



Practice Alert¹

Third Country Deportations and *D.V.D. v. DHS*

Last Updated March 17, 2026

The U.S. Department of Homeland Security (DHS) has escalated efforts to remove persons with final removal orders to third countries—without meaningful notice or opportunity to seek protection if they fear they are likely to be persecuted, tortured, or killed if removed there. While “third country” removals are authorized by statute and occasionally have been used in the past, DHS now is seeking to effectuate them more frequently, threatening people with final removal orders with deportation to countries where they have no prior ties and face dangerous conditions.

On February 25, 2026, the U.S. District Court for the District of Massachusetts issued a [summary judgment decision](#) and [final judgment](#) in *D.V.D. v. DHS*, a nationwide class action concerning noncitizens who have a final removal order issued in removal proceedings under Section 240, 241(a)(5), or 238(b) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a, 1231(a)(5), or 1238(b).² **The district court granted declaratory relief to the class and set aside DHS’ third-country removal policy. The decision has been [stayed](#) by the First Circuit pending an expedited appeal and thus is only persuasive authority. If/when it takes effect, it will control in all class member cases.** Briefing on the expedited appeal will be complete on or before April 20, 2026, and the court has indicated it will schedule argument shortly thereafter.

This practice alert provides a brief overview of third-country removals, addresses the district court’s decision, and provides some suggested strategies. A template habeas petition accompanies this advisory.

1. What is a “third country”?

For purposes of this advisory and more generally, a third country is a country not previously designated for removal by either an immigration judge (IJ) or DHS in the underlying removal

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² The class is represented by the National Immigration Litigation Alliance (NILA), Northwest Immigrant Rights Project (NWIRP), and Human Rights First (HRF).

proceedings. IJs designate a country of removal in removal proceedings under § 240 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1229a, or reasonable fear or withholding-only proceedings under 8 C.F.R. § 1241.8(e); DHS designates a country of removal in reinstatement proceedings under INA § 241(a)(5), 8 U.S.C. § 1231(a), administrative removal proceedings under INA § 238(b), 8 U.S.C. § 1228(b), or expedited removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b).

The term “third country” is used because IJs in removal proceedings designate a country of removal (usually the noncitizen’s country of origin) and, in some cases, also designate an alternate country of removal (usually a country of which they are a citizen or in which they hold or previously held status).³ When DHS seeks to remove a person to a country other than the primary or alternate countries designated, the new country is referred to as a third country.

2. Does DHS have the authority to remove noncitizens to third countries?

Yes, DHS has the authority to remove noncitizens to a third country but only after first pursuing removal to the designated country of removal or specified alternative country(ies) of removal. If DHS “is unable” to do so, 8 C.F.R. § 1240.12(d), DHS must then follow the statutory sequencing for pursuing removal, including to the country(ies) of citizenship and then to countries where the person has a lesser connection. *See* 8 U.S.C. § 1231(b) (outlining framework for designation). Only if these options are “impracticable, inadvisable, or impossible” may DHS pursue removal to a country willing to accept the person. 8 U.S.C. § 1231(b)(2)(E)(vii).

3. What policies and practices are challenged in *D.V.D. v. DHS*?

The class action [complaint](#) in *D.V.D. v. DHS* challenged two policies and practices:

- DHS’s policy of removing, or seeking to remove, individuals to third countries without providing notice and an opportunity to contest that removal if they have a fear of persecution or torture if removed to that third country; and
- DHS’s February 18, 2025 policy [directive](#) instructing DHS officers to review for re-detention and removal to third countries all cases of individuals who were previously released from immigration detention.

The district court’s summary judgment decision, discussed below, addresses only the first policy. Individual challenges to re-detention are discussed below.

4. Who is a member of the nationally certified *D.V.D.* class?

Certified on April 18, 2025, the nationwide class is defined as:

³ The law governing these designations is laid out in the [complaint in *D.V.D.*](#) It is also discussed in this NILA, NWIRP, and Florence Project practice advisory dated January 29, 2025, and entitled, [Protecting Noncitizens Granted Withholding of Removal or CAT Protection Against Deportation to Third Countries Where They Fear Persecution/Torture.](#)

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.

D.V.D. v. DHS, 778 F. Supp. 3d 355, 378 (D. Mass. 2025).

5. What did the district court in *D.V.D. v. DHS* hold in its February 25, 2026 decision?

The court issued an 81-page decision that (a) details the procedural history; (b) dissolves an earlier-entered preliminary injunction; (c) rejects Defendants' jurisdictional arguments; (d) dismisses Plaintiffs' Freedom of Information Act and detention claims; (e) dismisses two claims as duplicative; (f) addresses Plaintiffs' statutory and due process claims on the merits; (g) rejects the legality of DHS' third-country removal policy; (h) explains the court's authority to grant declaratory relief and vacatur of the policy; (i) balances the factors for staying the decision pending appeal; and (j) grants declaratory relief and sets aside DHS' third-country removal policy. *See D.V.D. v. DHS*, No. CV 25-10676-BEM, 2026 WL 521557 (D. Mass. Feb. 25, 2026).

The district court declared:

- 8 C.F.R. § 1240.12(d) requires Defendants, before effecting any third-country removal, to first seek removal to that class member's designated country of removal or specified alternative country or countries of removal, as provided in that class member's final order of removal.
- 8 U.S.C. § 1231(b) requires Defendants, before effecting any third-country removal pursuant to 8 U.S.C. § 1231(b)(2)(E), to first seek removal to that class member's designated country of removal or country or countries of citizenship, if any.
- Class members have the right to meaningful notice before removal to any third country.
- Class members have the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country.
- Defendants' third-country removal policy, as embodied in DHS's March 30 Memo and ICE's July 9 Guidance, is unlawful.

The court also set aside Defendants' third-country removal policy pursuant to 5 U.S.C. § 706(2)(A) as "not in accordance with law." *D.V.D.*, 2026 WL 521557 at *42, *44.

Finally, the court stayed the judgment "until fifteen days from date of issuance or until the First Circuit rules on any motion for an administrative stay or stay pending appeal, whichever occurs first." *Id.* at *44.

6. When will the decision take effect?

On February 27, Defendants filed a notice of appeal of the district court's decision. On March 5, 2026, Defendants filed an emergency motion to stay judgment pending appeal with the First Circuit, alternatively asking for an administrative stay to permit time for Defendants to seek

Supreme Court review.

On March 16, 2026, the First Circuit granted the stay motion. However, the court also issued an expedited briefing schedule, requiring the completion of merits briefing on or before April 20, 2026. The court also stated that it intends to hold argument soon after briefing was complete.

Thus, the decision remains stayed during this expedited appeal process. If the First Circuit affirms the district court's decision on appeal, the decision could take effect at that time unless either the First Circuit or Supreme Court stay the decision pending further appeal.

7. How can class members raise the February 25, 2026 decision in individual cases before it takes effect?

Detained Class Members – Habeas Petitions

Unless and until the district court's decision takes effect, class members can file habeas petitions raising third-country claims, amend or supplement existing habeas petitions, file notices of supplemental authority, or seek reconsideration of any denied motion for injunctive relief where a habeas petition remains pending. These filings should assert that the individual satisfies the requirements of *D.V.D.* class membership, that the district court's rationale applies to the class member's third-country claims, and that the final declaratory and set aside relief issued in *D.V.D.* is persuasive authority. The filing also should explain that, if/when the decision takes effect, it will be binding on the class members' claims.

Because federal courts currently are overwhelmed with cases, in some circumstances, it may be prudent to ask the district court or the court of appeals (if the habeas is on appeal) to hold the case in abeyance to await the outcome of the stay litigation and/or final merits decision in *D.V.D.*

See Questions 12 and 13 and accompanying template habeas petition for further information.

Detained Class Members – Awaiting or Completing Third Country Screening Interviews Before the Asylum Office

The district court's decision holds that DHS' third-country removal policy is unlawful, meaning that any and all third-country screening interviews that class members have had or will have are also unlawful. In these cases, it is advisable to provide both ICE and USCIS with copies of the decision, demand vacatur of any adverse third-country screening determination, and demand the declaratory relief and set aside relief that the district court provided, including meaningful notice and an opportunity to raise a fear-based claim. *See infra* Questions 8 and 9. If DHS refuses, DHS' refusal may be raised in a newly-filed or pending habeas petition and/or a motion to enforce a favorable habeas ruling.

Deported Class Members Abroad

At this juncture, the district court's decision is neither in effect nor final as Defendants have appealed the decision and the case is likely to go back to the Supreme Court. To date, courts have been, and likely will continue to be, reluctant to exercise their jurisdiction over class members who are abroad. If the class member filed a habeas petition prior to a third-country removal, class

members or their counsel may wish to explore the possibility of return through that action. If and when the district court's decision is final, class counsel will update this advisory.

Detained or Non-Detained Class Members – Cases Pending Before the Court of Appeals

Class counsel would appreciate hearing from anyone representing a *D.V.D.* class member who has a pending habeas appeal or petition for review in a circuit court so that we may provide more individualized assistance prior to any circuit court decision on any claims related to third-country removals.

8. What constitutes “meaningful notice” prior to any third country removal?

The district court did not specify procedures to ensure meaningful notice of any third-country removal. At a minimum, class counsel contends meaningful notice should require:

- written notice in a language that the noncitizen who would be subject to third-country removal can understand;
- written notice both to the noncitizen and their attorney (if they are represented); and
- at least a 15-day stay between written notice and actual removal to ensure that the individual has time to raise a fear-based claim.

Such notice is supported by Supreme Court case law. *See, e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (“[N]otice must be afforded within a reasonable time and in such a manner as will allow [the noncitizen] to actually seek . . . relief”). It is also supported by statutory and regulatory protections affording the right to counsel. *See e.g.*, 8 U.S.C. § 1229a(b)(4)(A); 8 U.S.C. § 1362; 8 U.S.C. § 1228(b)(4)(b); 8 C.F.R. § 292.5. Finally, a 15-day automatic stay is supported by a [2001 draft form](#) issued by the former Immigration and Naturalization Service and a [2020 draft notice](#) issued by DHS, although neither was published. *See D.V.D. Complaint* ¶ 41; *D.V.D.*, 778 F. Supp. 3d. at 392-93.

9. What constitutes a “meaningful opportunity to raise a country-specific claim against removal before removal to any third country”?

The district court did not specify which procedures must be applied to ensure a meaningful opportunity to raise a fear-based claim to contest removal to a third country. However, it did observe that expecting noncitizens to satisfy the “more likely than not” standard on short notice was “facially inadequate.” 2026 WL 521557, at *34 n.86 (citation omitted).⁴

⁴ The district court had previously granted a preliminary injunction, which was stayed and ultimately dissolved. It required the opportunity to raise a third-country CAT protection claim in a reasonable fear interview; that the relevant standard be “reasonable fear” instead of “more likely than not”; that, if the class member demonstrated reasonable fear, DHS must move to reopen immigration proceedings; and that, if the class member did not demonstrate a reasonable

The answer to which procedures must be applied may vary depending on whether the class member was ordered removed (a) in reinstatement proceedings under 8 U.S.C. § 1231(a)(5) or in administrative removal proceedings under 8 U.S.C. § 1228(b), or (b) in regular removal proceedings under 8 U.S.C. § 1229a.

Reinstatement / § 1228(b) Proceedings

If DHS issued the class member’s removal order in reinstatement proceedings under 8 U.S.C. § 1231(a)(5) or in administrative removal proceedings under 8 U.S.C. § 1228(b), class counsel contend that DHS should *reissue* the removal order to designate the third country and permit the class member to articulate a fear to the designated country in accordance with 8 C.F.R. §§ 241.8(b), (e) (reinstatement) and § 238.1(f)(2), (f)(3) (administrative removal).⁵ Thereafter, the class member should undergo reasonable fear and/or withholding only proceedings, during which removal should be automatically stayed. The class member then should be able to pursue judicial review, if needed by filing a petition for review of any final order issued.

Note that class members in these proceedings continue to have a final removal order and thus, any detention is under 8 U.S.C. § 1231(a).

Removal Proceedings

If an immigration judge issued the class member’s removal order in regular removal proceedings under 8 U.S.C. § 1229a, class counsel contend that DHS should file a motion to reopen with the immigration judge or Board of Immigration Appeals. DHS also should stay removal until the final administrative adjudication of the motion to reopen.⁶ Absent such action, the class member

fear, DHS must provide a minimum of fifteen days to allow the noncitizen to seek reopening. *See D.V.D.*, 778 F. Supp. 3d at 392-93. Other district courts have provided class members similar protections in individual habeas actions. *See, e.g., Kumar v. Wamsley*, No. C25-2055-KKE, ---F. Supp. 3d ---, 2025 WL 3204724, at *8-9 (W.D. Wash. Nov. 17, 2025) (listing cases); *Ramos v. Noem*, No. 5:26-CV-00064-MEMF-ADS, 2026 WL 303536, at *8 (C.D. Cal. Feb. 4, 2026) (providing for a 15-day stay following any negative determination in a third-country reasonable fear interview); *Portela-Hernandez v. Trump*, No. 25-1633-BAH, 2026 WL 74042, at *14 (D. Md. Jan. 9, 2026) (finding IJ review of negative determination in a third-country reasonable fear interview required); *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1016 (S.D. Tex. 2025) (enjoining petitioner’s removal “until seven (7) days after an [IJ] reviews [p]etitioner’s denied Reasonable Fear Interview, and only if the [IJ] affirms such denial”).

⁵ Upon reissuance, the class member should consider filing a petition for review within 30 days of reissuance to protect the right to judicial review. *See* NILA’s practice advisory, [Riley v. Bondi: Impact on Petitions for Review](#) (July 2025).

⁶ Requiring the class member to file a motion to reopen would not ensure a meaningful opportunity to seek protection. *Compare D.V.D.*, 2026 WL 521557, at *16 (explaining the procedural limitations on motions to reopen filed by noncitizens), with 8 C.F.R. § 1003.23(b)(1) (explaining that the “time and numerical limitations” on motions to reopen or reconsider “do not apply to motions by DHS in removal proceedings pursuant to [INA § 240]”); *see also Nguyen v. Scott*, 796 F. Supp. 3d 703, 727 (W.D. Wash. 2025) (explaining that statutory and constitutional

could lose the opportunity to seek protection *before* removal to a third country. If/when the IJ or BIA grants the motion to reopen, the reopening decision “necessarily extinguish[es] the finality of [a] removal order.” *Nken v. Holder*, 556 U.S. 418, 429 n.1 (2009).

Reopening may be limited to permitting only adjudication of withholding of removal and/or CAT application to the newly designated third country. *Cf. Matter of Patel*, 16 I. & N. Dec. 600, 601 (BIA 1978) (referencing the BIA’s authority to limit remands to a particular purpose). Under the doctrines of law of the case and/or collateral estoppel, practitioners can argue that any previous grant of protection should not be disturbed in reopened proceedings. *See, e.g., Arizona v. California*, 460 U.S. 605, 618 (1983), *decision supplemented*, 466 U.S. 144 (1984) (“[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”); *cf. Allen v. McCurry*, 449 U.S. 90, 94 (1980) (“Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.”).⁷ Moreover, if an immigration judge or the BIA denies a motion to reopen (following an administrative appeal, as applicable) or denies class member’s protection claim, judicial review should be available on a petition for review under 8 U.S.C. §§ 1252(a), 1252(b)(6).

Note that reopening removal proceedings for purposes beyond adding a new country of removal could change the class member’s statute of detention from post-final order detention under 8 U.S.C. § 1231(a) to pre-final order detention under 8 U.S.C. § 1226(a), (c).

10. What are possible third countries where clients have been and might be removed?

Media sources report that, as of June 2025, the U.S. government “has reportedly pursued deals” to pressure foreign nations to accept third-country deportations “with at least 53 countries, including many that are beset by conflict or terrorist violence.”⁸

Class counsel are aware of third-country deportations to the following countries: El Salvador, Mexico, South Sudan, Rwanda, Eswatini, Ghana, Equatorial Guinea, Kosovo, Uzbekistan, Palau, and Cameroon. Class counsel understand that the government is pursuing, or has pursued deals,

rights “cannot be satisfied by simply allowing the noncitizen to file a motion to reopen their removal proceedings; rather, the removal proceedings must be reopened so that a hearing can be held”).

⁷ The relevant law-of-the-case test—and its application in the context of reopened immigration proceedings—varies by circuit. Readers are advised to research the relevant circuit case law.

⁸ Nick Turse, *Trump’s Global Gulag Search Expands to 53 Nations*, *The Intercept* (Jun. 25, 2025), <https://theintercept.com/2025/06/25/trump-immigrant-deportations-supreme-court/>; *see also* Adam Taylor, *Trump Administration Considers Adding 36 Countries to Travel Ban List*, *Washington Post* (Jun. 14, 2025) (describing Department of State memorandum considering restricting entry to citizens of 36 countries, in addition to the countries listed on the Administration’s initial travel ban, which provided that those countries might be able to “mitigate” factors which led to their placement on the travel ban list were they to accept the removal of third-country nationals).

to accept third-country nationals with Sierra Leone and the Democratic Republic of the Congo and possibly also with Cape Verde and Burundi.⁹

11. What steps can practitioners take if a client is subject to third-country removal?

Unless and until the district court's decision takes effect, pursue all avenues of action on behalf of clients subject to third-country removal, including:

- Advising clients to articulate the fear to a DHS officer as soon as they are informed that they may face removal to that country (or even in advance of notice, if feasible).

Note: *D.V.D.* defendants claim *only* noncitizens (*not* counsel) may raise a fear claim. Class counsel dispute this interpretation. Many clients cannot express fear to ICE due to language barriers, physical or cognitive impediments, and/or logistical challenges. However, out of an abundance of caution, clients should be advised to articulate their fears directly where possible.

- Informing DHS in writing of all nondesignated countries to which the client would have a fear of removal and demand a stay of removal and reopening if DHS intends to deport the person to any of the identified countries.¹⁰
- Filing a habeas petition in the district of confinement seeking release and/or an order requiring DHS to provide notice and an opportunity to seek protection from persecution and/or torture prior to any third-country removal.
- Filing an emergency motion to reopen and motion to stay removal if DHS indicates an intention to remove to a third country.¹¹

12. Can *D.V.D.* class members file individual habeas petitions to challenge third-country removal without notice or opportunity to seek protection from persecution or torture?

Yes, unless and until the district court's decision takes effect, class members can file new habeas petitions, amend or supplement existing habeas petitions, or seek reconsideration of any denied motion for injunctive relief if a habeas petition remains pending. These filings should assert that the individual satisfies the requirements of *D.V.D.* class membership, that the district court's rationale applies to the class member's third-country claims, and that the final declaratory and set-aside relief issued in *D.V.D.* is persuasive authority on the claims. The filing also should

⁹ Human Rights First and Refugees International are tracking third-country removal agreements, along with other types of third-country transfer agreements. See <https://www.thirdcountrydeportationwatch.org/> for country-specific information.

¹⁰ A downloadable Word version of a template letter from January 2025 is available on the practice advisories page of [NILA's website](#).

¹¹ A downloadable template emergency motion to reopen and motion to stay removal (along with a template exhibit list, declarations, and proposed order) from January 2025 is available on the practice advisories page of [NILA's website](#).

explain that, if/when the decision takes effect, it will be binding on the class members' claims.

Notably, prior to the district court's summary judgment ruling in *D.V.D.*, several district courts have granted habeas petitions finding DHS' third-country removal policy unlawful and/or ordering due process protections prior to any third-country removal.¹²

Federal courts currently may be overwhelmed with cases so, in some situations, it could be prudent to ask the district court or the court of appeals (if the habeas is on appeal) to hold the case in abeyance to await the outcome of the stay litigation and/or final merits decision in *D.V.D.*

Courts may consider the existence of the class action in determining how to proceed in individual habeas petitions filed by *D.V.D.* class members.¹³

13. Can *D.V.D.* class members file individual habeas petitions as challenges to ongoing detention or re-detention?

Yes. Many class members have claims challenging their re-detention or continued detention that are not contingent upon the outcome in *D.V.D.* or any third-country issue. There are two general sets of claims challenging detention or re-detention that *D.V.D.* class members can raise via a habeas petition:

¹² See, e.g., *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *8 (E.D. Cal. Nov. 6, 2025); *Cruz-Medina v. Noem*, No. 25-cv-1768-ABA, -- F.Supp.3d --, 2025 WL 2841488, at *7 (D. Md. Oct. 7, 2025); *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (W.D. Wash. Nov. 17, 2025); *Sagastizado Sanchez v. Noem*, No. 5:25-CV-00104, -- F.Supp.3d --, 2025 WL 2957002, at *12 (S.D. Tex. Oct. 2, 2025); *Esmail v. Noem*, No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030589, at *7 (C.D. Cal. Sept. 26, 2025); *Nguyen v. Scott*, No. 2:25-cv-01398, 796 F.Supp.3d 703, 727-35 (W.D. Wash. Aug. 21, 2025); *Azzo v. Noem*, 2025 WL 3535208 (S.D. Cal. Dec. 10, 2025); *Barka v. Mattos*, 2025 WL 3723998 (D. Nev. Dec. 23, 2025); *Portela-Hernandez v. Trump*, 2026 WL 74042 (D. Md. Jan. 9, 2026); *L.R. v. Noem*, 2026 WL 161605 (D. Nev. Jan. 21, 2026).

¹³ Several courts of appeals have held that district courts have discretion to dismiss or stay individual actions that involve parties or issues that overlap with those in a pending class action. See, e.g., *Horns v. Whalen*, 922 F. 2d 835 (4th Cir. 1991) (discussing cases from Third, Fourth, Fifth, Sixth, and Eighth Circuits); *Pride v. Correa*, 719 F.3d 11430 (9th Cir. 2013). The Ninth Circuit has recognized that, while a district court may have discretion to “dismiss those portions of [a] complaint which duplicate [a class action’s] allegations and prayer for relief,” it may not dismiss allegations that go beyond those in the class action. *Id.* at 1133; see also *Brewer v. Swinson*, 837 F.2d 802, 804 (8th Cir. 1988) (“While the general principle is to avoid duplicative litigation, the determining factors should be equitable in nature, giving regard to wise judicial administration.”). Some district courts have declined to dismiss habeas petitions filed by individual class members due, in part, to the impact any delay in the *D.V.D.* adjudication would have on class members’ ability to vindicate their rights. See, e.g., *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *7 (W.D. Wash. Nov. 17, 2025) (“[B]y the time the issues of class-wide relief are resolved in *D.V.D.*, Kumar could be removed or subjected to further due process violations under the third country removal policy. The Court declines to exercise its discretion as to render Kumar without a remedy to enforce his due process rights.”).

- Class members who recently won withholding of removal or CAT protection: These individuals are generally subject to mandatory detention for a period of 90 days, known as the removal period, while DHS tries to remove them to a third country. 8 U.S.C. § 1231(a)(1). This is common, even under prior administrations. If, however, this period becomes prolonged—generally beyond 180 days—and DHS has not identified a third country and taken significant steps, including securing a travel document required for removal to that third country, the person could file a petition for writ of habeas corpus arguing that their continued detention violates due process because their removal to a third country is not reasonably foreseeable. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).
- Class members who have been released on an Order of Supervision and now face re-detention: This group includes individuals who won withholding of removal or CAT protection or are nationals of countries with whom the United States does not have formal relations. Many of these individuals regularly check in with ICE, either directly with ERO or via the Intensive Supervision Appearance Program (ISAP). The regulations at 8 C.F.R. §§ 241.4 and 241.13 govern the revocation of release. If revocation was improper under the regulations (e.g., the person did not violate the terms or conditions of release), these individuals may file a habeas petition challenging their detention as violating the regulations and due process. If DHS has not identified a third country and taken significant steps, including securing a travel document required for removal to that third country, the person also can argue that their continued detention violates due process because their removal to a third country is not reasonably foreseeable. *See Zadvydas*, 533 U.S. at 701.

14. What is the procedural history in *D.V.D. v. DHS*?

This background is provided for individuals interested in a more in-depth understanding of the procedural history of the case.

The case was filed on March 23, 2025, against DHS, DHS Secretary Kristi Noem, U.S. Attorney General Pamela Bondi, and the superintendent of a local detention center where one of the named plaintiffs was detained.

On March 28, 2025, the district court entered a [temporary restraining order](#) blocking third country removals without notice and a meaningful opportunity to seek CAT protection. Defendants appealed the TRO and moved the district court to stay it. The district court denied the stay motion and issued a [memorandum on the TRO](#) on March 29.

On March 31, at least 6 class members were removed from Guantanamo to El Salvador. Plaintiffs' counsel believes the deportations were in violation of the TRO.¹⁴

¹⁴ On June 24, 2025, a former high-level official with the Department of Justice's (DOJ's) Office of Immigration Litigation filed a protected whistleblower claim alleging that high-level DOJ officials conspired to violate the *D.V.D.* TRO. The disclosure describes efforts to feign ambiguity in an unambiguous order, failing to disseminate the fact and terms of the injunction, and purposefully failing to respond to Plaintiffs' inquiries. *See* Protected Whistleblower

The [First Circuit denied Defendants' motion to stay the TRO](#) on April 7. Meanwhile, Defendants also moved for an [indicative ruling](#) based on a [March 30, 2025 policy memorandum](#) (March 30 Memo) that DHS issued immediately following the TRO. Plaintiffs opposed that motion, arguing that [the March 30 policy memo does not protect individuals with final removal orders](#).

On April 18, 2025, the district court [certified a nationwide class and granted a preliminary injunction](#). Defendants appealed the preliminary injunction to the First Circuit and simultaneously filed a motion to stay it pending the appeal.

Following a hearing on April 28, the district court ordered disclosure of the names of class members on flights from Guantanamo to El Salvador on March 31 and April 13 and any additional flights. The [district court also amended the preliminary injunction](#) to clarify that Defendants must afford the procedural protections in the preliminary injunction prior to removing any class member from Guantanamo and prior to ceding custody or control to another entity in a manner that prevents provision of those protections.

On May 7, 2025, following credible reports of a flight to deport class members to Libya without provision of the preliminary injunction protections, class counsel filed an emergency TRO motion. The court promptly issued a memorandum reiterating the terms of the preliminary injunction and making clear that any such removals would violate it. The court also ordered [discovery](#) related to the deportations of class members on the March 31 flight from Guantanamo to El Salvador.

On May 16, the First Circuit [denied Defendants' motion to stay the preliminary injunction](#).

On May 20, after credible reports that DHS was attempting to remove class members to South Sudan, class counsel filed another emergency TRO motion. The court conducted emergency hearings on May 20 and 21. With respect to the class members en route to South Sudan, the court found that Defendants had [violated the preliminary injunction and ordered a remedy](#). With respect to the class as a whole, the court issued a [memorandum on the preliminary injunction, elaborating that a meaningful opportunity to be heard requires](#) that Defendants provide a minimum of ten days to raise a fear claim.

On May 24, Defendants filed a motion to reconsider the court's rulings, which the district court swiftly [denied](#) on May 26.¹⁵ On May 27, Defendants filed an application to stay the preliminary injunction and request for an immediate administrative stay with the U.S. Supreme Court. Plaintiffs opposed the application.

On June 23, 2025, the Supreme Court [stayed the preliminary injunction](#). Plaintiffs subsequently

Disclosure of Erez Reuveni Regarding Violation of Laws, Rules & Regulations, Abuse of Authority, and Substantial and Specific Danger to Health and Safety at the Department of Justice at 16-21, <https://s3.documentcloud.org/documents/25982155/file-5344.pdf>.

¹⁵ Also on May 24, the district court [granted](#) Plaintiff O.C.G.'s motion for a preliminary injunction, ordering Defendants to work with Plaintiffs' counsel to facilitate his return to the United States.

filed a motion for an indicative ruling asking the district court to dissolve the preliminary injunction if the First Circuit were to remand the preliminary injunction appeal, which the district court granted on August 28, 2025. On October 20, 2025, the First Circuit declined to remand for dissolution of the preliminary injunction. However, four months later, on February 20, 2026, following briefing and oral argument on the appeal, the First Circuit [remanded the appeal to dissolve the preliminary injunction](#).

On December 16, 2025, the district court heard oral argument on [Plaintiffs' motion for partial summary judgement](#), Defendants' motion to dismiss, and Defendants' motion to strike exhibits (e.g., declarations of attorneys and class members) that Plaintiffs submitted in support of their positions.

On February 25, 2026, the district court dissolved the preliminary injunction, dismissed some of Plaintiffs' claims, and granted Plaintiffs' motion for summary judgment as to Plaintiffs' claims under the Administrative Procedure Act and Declaratory Judgment Act. *See* Question 5 (discussing decision). The decision is [here](#), and the final judgment is [here](#).

Defendants filed a notice of appeal to the First Circuit on February 27, 2026, and an emergency [motion to stay the decision](#) on March 5, 2026. On March 16, 2026, the First Circuit [granted the motion \(continuing the stay\), but issued an expedited appeal schedule](#) requiring the completion of merits briefing by April 20, 2026. The First Circuit further stated that it intends to hold oral argument soon after briefing is complete.

15. What did the now-dissolved preliminary injunction in *D.V.D.* previously provide?

The preliminary injunction issued by the district court April 18, 2025 (and amended, reaffirmed, and clarified on April 30, May 7, and May 20) had provided the following procedural protections:

- Written notice of the third country, in a language that the noncitizen can understand, to the individual and their attorney, if any,
- An automatic 10-day stay between notice and actual removal,
- The ability to raise a fear-based claim for CAT protection prior to removal, and
 - If the noncitizen demonstrates “reasonable fear” of removal to the third country, DHS must move to reopen the noncitizen’s immigration proceedings.
 - If the noncitizen does not demonstrate a “reasonable fear” of removal to the third country, DHS must provide a meaningful opportunity, and a minimum of fifteen days, for the noncitizen to seek reopening of their immigration proceedings.

D.V.D. v. DHS, 778 F. Supp. 3d 355, 392-93 (D. Mass. 2025).¹⁶ On June 23, 2025, the U.S. Supreme Court, without any explanation, stayed the district court’s preliminary injunction. *See*

¹⁶ *See also* Electronic Order – Amended Preliminary Injunction, [Dkt. 86](#) (clarifying applicability to Guantanamo); Memorandum and Order on Plaintiffs’ Motion for Emergency Relief, [Dkt. 91](#) (clarifying that removals without required protections to Libya would have violated the preliminary injunction); Memorandum on Preliminary Injunction, [Dkt. 118](#) (providing a ten-day stay between notice and removal).

DHS v. D.V.D., No. 24A1153 (S. Ct. Jun. 23, 2025). The Supreme Court stated that the stay would remain in place while the preliminary injunction appeal was pending disposition before the First Circuit Court of Appeals and, if applicable, until the Supreme Court resolved any timely filed petition of certiorari. As a result, the preliminary injunction has not been in effect since the Supreme Court’s June 23, 2025, order.

As indicated above, the district court dissolved the preliminary injunction on February 25, 2026.

16. What is DHS’s policy regarding third country deportations that the district court has found unlawful?

The district court determined that DHS’ third country removal policy is unlawful. That policy was embodied in DHS’ March 30, 2025, policy memorandum entitled “Guidance Regarding Third Country Removals” ([March 30 Memo](#)), and ICE’s July 9, 2025 “[Guidance Regarding Third Country Removals](#)” ([July 9 Guidance](#)). The July 9 Guidance is identical to the March 30 Memo in most respects.

Under the March 30 Memo and July 9 Guidance, the following “process” applies:

- If the U.S. State Department receives credible diplomatic assurances from the third country that persons will not be persecuted or tortured, *no further process is provided*.
- If no such assurances are received:
 - ICE claims it will serve a “Notice of Removal” with interpretation.
 - Critically, ICE *will not* ask if the noncitizen has a fear of removal to that country.
 - If the noncitizen does not affirmatively articulate a fear, ICE may effectuate removal 24 hours after serving notice; however, in exigent circumstances, with approval from certain officials, ICE may execute removal with six hours’ notice if ICE provides the noncitizen means and opportunity to speak with an attorney.
 - Only if the individual “affirmatively states a fear,” will ICE refer them for a screening interview before U.S. Citizenship and Immigration Services. The interview will generally take place within 24 hours of referral.
 - At the interview, the person must establish it is “more likely than not” that they will be persecuted on a statutory ground or tortured in the third country.
 - If USCIS finds the noncitizen meets this standard:
 - USCIS will refer the matter to immigration court if the person was not previously in immigration court proceedings.
 - If the person was previously in immigration court proceedings, DHS will refer the matter to ICE to determine whether it will elect to file a motion to reopen or simply designate an additional country of removal.
- If USCIS finds the noncitizen does not meet the screening standard, they will be immediately removed to the third country. *Id.*

As the district court found, the March 30 Memo and July 9 Guidance do not protect noncitizens' due process, statutory, and regulatory rights to notice and an opportunity to seek protection from persecution or torture.