

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

IFEOMA ADA CHINWEOKE OJUKWU,

Petitioner-Appellant,

v.

TODD M. LYONS, Ice Detroit Field Office Director for the Michigan and Ohio, U.S. Immigration and Customs Enforcement and Enforcement of Removal Operations (ERO); DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security; TODD BLANCHE, Attorney General; SIRCE E. OWEN, Director for Executive Office for Immigration Review,

Respondents-Appellees.

No. 26-3891

On Motion for Stay of Removal

United States District Court for the Northern District of Ohio at Youngstown
No. 4:26-cv-02483—J. Philip Calabrese, District Judge.

Decided and Filed: October 9, 2026

Before: McKEAGUE, THAPAR, and MURPHY, Circuit Judges.

COUNSEL

ON MOTION FOR STAY OF REMOVAL and REPLY: Susan Blumenthal, MARGARET WONG & ASSOCIATES LLC, Cleveland, Ohio, for Appellant. **ON RESPONSE:** Patricia M. Fitzgerald, UNITED STATES ATTORNEY’S OFFICE, Cleveland, Ohio, for Appellees.

ORDER

Petitioner Ifeoma Ada Chinweoke Ojukwu, a native and citizen of Nigeria, illegally entered the United States. An immigration judge issued a final order of removal directing the government to remove Ojukwu to Nigeria. At the same time, though, the judge granted Ojukwu withholding of removal to that country. She has remained here ever since. The United States currently plans to remove Ojukwu to Ghana (rather than Nigeria) on October 11, 2026. Ojukwu has appealed the district court's dismissal of her petition for a writ of mandamus asking for additional process before her removal. She now moves for an emergency stay of removal pending our review. Yet the Supreme Court recently overturned an order granting similar relief pending its review of a class action raising similar questions. *See DHS v. D.V.D.*, No. 26-426, 2026 WL 2917860, at *1 (U.S. Sep. 29, 2026) (mem.). The Court's decision shows that Ojukwu has not met the demanding standards for emergency relief. We thus deny her motion to stay.

According to government records, Ojukwu falsely presented herself as a United States citizen when first entering the United States in 1999. In 2013, an immigration judge issued a final order of removal commanding the government to remove Ojukwu to Nigeria. But the immigration judge simultaneously granted her withholding of removal because she feared persecution and torture in that country. The government released Ojukwu subject to an order of supervision that required her to regularly report to immigration authorities. Over the years, she married a U.S. citizen and settled in LaGrange, Ohio. The couple had children who are also U.S. citizens. And Ojukwu now helps care for her elderly mother and mother-in-law, who reside in the United States.

For years, Ojukwu reported to immigration authorities without incident. But the government alleges that she stopped following her reporting obligations in 2019. Immigration authorities then directed her to report in person on September 21, 2026. When she arrived, the authorities detained her and prepared to remove her to a third country: Ghana.

This removal stemmed from an executive policy governing removals issued by the Secretary of the Department of Homeland Security (DHS) in March 2025. The withholding-of-removal statute is *country specific*. That is, it prohibits the government from “remov[ing] an alien to *a country* if the Attorney General decides that the alien’s life or freedom would be threatened in *that country*” on specified grounds. 8 U.S.C. § 1231(b)(3)(A) (emphases added). Here, then, the statute barred Ojukwu’s removal to Nigeria; it did not bar her removal to all other countries. And when it is “impracticable, inadvisable, or impossible to remove [an] alien” to a home country, the Immigration and Nationality Act (INA) allows the government to “remove the alien to” “another country whose government will accept the alien into that country.” *Id.* § 1231(b)(2)(E)(vii). DHS’s March 2025 policy implemented this provision. The policy first asks whether a third “country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured” there. Policy, Ex. D. to Mot. to Stay, at 1. If so and if the Department of State has found “those assurances to be credible,” the policy allows an “alien [to] be removed” to that country “without the need for further procedures.” *Id.* at 1–2.

According to a government official, Ghana “entered into an arrangement with the Department of State” to accept certain aliens, including Ojukwu. Decl. of Vu Cam, Ex. A to Resp. to Mot., at 1–2. Ghana has also provided the required “assurances that aliens removed from the United States pursuant to this arrangement will not be subjected to persecution or torture in Ghana nor in any country they may be further transferred to.” *Id.* at 2. The government has thus concluded that it may immediately remove Ojukwu to Ghana without giving her a hearing to prove that her “life or freedom would be threatened in” Ghana. 8 U.S.C. § 1231(b)(3)(A).

Ojukwu challenges DHS’s policy in this litigation. She petitioned for a writ of mandamus, alleging that the lack of process violated the INA, the Foreign Affairs Reform Restructuring Act, the Administrative Procedure Act, and the Due Process Clause. She also moved for several temporary restraining orders, raising the same alleged violations. Ojukwu claims that the government did not provide her with “a meaningful opportunity to investigate and contest removal to” Ghana. Am. Pleadings, R.8, PageID 154.

The district court held that it lacked jurisdiction, denied her motions, and dismissed the action. *See Ojukwu v. Lynch*, No. 4:26-cv-2483, 2026 WL 2886889, at *5 (N.D. Ohio Sep. 26, 2026). After this rejection, Ojukwu appealed to our court. She also immediately filed an emergency motion to stay her removal. That motion is now before us.

A “party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.” *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). We consider four factors in determining whether a stay is appropriate: (1) whether the movant “has made a strong showing that [s]he is likely to succeed on the merits”; (2) whether the movant “will be irreparably injured absent a stay”; (3) whether a stay “will substantially injure the other parties interested in the proceeding”; and (4) “where the public interest lies.” *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The first two factors “are the most critical.” *Id.*

We hold that Ojukwu has not shown a likelihood of success because her stay motion pursues the same claims that the Supreme Court held did not warrant an injunction. *See D.V.D.*, 2026 WL 2917860, at *1. In *D.V.D.*, four aliens pursued a class action under Federal Rule of Civil Procedure 23(b)(2) challenging DHS’s general “policy or practice” of removing aliens to a third country not listed in their removal orders without affording them individualized process to prove that they would face persecution in that country. *D.V.D. v. DHS*, 778 F. Supp. 3d 355, 368–70 (D. Mass. 2025). The aliens claimed that this policy violated (among other things) the INA and the Due Process Clause. *See id.* at 369. The district court first certified a class action. *Id.* at 394. It found that the litigation did not “hinge on the individual circumstances of each class member” and rejected the government’s argument that the additional process due to individual aliens would turn “on the underlying facts and circumstances of their case.” *Id.* at 386 (citation modified). The court next issued a preliminary injunction compelling DHS to provide class members with a minimum amount of process before removing them to third countries. *See id.* at 392–93.

Last year, the Supreme Court stayed this preliminary injunction. *See DHS v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025) (mem.). The district court disregarded this stay because it did not view the stay as affecting an interim order remedying DHS’s alleged violations of the injunction for six individual class members. *See DHS v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025). The Supreme

Court thus had to issue a second order clarifying that it had stayed the injunction “in full” and that the district court could not enforce it in favor of *any* class member. *Id.* As Justice Kagan noted, although she would not have granted the initial stay, she did “not see how a district court can compel compliance with an order that this Court has stayed.” *Id.* at 2630 (Kagan, J., concurring).

On remand, the district court again found that the DHS policy violated the INA and the Due Process Clause—this time, at the summary-judgment stage. *D.V.D. v. DHS*, 821 F. Supp. 3d 102, 143 (D. Mass. 2026). The court thus vacated the policy. *Id.* at 165. The First Circuit affirmed. *See D.V.D. v. DHS*, No. 26-1212, 2026 WL 2797801, at *20 (1st Cir. Sep. 18, 2026). Last month, however, the Supreme Court issued a third order staying the district court’s refusal to allow DHS to enforce its third-country policy. *See D.V.D.*, 2026 WL 2917860, at *1. The Court also granted certiorari to consider (among other things) the courts’ jurisdiction over these claims and the legality of the policy. *See id.*

In our view, Ojukwu’s “like” claims in this case are “squarely controlled” by the Supreme Court’s (repeated) decision to stay an injunction in the *D.V.D.* class action. *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). Indeed, Ojukwu does not dispute that she is a member of the certified class action now pending before the Court in *D.V.D.* Nor could she. After all, her counsel asked the government’s lawyer if the *D.V.D.* court’s “nationwide class order” would halt her removal to Ghana. Email, Ex. A to Mot. to Stay, at 1. The government’s lawyer responded that “DHS will comply with the First Circuit’s decision unless and until any stay” is issued by the Supreme Court. *Id.* Ojukwu thus benefited from the *D.V.D.* order while it remained in effect.

Her briefing also leaves no doubt that she pursues the same due-process claim that she did as a class member in that litigation. Mot. to Stay, at 29–37. She says that she “challenges the DHS *policy or practice*” barring additional process before removing aliens to third countries. Mot. to Stay, at 9 (emphasis added). Next, she repeatedly invokes the First Circuit’s or district court’s *D.V.D.* decisions when arguing that the district court here wrongly held that it lacked jurisdiction to consider her case. *Id.* at 18–28. And she claims that, “[l]ike the *D.V.D.* plaintiffs,” she has shown that DHS’s “policy or practice constitutes a deprivation of procedural

due process.” *Id.* at 29. Yet the Supreme Court found that the *D.V.D.* plaintiffs were not entitled to an injunction pending its review. So how could we reach any different result for the same claims in this case?

At bottom, Ojukwu’s claims conflict with the district court’s decision to certify a class action in *D.V.D.* Class certification has serious consequences for absent class members—which explains why district courts must undertake “rigorous analysis” before taking this step. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011) (citation modified). Such care is all the more appropriate for a Rule 23(b)(2) class action because absent class members like Ojukwu may not even have the “opportunity” “to opt out” of the class. *Id.* at 362; *cf. Doster v. Kendall*, 54 F.4th 398, 440 (6th Cir. 2022), *vacated as moot* 144 S. Ct. 481 (2023) (mem.). If the district court certifies such a class but the class’s claim fails on the merits, the “failed class claim binds all class members.” *Doster*, 54 F.4th at 440. The absent class members thus cannot take a do-over by later pursuing the same failed claim in an individual suit in a new court. *See Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874 (1984). And “[i]f a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.” *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982); *see Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc); *Groseclose v. Dutton*, 829 F.2d 581, 584–85 (6th Cir. 1987). We thus find it unsurprising that many district courts refused to grant preliminary injunctions to absent class members of the *D.V.D.* class after the Supreme Court overturned the preliminary injunction granted to that class. *See Sanchez v. Bondi*, No. 1:25-cv-2287, 2025 WL 2550646, at *2–3 (D. Colo. Aug. 20, 2025) (citing cases); *see also Qasemi v. Kurzdorfer*, No. 25-cv-668, 2025 WL 2938607, at *6 (W.D.N.Y. Oct. 16, 2025).

To be sure, *class* claims do not always bar *individual* claims. For example, courts have held that the failure of a class claim alleging that the defendant followed a *general pattern or practice* of racial or religious discrimination might not preclude an individual claim alleging that the defendant discriminated *against a specific plaintiff*. *See Cooper*, 467 U.S. at 880; *Doster*, 54 F.4th at 440. Just because a defendant did not follow a generally discriminatory policy does not mean that it did not discriminate against a specific person. But this principle cannot salvage

Ojukwu's claim. As we have said, her motion asserts that she pursues the same general "policy or practice" claim that the class litigated in the *D.V.D.* action. Mot. to Stay, at 9. And the class suit does preclude the same "pattern and practice" claim in an individual case. *Cooper*, 467 U.S. at 880. Besides, unlike in the discrimination context, the district court's certification order in *D.V.D.* explained that the government could not identify "a single example of how an 'underlying fact' and/or 'circumstance' might lead to different procedural minima for one individual versus another." *D.V.D.*, 778 F. Supp. 3d at 386. The court's certification order thus rests on the premise that individual facts do not matter to the question whether an alien had a due-process right to notice and a hearing before a third-country removal.

For her part, Ojukwu suggests that her "unique and compelling" facts should make a difference to her likelihood of success in establishing the courts' jurisdiction and her due-process claim. Reply Br. at 4. She notes that she has never visited Ghana and lacks any connections to this country. She adds that a general State Department travel advisory alerts individuals to "[e]xercise increased caution while traveling to Ghana due to," among other things, "violence against women[.]" Advisory, R.9-1, PageID 172. But Ojukwu's allegations do nothing to take this case outside the *D.V.D.* class action. For example, she fails to explain why her unique facts would establish the district court's jurisdiction even if the *D.V.D.* district court lacked jurisdiction over the class claims. Nor does she explain why her unique facts would create a due-process problem even if the DHS's general third-country policy satisfies the Fifth Amendment. In sum, the Supreme Court's stay in *D.V.D.* makes clear that Ojukwu has established no "more than [a] possibility of success on the merits," a fact that "is all but fatal to her motion." *Coffie-Joseph v. Bondi*, No. 24-3938, 2025 WL 1661894, at *1 (6th Cir. Mar. 3, 2025) (order).

As for the irreparable-injury factor, the evidence remains (at most) in equipoise. Ojukwu conclusorily alleges that she will face "persecution, torture, and death" in Ghana. Mot. to Stay, at 37. But Ojukwu cites only dated or generalized statistics about Ghana's generic country conditions. On the other hand, Ghanaian officials have credibly assured the Department of State that aliens like Ojukwu would not be tortured or persecuted in that country. Decl. of Vu Cam, Ex. A to Resp. to Mot., at 2. Ojukwu's general evidence thus cannot overcome her shortcomings on the likelihood of success. See *Coffie-Joseph*, 2025 WL 1661894, at *1.

The remaining factors (harm to the opposing party and the public interest) “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. These factors often depend on the likelihood of success. On the one hand, “there is a public interest in preventing aliens from being wrongfully removed”; on the other, “[t]here is always a public interest in prompt execution of removal orders” that are lawful. *Id.* at 436. Yet here, an immigration judge ordered Ojukwu removed over a decade ago. Because she has failed to establish a likelihood of success on the merits, these factors weigh in the government’s favor.

All told, the Supreme Court’s decision to stay the district court’s vacatur order in *D.V.D.* must “inform how [we] should exercise [our] equitable discretion in like cases.” *Boyle*, 145 S. Ct. at 2654. And this is not just a like case; in some respects, it is the same one. We understand Ojukwu’s frustration with these events. A district court involuntarily forced her into a class action in a faraway venue and thereby undermined her ability to pursue her own equitable relief in a court closer to her Ohio home. The choice to certify the class also “foreclos[ed] adjudication by a number of different courts and judges” (which could have helped the Supreme Court render its ultimate decision) and increased “the pressures on [that] Court’s docket.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). So courts should always exercise caution when certifying a “nationwide” class action. *Id.* Perhaps the Supreme Court will soon clarify whether the district court properly exercised that caution in *D.V.D.* In the meantime, though, the Court has made clear that the equities favor the government. We must reach the same result in this similar case.

Therefore, the motion for a stay of removal is **DENIED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script that reads "Kelly L. Stephens".

Kelly L. Stephens, Clerk