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Judge Finds U.S. Government Unlawfully Deported Noncitizens on Flight to South Sudan in Violation of Court Order, Issues Remedial Relief

Boston, Massachusetts – Earlier today, the U.S. District Court for the District of Massachusetts ruled that the Department of Homeland Security (DHS) violated the court’s preliminary injunction when it placed six noncitizens who had been ordered removed to other countries on a flight to South Sudan without the notice required by the prior order or any meaningful opportunity to seek protection against torture in South Sudan. The State Department has a Level 4 travel warning in place for South Sudan, where a peace agreement between warring factions just collapsed.

The noncitizens on the plane who were subjects of the hearing—none of whom are nationals of South Sudan—are class members in the certified national class action known as *D.V.D. v. DHS* are represented by the National Immigration Litigation Alliance (NILA), the Northwest Immigrant Rights Project (NWIRP), and Human Rights First (HRF). The U.N. High Commissioner for Refugees warns states against forcibly returning even South Sudanese

nationals to South Sudan in light of ongoing armed conflict, serious human rights abuses, and mass displacement, among other problems. The court concluded, based on statements at the hearing, that notice to the men was rushed and confused and done without access to counsel, all of which clearly violated the court's prior order.

The court order follows a series of emergency hearings on Tuesday and Wednesday, after class counsel alerted the District Court that DHS was removing at least two class members, nationals of Myanmar and Vietnam, to South Sudan, in violation of the court's order. On Tuesday, after DHS admitted its intention to deport class members to South Sudan, the court ordered DHS to retain custody of the noncitizens overseas while DHS obtained additional information regarding the members of the flight. After a five-hour hearing on Wednesday, the court indicated that, in light of the DHS's violation of its order, it would clarify its preliminary injunction order to require a minimum of ten days to raise a fear-based claim for protection.

As for the class members already removed from U.S. soil, the court ruled that DHS could either return them to the United States to receive a fear screening or provide that screening under equivalent conditions at an undisclosed location overseas, while still retaining custody throughout the screening process.

The court's prior preliminary injunction required the government to provide class members notice and an opportunity to apply for protection prior to removal to a "third" country—that is, not the country designated in the removal order—if they fear persecution or torture in that country. Federal law requires that DHS not deport people, regardless of their status or past histories, to places where it is likely they will suffer torture. South Sudan is currently on the brink of renewed civil war.

Following Wednesday's hearing, the court also ordered a series of sworn declarations related to the violations, including a declaration detailing the situation of a Burmese man on the flight; a declaration addressing reported statements by South Sudan's police spokesperson, Major General James Monday Enoka, indicating that migrant arrivals would be deported on to their "so-called" correct country; and a declaration from the federal government certifying that notice of the clarified preliminary injunction has been provided to all persons involved in the removal process, including that violations may subject them to civil or criminal contempt.

"Today's rulings demonstrate that the court will not tolerate the government's defiance of the rule of law. Although the court stopped short of ordering return, the court ordered the government to provide our class members with an opportunity to raise a fear of torture in South Sudan—a country to which these individuals have no ties, which is in chaos and on the brink of civil war," said Trina Realmuto, Executive Director of the National Immigration Litigation Alliance, who argued Plaintiffs' motions. "We hope that the court's clarifying order, ongoing

discovery in the case, and the accompanying declarations will prevent the government from continuing to flagrantly violate the law.”

“Like its attempt to deport non-Libyans to Libya two weeks ago without notice or an opportunity to be heard, DHS’s South Sudan caper indicates a disturbing and deliberate contempt for human life,” said Anwen Hughes, an attorney with Human Rights First. “All human beings have a right to be protected against torture. That is the law and DHS is well aware of this. DHS is also on notice of the court’s preliminary injunction, which aims to ensure that U.S. obligations under the Convention Against Torture are respected in this context. The court’s most recent orders should leave no one at DHS any excuse for non-compliance.”

“Today, the court affirmed a fundamental principle: due process still matters,” said Leila Kang, Supervising Attorney of the Northwest Immigrant Rights Project. “The order appropriately recognizes that DHS must afford our class members a chance to apply for protection from removal to a country where they face a serious risk of torture.”

The court’s order clarifying its preliminary injunction is located [HERE](#).

The court’s order remedying the violations is located [HERE](#).

The court’s orders requiring Defendants to submit sworn declarations are located [HERE](#), [HERE](#), and [HERE](#).