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DEPARTMENT OF HOME AFFAIRS

NO. 4472 **5 March 2024**

MINISTER'S IMMIGRATION DIRECTIVE NO 1 OF 2024

IMPLEMENTATION OF THE ORDER OF THE CONSTITUTIONAL COURT IN *EX PARTE MINISTER OF HOME AFFAIRS AND OTHERS [2022] ZACC W IN LAWYERS FOR HUMAN RIGHTS v MINISTER OF HOME AFFAIRS AND OTHERS [2017] ZACC 22*

The Constitutional Court in **EX PARTE MINISTER OF HOME AFFAIRS AND OTHERS [2022] ZACC W IN LAWYERS FOR HUMAN RIGHTS v MINISTER OF HOME AFFAIRS AND OTHERS [2017] ZACC 22** ordered as follows:

"*1. Subject to and pending the enactment of legislation outlined in paragraph 2, as from the date of this order, and pending remedial legislation to be enacted and brought into force within 12 months from the date of this order, the following*

provisions, supplementary to those contained in paragraph 4 of this Court's order of 29 June 2017, shall apply:

(a) An immigration officer considering the arrest and detention of an illegal foreigner in terms of section 34 (1) of the Immigration Act 13 of 2002 (Act) must consider whether the interests of justice permit release of such person subject to reasonable conditions, and must not cause the person to be detained if the officer concludes that the interests of justice permit the release of such person subject to reasonable conditions.

(b) A person detained in terms of section 34 (1) of the Act shall be brought before a court within 48 hours from the time of arrest or not later than the first court day after the expiry of the 48 hours, if 48 hours expired outside ordinary court days.

(c) The Court before whom a person is brought in terms of paragraph (b) above must consider whether the interests of justice permit the release of such person subject to reasonable conditions and must, if it so concludes, order the person to be released subject to reasonable conditions.

(d) If the Court concludes that the interests of justice do not permit the release of such person, the Court may authorise the further detention of the person for a period not exceeding 30 calendar days.

(e) If the Court has ordered the further detention of a person in terms of paragraph (d) above, the said person must again be brought before the Court before the expiry of the period of detention authorised by the Court must again consider whether the interests of justice permit the release of such person subject to reasonable conditions and must, if it so concludes, order the person to be released subject to reasonable conditions.

(f) If the Court contemplated in paragraph (e) above concludes that the interests of justice do not permit the release of such person, the Court may

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authorise the person's detention for an adequate period not exceeding a further 90 calendar days.

(g) A person brought a Court in terms of paragraph (b) or (e) must be given an opportunity to make representations to the Court"

I, Dr PA Motsoaledi, MP, Minister of Home Affairs having, with the powers bestowed upon me in terms of section 7(1)(o) and (p) of the Immigration Act 13 of 2002, read with regulation 33 of the Immigration Regulations, 2014, hereby prescribe forms 28,29,30, 31and 32 annexed hereto, to be used pending the enactment of remedial legislation referred to in the order of the Constitutional Court and further direct that during the 12 months' period, starting from 30 October 2023 and ending 30 October 2024:

1. All immigration officers and/or other relevant officials shall use the forms 28,29,30, 31and 32 as prescribed in this directive in effecting the arrest, detention, and release of any illegal foreigner affected by the order of the Constitutional Court.

2. All immigration officer and/or other relevant officials shall fully comply with the order of the Constitutional Court.

Any enquiry related to the contents of this Directive, should be directed to the Acting Deputy Director- General: Immigration Services, Mr Modiri Matthews at Modiri.Matthews@dha.gov.za or at **082 881 5308**

THUS DONE AND SIGNED AT PRETORIA ON THIS THE 4th DAY MARCH 2024.

DR P A MOTSOALEDI, MP
MINISTER OF HOME AFFAIRS
DATE: 4th MARCH 2024

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FORM 28
WARRANT OF DETENTION OF ILLEGAL FOREIGNER

(DHA-1725) **Form 28**

DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

WARRANT OF DETENTION OF ILLEGAL FOREIGNER

[Section 7(1)*(g)* read with section 34(1); Regulation 33(1)]

To: ***Station Commissioner/Head of Correctional Services or Detention Facility**
.....
.....

As ..... *(indicate full names and surname of illegal foreigner)*, with date of birth …… / …… / ……(dd/mm/yyyy) and Travel Document No. (e.g. passport) ……., issued by ……. *(indicate issuing authority)* has made *himself/herself liable to *deportation/removal from the Republic and for detention pending such *deportation/removal in terms of section *34(1) or 34(5)/34(8) of the Act, you are hereby ordered to detain him or her until such time *he/she is *deported/removed from the Republic.

....
Signature of immigration officer **Date**

Official stamp

IMMIGRATION OFFICER'S PARTICULARS

Name and surname:.....
Appointment number:.....
Rank/position.....
Office..... Province.....

SUPERVISOR'S PARTICULARS

Name and surname:.....
Rank/position.....
Contact No.: Tel:.....

NB: No release may be effected without the written authority of an immigration officer by means of a warrant of release referred to in section 34(7) of the Act.

***Delete which is not applicable**

FORM 29
NOTIFICATION OF DETENTION FOR PURPOSES OF DEPORTATION

(DHA-1724) **Form 29**

DEPARTMENT OF HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

NOTIFICATION OF DETENTION FOR PURPOSES OF DEPORTATION

[Section 7(1)*(g)* read with section 34(1)*(a)*; Regulation 33(2)]

To: ..... *(indicate full names and surname of illegal foreigner)*

Date of Birth ……/ ……/ …… (dd/mm/yyyy)

Travel Document Type: …….. Travel Document No. ….……

Date of issue ……..…/ ……..…/ ……..…….. Expiry date ……..…/ ……/ ……..……

Issuing Authority ……

As you are an illegal foreigner, as determined following an investigation into your immigration status in the Republic and after considering whether the interests of justice permit your release subject to reasonable conditions, you are hereby notified that you are to be deported to your country of origin, namely…….. as soon as the necessary deportation arrangements have been made.

In terms of section 34(1) of the Act, you have the right to—

(a) appeal the decision to the Director-General in terms of section 8(4) of the Act within 10 working days from date of receipt of this notice; or

(b) make representations to the Magistrate Court, at the time of your appearance for confirmation of your further detention, within 48 hours of your arrest and detention or any subsequent further detention thereof, for a period not exceeding 30 calendar days.

ACKNOWLEDGEMENT OF RECEIPT OF NOTIFICATION OF DETENTION FOR PURPOSES OF DEPORTATION

I hereby acknowledge receipt of the original notification of detention for purposes of deportation in which my rights in terms of section 34(1) of the Act were explained to me.

After due consideration, I have decided to—

Await my deportation at the first reasonable opportunity, whilst remaining in custody. Yes ☐ No ☐

Appeal the decision to deport me. Yes ☐ No ☐

....
Signature of detainee **Date**

Place:.....

....
Signature of immigration officer **Date**

IMMIGRATION OFFICER'S PARTICULARS

Name and surname:.....

Appointment number:.....

Rank/position.....
Office:..... Province:.....

SUPERVISOR'S PARTICULARS
Name and surname:.....
Rank/position.....
Contact No.: Tel: .....

CERTIFICATE BY INTERPRETER

I,..... *(name(s) and surname)* of
,..... *(*business/residential address)* and telephone number..... and cell phone number ..... hereby confirm that I have mastered..... *(state language)* and that I have explained to..... *(name(s) and surname of detainee)* the contents of this notice in the said language and that I am satisfied that the said foreigner fully understands it.

....
Signature of interpreter Place **Date**
***Delete which is not applicable**

FORM 29A
CONDITIONAL RELEASE
FROM DETENTION FOR PURPOSES OF DEPORTATION

(DHA-1724) **Form 29A**

DEPARTMENT OF HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA
CONDITIONAL RELEASE FROM DETENTION FOR PURPOSES OF DEPORTATION
[Section 7(1)*(g)* read with section 34(1)]

To: ..... *(indicate full names and surname of illegal foreigner)*
Date of Birth ……/ ……../ …… (dd/mm/yyyy)
Travel Document Type: …….. Travel Document No. ……
Date of issue ……/ ……/ …… Expiry date ……/ ……/ ……
Issuing Authority ……

You are hereby **conditionally** released from detention for purposes of deportation, following an *interview held on ……/ ……../ …… or the attached Court Order issued by the …… Magistrates Court and dated ……/ ……/ ……. in which it was concluded that there exists reasons justifying your release in the interests of justice, subject to the following conditions:

1. ……
2. ……
3. ……
4. ……
5. ……..

Reporting date: ……/ ……/ …… at the …….. Office

The reasons justifying your conditional release are as follows:
……
……
……
……
……
……

NOTE: You are hereby warned—

(a) that should you breach any of the conditions for your release, you shall be detained pending your deportation;

(b) to report to an immigration officer named below on the abovementioned specified date(s);

(c) ……
……..; and

(d) ……
……..

ACKNOWLEDGEMENT OF RECEIPT OF CONDITIONAL RELEASE FROM DETENTION FOR PURPOSES OF DEPORTATION

I hereby acknowledge receipt of the original notification of my conditional release from detention for purposes of deportation and that the contents hereof were explained to me.

....
Signature of detainee **Date**
Place:.....

....
Signature of immigration officer **Date**

IMMIGRATION OFFICER'S PARTICULARS
Name and surname:.....
Appointment number:.....
Rank/position.....
Office:..... Province:.....

SUPERVISOR'S PARTICULARS
Name and surname:.....
Rank/position.....
Contact No.: Tel: .....

CERTIFICATE BY INTERPRETER

I,..... *(name(s) and surname)* of ,..... *(*business/residential address)* and telephone number..... and cell phone number ..... hereby confirm that I have mastered..... *(state language)* and that I have explained to..... *(name(s) and surname of detainee)* the contents of this notice in the said language and that I am satisfied that the said foreigner fully understands it.

....
Signature of interpreter Place **Date**
***Delete which is not applicable**

FORM 30
CONFIRMATION BY COURT OF FURTHER DETENTION FOR PURPOSES OF DEPORTATION

(DHA-1725) **Form 30**

DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

CONFIRMATION BY COURT OF FURTHER DETENTION FOR PURPOSES OF DEPORTATION
[Section 7(1)*(g)* read with section 34(1); Regulation 33(3)]

To: ***Station Commissioner/Head of Prison or Detention facility**
.....
.....
.....

CC: Immigration Officer: …… Office (Department of Home Affairs)

As .....*(indicate full names and surname of illegal foreigner)*, with date of birth …… / …… / ……(dd/mm/yyyy) and Travel Document No. (e.g. passport) ……., issued by ……. *(indicate issuing authority)* (name and surname) has made *himself/herself liable to *deportation/removal from the Republic and having concluded that the interests of justice do not permit his/her release pending such *deportation/removal, in terms of section *34(1)/34(5)/34(8) of the Act, you are hereby ordered to further detain him/her until such time * he/she is *deported/removed from the Republic.

The further detention is extended up to and including ……../ ……. / ……. (dd/mm/yyyy).
Given under my hand at..... on this ..... day of.....20.....

Magistrates Court

.....
Signature
Designation: .....

Official stamp

NB: No release may be effected without a warrant of release contemplated in section 34(7) of the Act.
***Delete which is not applicable**

FORM 31
NOTICE TO A FOREIGNER OF THE INTENTION TO APPLY TO COURT FOR THE EXTENSION OF HIS/HER FURTHER DETENTION

[Section 7(1)*(g)* read with section 34(1); Regulation 33(4)*(a)*]

(DHA—1726) **Form 31**

DEPARTMENT OF HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

To: ..... *(name and surname of detainee)* with date of birth …… / …… / ……(dd/mm/yyyy) and Travel Document No. (e.g. passport) ……., issued by ……. *(indicate issuing authority),* detained at ..... *(name of detention facility).*

You are hereby notified that in view of the fact that your detention pending the execution of the warrant for your deportation to ..... *(destination)* issued on ...../...../..... *(date – dd/mm/yyyy)* is likely to exceed 30 calendar days on ...../...../.... *(date – dd/mm/yyyy)* for the reasons mentioned in the affidavit on the reverse side of this notice, I am, in terms of section 34(1) of the Act, submitting the matter for consideration to the Magistrate at ..... *(place)* on or before ...../...../.... *(date)*.

You are entitled to make a written or oral representation to a magistrate of the court who will consider and decide on the application for your extended further detention and you are requested to provide me with such representations on or before ...../...../..... *(date)*. If you require assistance, you may approach the head of the institution where you are being detained.

.....
Signature of Immigration officer

Official Stamp

IMMIGRATION OFFICER'S PARTICULARS

Name and Surname: .....
Appointment number: .....
Rank/position: .....
Office: ..... Province: .....

SUPERVISOR'S PARTICULARS

Name and Surname: .....
Rank/position: .....
Contact No: Tel: .....

CERTIFICATE BY INTERPRETER

I, ... *(name and surname)* of ..... *(*business/residential address)* hereby confirm that I have mastered ..... *(state language)* and that I have explained to ..... *(name and surname of detainee)* the contents of this notice in the said language and that I am satisfied that the said foreigner fully understands it.

.....	.....	.....
Signature of interpreter	**Place**	**Date**

***Delete which is not applicable**

REVERSE SIDE OF FORM 31

AFFIDAVIT

I, ... *(name and surname of deponent)*
*state herewith under oath/solemnly declare that-

(a) I am a duly appointed immigration officer stationed at ..... (place);

(b) I have ordered the detention of ..... *(name and surname of detainee)* because the warrant for his or her removal from the Republic issued by me on ..../......../..... *(date – dd/mm/yyyy)* could not be executed immediately due to .....
.....
..... *(provide reasons)*;

(c) the detention of the said detainee was done after considering whether the interests justice permit the release of the detainee subject to reasonable conditions and regarded as necessary as.....
.....
.....
.....

(d) it is necessary that the said detainee be detained for a further period of .....
because .....
.....

I append hereto certified copies of the following documentation as proof of my endeavours to expedite the deportation of the said detainee:

(a) .....
(b) .....
(c) .....

Signed at ..... on this ..... day of .....20.....

....
Signature of Immigration officer **Appointment number**

Thus signed and *sworn/solemnly affirmed before me on this .... day of ..... 20.....

***Delete whichever is not applicable**

Official Stamp

CERTIFICATE OF OATH/AFFIRMATION

I, ... *(name and surname of Commissioner/designation)*
....., hereby certify that before administering the prescribed *oath/solemn declaration, you put the following questions to the deponent and noted *his/her reply in his/her presence:

QUESTIONS		**ANSWER**
(a)	Do you know and understand the contents of the above declaration	Yes/No
(b)	Have you any objection to taking the prescribed oath?	Yes/No
(c)	Do you regard the prescribed oath as binding on your conscience?	Yes/No

The deponent has acknowledged that he/she knows and understands the contents of the declaration; this declaration was duly *sworn to/solemnly affirmed before me and the deponent's signature was appended thereon in my presence.

Date: ..... Signed: .....
Place: ..... Address: .....

FORM 32
APPLICATION TO COURT FOR EXTENSION OF FURTHER DETENTION AND AUTHORISATION BY COURT FOR THAT EXTENSION

(DHA-1727) **Form 32**

DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA

APPLICATION TO COURT FOR EXTENSION OF FURTHER DETENTION AND AUTHORISATION BY COURT FOR THAT EXTENSION

[Section 7(1)*(g)* read with section 34(1); Regulation 33(4)*(c)* and (6)]

To: **The clerk of the Court:**

.....

Re: Extension of further detention of.....*(name(s) and surname of detainee)* detained at.....*(place).*

Please refer this matter for consideration to the Magistrate in terms of section 34(1) of the Act read with Regulation 33(6).

The following documents are attached:

(a) Certified copy of the warrant of detention of ..... *(name and surname of detainee) issued on ...../...../.....(date - dd/mm/yyyy);*

(b) notification to the detainee as contemplated in Regulation 33(4)*(a)*;

(c) affidavit of the immigration officer; and

(d) any representations by the said detainee (if any). *(This does not preclude the concerned foreigner from making oral representations during his/her appearance in the Magistrates Court.)*

Signed at..... on this.....day of.....20.....

Immigration officer:

Official stamp

....
Signature **Appointment No** **Place** **Date**

DECISION BY MAGISTRATE

*After perusing the documentation referred to above, I hereby-

(a) confirm in the interests of justice the application for the extended further detention not exceeding 30 calendar days of .....
..... *(name and surname of detainee)*; subject to the following reasonable conditions……
……

(b) refuse in the interests of justice the application for the extended further detention of…… ..... and order the release subject to the following reasonable conditions----------
……
..... *(name and surname of detainee)*;s

(c) make the following order in addition to the confirmation or refusal above:

.....

.....

Given under my hand at..... on this ..... day of.....20.....

Magistrates Court

.....

Signature of Magistrate

.....

Designation:

***Delete which is not applicable**

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