United States District Court
Eastern District of Michigan

Dinu Relu Rascol,

Petitioner,

v.

Kevin Raycraft, Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; et al.,

Respondents.

Civil No. 26-13534

Honorable Stephen J. Murphy III
Mag. Judge Patricia T. Morris

Respondents' Response to Petitioner's Emergency Motion to Enforce Third-Country Procedural Rights, For Immediate Stay of Removal, and For Order Requiring Rwanda Fear Screening

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Petitioner is a member of a class action certified by a federal district court in Massachusetts. In that case, the district court invalidated DHS's March 2025 policy regarding removals to third countries, but the effect of its decision was stayed by the First Circuit while the First Circuit considered an appeal. The First Circuit recently affirmed the district court's judgment and its stay of the district court's judgment will dissolve when the First Circuit issues its mandate, unless DHS seeks rehearing or certiorari in that case. Now, petitioner seeks an order from this Court to enforce

the judgment issued by the District of Massachusetts. The Court should deny this motion because his motion should properly be filed in the District of Massachusetts.

Respectfully submitted,

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Dated: September 22, 2026

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Respondents' Brief in Support of Their Response to Petitioner's Motion to Enforce Judgment

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Issue Presented

Should the Court deny petitioner's motion to enforce a judgment issued by the District of Massachusetts when that court is the proper venue for his motion?

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Introduction

Petitioner is a member of a class action in the First Circuit challenging a DHS policy allowing removals to third countries if the country of removal provides assurances that the noncitizen being removed will not be mistreated upon removal. In this habeas suit, petitioner requests the same relief the class is pursuing in the First Circuit. In the instant motion, he seeks to enforce the judgment issued in the First Circuit, however, it is inappropriate for petitioner to seek that relief in this Court. Accordingly, respondents request that the Court deny petitioner's motion.

Background

Petitioner is a citizen of Romania who has been ordered removed from the United States but granted withholding of removal and cannot be removed to Romania. (I-213, ECF No. 6-2, PageID.135–38; Removal Order, ECF No. 6-3, PageID.139). Immigration officials recently arrested him to remove him to Rwanda pursuant to a memo issued by DHS in March 2025 and assurances from the Rwandan government that Rascol will not be persecuted or tortured if removed to that country. (Not. of Revocation, ECF NO. 6-4, PageID.140–42; DHS Memo, ECF No. 6-5, PageID.143–44; Leyva Decl., ECF No. 6-6, PageID.145–47; State Ltr., ECF No. 6-7, PageID.148).

On September 18, 2026, Rascol filed a petition for a writ of habeas corpus in this Court seeking to bar his removal. (Pet., ECF No. 1). On the same day, Rascol

filed an emergency motion for a temporary restraining order seeking to stay his removal. (Mot. for TRO, ECF No. 3). And, the following day, he filed this emergency motion to enforce the judgment of the court presiding over a class action in Massachusetts. (Mot. to Enforce, ECF No. 8).

Background of *D.V.D. v. Dep't of Homeland Sec.*, No. 25-10676 (D. Mass.)

The Immigration and Nationality Act (INA) provides a statutory hierarchy for selecting a country of removal. 8 U.S.C. § 1231(b)(2). *See Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341–342 (2005). Section 1231(b)(2) "provides four consecutive removal commands" governing how the Government selects the country of removal. *Jama*, 543 U.S. at 338–39. Generally, noncitizens ordered removed "may designate one country to which the alien wants to be removed," and DHS "shall remove the noncitizen to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain circumstances, DHS will not remove the noncitizen to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In such a case, the noncitizen "shall" be removed to the noncitizen's country of nationality or citizenship, unless that country "is not willing to accept the noncitizen[.]" *Id.* § 1231(b)(2)(D). If a noncitizen cannot be removed to the country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he

country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the noncitizen may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii). Thus, if those are unavailable, DHS may rely on the residual authority of subparagraph (E) to designate "another country whose government will accept the alien." *Id.*

While the INA provides for third-country removals, it does not delineate a particular process for carrying out those removals. *See* 8 U.S.C. § 1231(b). Consequently, on March 30, 2025, DHS issued guidance, clarifying its "policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the [INA] to countries other than those designated for removal in those removal orders." (DHS Memo, ECF No. 6-5, PageID.143–44). The March Guidance distinguishes between removals to countries that have provided credible assurances that any aliens removed there will not be persecuted or tortured, and removals to those countries that have not done so. (*Id.* at 1–2). For countries that have provided such an assurance, "the alien may be removed without the need for further procedures." (*Id.*).

A class of noncitizens challenged DHS's March 2025 policy in an action under the Administrative Procedures Act in the District of Massachusetts. *See*

D.V.D. v. Dep't of Homeland Sec., No. 25-10676 (D. Mass. Apr. 18, 2025). The Massachusetts court has certified a class in that case and the class is as follows:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id.

The district court in *D.V.D.* initially enjoined DHS's March 2025 policy, but the Supreme Court entered a stay of the district court's preliminary injunction pending appeal, both as to the class and the named plaintiffs. *See Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. Jun. 23, 2025); *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S. July 3, 2025).

On February 25, 2026, the district court vacated the class-wide preliminary injunction and issued class-wide declaratory and vacatur relief. *See D.V.D. v. Dep't of Homeland Sec.*, No. 25-10676 (D. Mass. Feb. 25, 2026) (setting aside DHS's third-country removal policy and declaring, among other things, that class members have the right to meaningful notice and opportunity to raise a country-specific claim against removal before removal to a third country.) The government appealed that decision and on March 16, 2026, the First Circuit granted the government's

emergency motion for stay pending appeal. *See D.V.D. v. Dep't of Homeland Sec.*, No. 26-1212 (1st Cir. Mar. 16, 2026).

On September 18, 2026, the First Circuit affirmed the Massachusetts's court's judgment. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 26-1212, 2026 WL 2797801, at *19 (1st Cir. Sept. 18, 2026). However, the First Circuit's stay of the district court's judgment remains in place until the First Circuit issues its mandate. *See* Fed. R. App. P. 41(c).

Argument

Rule 23(b)(2) classes can be certified only when "the relief sought must perforce affect the entire class at once." *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 361–62 (2011). "For that reason," Rule 23(b)(2) classes are "mandatory classes," with "no opportunity" for "class members to opt out" and litigate their claims individually. *Id.* at 362; *see also U.S. v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018) (noting that "[t]he certification of a suit as a class action has important consequences for the unnamed members of the class, including being "bound by the judgment") (cleaned up).

For this reason, numerous courts have appropriately declined to address claims relating to third-country removals under DHS's March 2025 polic due to the *D.V.D.* class action. *See, e.g.*, *Ghamelian v. Baker*, No. 25-02106, 2025 WL 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155

(D. Md. July 23, 2025) (declining to address claims relating to third-country removal because of petitioner's status as a *D.V.D.* class member); *I.V.I. v. Baker*, No. 25-1572, 2025 WL 1519449, at *2 (D. Md. May 27, 2025) ("Even stripped of any reference to the District of Massachusetts' order, these claims are the same as (or substantially related to) the class claims being litigated in that district." (citation omitted)); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-02121, 2025 WL 2062181, at *5 (D. Md. July 22, 2025) ("The court finds that Petitioner is a member of the D.V.D. Class."); *Sanchez v. Bondi*, No. 25-02287-CNS, 2025 WL 2550646, at *3 (D. Colo. Aug. 20, 2025) ("[B]ecause Mr. Sanchez is a member of *D.V.D.'s* Rule 23(b)(2) class, he has failed to show a likelihood of success on the merits of his claim."); *Qasemi v. Kurzdorfer*, No. 25-668, 2025 WL2938607, at *6 (W.D.N.Y. Oct. 16, 2025) (because the petitioner was a *D.V.D.* class member, "[i]t would be inappropriate for the Court to inject itself into that ongoing litigation."). *But see, e.g., Nguyen v. Scott*, 2025 WL 2419288, at *20-21 (W.D. Wash. Aug. 21, 2025) (holding that petitioner's ability to seek relief related to third-country removal was not impacted).

Here, petitioner cannot enforce the Massachusetts' court's judgment in this case. First, petitioner is a member of the *D.V.D.* class because he has been issued a final order of removal and DHS seeks to remove him to a country not designated in the order of removal. *See D.V.D. v. U.S. Dept of Homeland Sec.*, 778 F. Supp. 3d

355, 370 (D. Mass.) (subsequent history omitted); (Removal Order, ECF No. 6-3, PageID.139; Leyva Decl., ECF No. 6-6, PageID.145–47). Therefore, if he seeks the relief requested in that class action, he must do so in that court.

Yet that is what petitioner attempts to do in the instant motion. In his motion to enforce, petitioner cites extensively to the First Circuit's decision in the class action to explain why he is entitled to the same relief in this case that at issue in the class action. (*See* Mot. to Enforce, ECF No. 8). However, he is not permitted to do so under Rule 23. *See, e.g.*, *Ghamelian*, 2025 WL 2049981, at *3.

Further, even if he could obtain relief in this Court based on the judgment of a court in the First Circuit, his motion would be premature. The First Circuit's decision is not final because that court has not yet issued a mandate. *See* Fed. R. App. P. 41(c), 1998 Adv. Comm. Note ("A court of appeals' judgment or order is not final until issuance of the mandate[.]"). Therefore, the Massachusetts' court's judgment is not yet enforceable and petitioner should not be able to prematurely obtain relief by filing a separate suit that is explicitly prohibited by the rules governing class actions. *See* Fed. R. Civ. P. 23(b)(1).

Conclusion

Respondents respectfully request that the Court deny petitioner's motion to enforce.

Respectfully submitted,

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Dated: September 22, 2026

Certificate of Service

I hereby certify that on September 22, 2026, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey
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Assistant U.S. Attorney