relief\\_release\\_2000-20211.pdf](https://www.acluva.org/sites/default/files/field_documents/all_ice_policies_on_post-relief_release_2000-20211.pdf)

does it appear that Washington Field Office, which covers Virginia, is conducting an individualized review under the “exceptional circumstances” standard for noncitizens granted withholding of removal or CAT relief. Instead, ICE simply waits for the next scheduled custody review up to three months later to finally determine that it will not be able to deport the noncitizen, which it could and should have determined the moment the noncitizen was granted relief.

This practice not only violates ICE’s own policy, but also violates the U.S. Constitution. Settled Supreme Court precedent requires ICE to release noncitizens from custody when their deportation is not “reasonably foreseeable.” [5]

If the purpose of immigration detention is to hold noncitizens until ICE can deport them, then the continued detention of noncitizens

who are granted relief from deportation to their home country and lack a connection to an alternative country has no lawful purpose. [6]



***“Continuing to detain our clients after they win their cases is arbitrary, deplorable, and unnecessary. We urge ICE to fix the problem by implementing our commonsense recommendations.”***

— Austin Rose, Esq, Immigration Impact Lab  
Capital Area Immigrants’ Rights (CAIR) Coalition

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5] *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

[6] CAIR Coalition, the ACLU of Virginia, and the National Immigration Project of the National Lawyers Guild are together challenging ICE’s post-relief detention practices in Virginia federal court. See here: <https://www.acluva.org/en/cases/habeas-petitions-challenging-ice-was-unlawful-detention-practices>.



## RECOMMENDATIONS

At the very least, ICE field offices must comply with its agency's existing policy favoring the release of noncitizens who are granted relief from deportation. But ICE can also clarify and strengthen its policy to ensure that noncitizens are appropriately and promptly released after winning their cases. These changes would not only vindicate the rights of noncitizens who are detained but would also prevent the agency from wasting resources on costly and unnecessary detention.

**Establish a standard specific to noncitizens with final relief grants focusing on the likelihood of alternative country removal.** ICE's existing policy on post-relief detention, which applies to all noncitizens granted asylum, withholding of removal, or CAT relief regardless of whether the relief grant is final, does not explicitly instruct officers to consider the likelihood of a noncitizen's removal to alternative countries. This should be the primary, if not the only, factor that officers consider when determining whether continued detention after a final relief grant is warranted. The standard for noncitizens with a final relief grant should be as follows: *ICE should immediately release a noncitizen upon a final grant of withholding of removal or CAT relief unless there is clear and convincing evidence demonstrating that the noncitizen is a citizen of, or has lawful permanent status in, an alternative country to which they could be deported in the reasonably foreseeable future.*

*Immigration detention for punitive reasons is not only abhorrent: it's illegal. There is no good reason for ICE to detain people after they've already won their immigration cases. By adopting these commonsense reforms, ICE can stop wasting money, protect human dignity, and finally get on the right side of the law."*

— Sophia Gregg, ACLU of Virginia



## RECOMMENDATIONS

**Establish an accessible unit within ICE Headquarters dedicated to reviewing the detention of noncitizens with final grants of withholding of removal or CAT relief.** ICE Headquarters (HQ) currently contains a unit, called the “Removal Division,” tasked with conducting custody reviews for noncitizens with final deportation orders. But that division covers a wide range of noncitizens, from those granted withholding of removal or CAT relief to those who are simply waiting to be removed to their home countries. Furthermore, it is difficult to directly contact officers within the Removal Division to request updates or share evidence. Instead, noncitizens who are detained, and their attorneys, are forced to communicate with and through Deportation Officers at the field office level, who are often uninformed and abdicate responsibility to HQ without providing access to its personnel. A separate, accessible division within HQ would help noncitizens granted withholding of removal or CAT relief resolve issues efficiently and promptly secure their release from detention in accordance with ICE policy.

*“The practice of detaining people for months after they win their immigration case is emblematic of our inherently inhumane detention system that puts profits and cruelty over the lives of immigrants. We urge ICE to implement these recommendations immediately in order to remedy this ongoing violation of human rights.”*

— Amber Qureshi, National Immigration Project of the National Lawyers Guild (NIP-NLG)



**Austin Rose, Esq.**

**Senior Attorney, Immigration Impact Lab**

Austin Rose is a Senior Attorney with CAIR Coalition’s Immigration Impact Lab in Washington D.C., where he focuses on federal litigation to secure the release of noncitizens from prolonged detention. Austin received his J.D. from Georgetown University Law Center and, before coming to CAIR Coalition, worked at the intersection of criminal and immigration law with public defenders’ offices in Maryland and D.C.

## ABOUT CAIR COALITION

The Capital Area Immigrants' Rights Coalition is the leading service provider for immigrant adults and children at risk of detention and deportation in the Capital region area and beyond. We do direct legal representation, know-your-rights presentations, impact litigation, advocacy, and the enlistment and training of attorneys to defend immigrants. Our programs include:

### **Detained Children**

Provides legal services to children detained by the Office of Refugee Resettlement in Virginia and Maryland and those released locally to a sponsor in Virginia, Maryland, and D.C.

### **Detained Adults**

We provide information, legal support, and representation to adults in detention. We use a trauma-sensitive and client-centered approach.

### **Social Services**

We provide a holistic service model that addresses our client's basic needs—such as housing, food, and clothing, as well as referrals to medical, mental health, and educational support services.

### **Immigration Impact Lab**

The Lab uses impact litigation to challenge barriers to asylum, minimize the consequences of criminal convictions, and protect due process rights for detained children and adults.



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*At first, I had no hope. But while we were working on my case my attorney explained my rights and how to fight. Then I felt more encouraged.*

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*A CAIR Coalition client.*



## CONTACT US

For more information about our work. Contact us at [development@caircoalition.org](mailto:development@caircoalition.org) or [www.caircoalition.org](http://www.caircoalition.org).