



**MINISTER OF  
HOME AFFAIRS  
REPUBLIC OF SOUTH AFRICA**

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DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE

**BORDER MANAGEMENT AUTHORITY  
PROVINCIAL OFFICES  
REGIONAL AND DISTRICT OFFICES  
IMMIGRATION OFFICERS: PORT CONTROL  
IMMIGRATION OFFICERS: INSPECTORATE**

**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 ~~exceeding~~ 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 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 4<sup>th</sup> DAY MARCH 2024.

**DR P A MOTSOLEDI, MP**  
**MINISTER OF HOME AFFAIRS**  
**DATE: 4<sup>th</sup> MARCH 2024**