

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02059-DDD-STV

HOSSEIN BATOIE,

Petitioner,

v.

JUAN BALTAZAR, Acting Warden, Aurora ICE Processing Center,
ROBERT HAGAN, Field Office Director, U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security,¹
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice, in their official capacities,

Respondents.

**RESPONSE TO MOTION FOR EXPEDITED HEARING AND
CONSIDERATION OF PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 56)**

Petitioner's Opposed Motion for Expedited Hearing and Consideration of Petition for Writ of Habeas Corpus (ECF No. 56, the Motion) should be denied.

The Petition for Habeas Corpus (ECF No. 1, the Petition) is fully briefed and is awaiting decision. *See* ECF No. 56 at 1-2; ECF No. 19 (Order to Show Cause); ECF No. 33 (Response to Order to Show Cause); ECF No. 34 (Petitioner's Reply); ECF No. 39 (Supplemental Response

¹ Robert Hagan has taken over from Robert Guadian as Field Office Director and is automatically substituted as a respondent in this matter. *See* Fed. R. Civ. P. 25(d) (providing that a public officer's "successor is automatically substituted as a party" when the officer "ceases to hold office while the action is pending").

from Respondents); ECF No. 41 (Reply to Supplemental Response). Petitioner states, and Respondents agree, that these filings adequately address the legal issues in the case. ECF No. 56 at 2.

Petitioner argues, however, that there are two factual issues in dispute that necessitate a hearing: (1) whether the Department of Homeland Security (DHS) properly conducted a post-order custody review (POCR); and (2) what steps DHS has taken to designate a third country of removal. *Id.*

Petitioner is incorrect. Neither of those issues is properly before the Court in this habeas matter:

First, nowhere in the Petition or in any of the substantive briefing on the Petition does Petitioner contest DHS's POCR process. *See generally* ECF No. 1; ECF No. 34; ECF No. 41. Nor has Petitioner sought to amend his Petition to include this issue. There is no need to have an evidentiary hearing on an issue not raised in the Petition.

Second, as explained in Respondents' briefing on the Petition, the process for designating a third country of removal is at issue in the non-optout class action pending in *D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.) (hereinafter *D.V.D.*), and Petitioner is a member of that class. ECF No. 33 at 9-11. As a *D.V.D.* class member, Petitioner may not bring a separate claim for equitable relief. *See id.*; *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) ("Individual suits for injunctive and equitable relief ... cannot be brought where there is an existing class action. To permit them would allow interference with the ongoing class action."); *see also, e.g., Moore v. Hickenlooper*, 723 F. App'x 582, 586 (10th Cir. 2018) ("We have approved a protocol that prevents individual claimants from pursuing their own equitable claims relating to a class action while the class action is proceeding."); *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95

(9th Cir. 1982) (“There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.”); *Sanchez v. Bondi*, 25-cv-02287-CNS, 2025 WL 2550646, at *2 (D. Colo. Aug. 20, 2025) (“[I]n light of *D.V.D.*’s class certification, ‘it would be contrary to [comity and judicial economy] principles for [the Court] to assert jurisdiction over virtually identical claims between essentially the same parties.’” (citation omitted)). No evidentiary hearing is necessary for a claim that is not properly before this Court.

Petitioner has elsewhere argued that he should still be able to proceed notwithstanding *D.V.D.* because he seeks the ability to assert withholding of removal, and because he contests a March 30, 2025, DHS Memorandum that sets forth DHS’s policy for effectuating third-country removals, and these subjects, according to Petitioner, are not at issue in *D.V.D.* ECF No. 34 at 7. Petitioner is wrong. The class representatives in that action have filed a motion for partial summary judgment that seeks a declaration that: (1) aliens are entitled to the opportunity to seek relief from removal (including withholding) before being removed to a third country; and (2) the March 30 DHS Memorandum is unlawful. *See* Ex. 1, Mem. in Support of Plaintiffs’ Mot. for Partial Summary Judgment, *D.V.D.*, (July 15, 2025), ECF No. 194 at 15-18 (arguing that March 30 DHS Memorandum is unlawful); *id.* at 18-20 (arguing that same policy deprives class members of opportunity to seek withholding or other relief). Even if the relief sought in *D.V.D.* is declaratory rather than injunctive—a point that the government has contested before the *D.V.D.* court—the issues Petitioner raises in this case are squarely before the court in *D.V.D.* The matters Petitioner seeks to explore in an evidentiary hearing are thus already subject to extensive proceedings in another forum.

And even if *D.V.D.* did not stand in the way, Petitioner's attack on Respondents' procedures for third-country removal are not cognizable in habeas anyway. A habeas petition under 28 U.S.C. § 2241 is a special vehicle for challenges specifically to detention. *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020) ("Habeas has traditionally been a means to secure *release* from unlawful detention." (emphasis in original)). The third-country removal process that Petitioner seeks to attack in this habeas matter concerns where he will be removed, not whether he will be detained pending removal. It is unnecessary to have an evidentiary hearing on Respondents' implementation of a process that is irrelevant to the basis for Petitioner's detention.

CONCLUSION

For the reasons set forth above, the Motion should be denied.

Dated: January 13, 2026.

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ V. William Scarpato III

V. William Scarpato III
Nicholas A. Deuschle
Assistant United States Attorneys
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Fax: (303) 454-0407
Victor.Scarpato@usdoj.gov

Counsel for Respondents

CERTIFICATE OF COMPLIANCE

Counsel for Respondents hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

CERTIFICATE OF SERVICE

I certify that on January 13, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

Laura L. Lichter
Mark Robert Barr
Lichter Immigration
1601 Vine Street
Denver, CO 80206-1117
Llichter@lichterimmigration.com
Mbarr@lichterimmigration.com

Attorneys for Petitioner

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ V. William Scarpato III
V. William Scarpato III