

# Unpacking DOJ's Suit Against Maryland Federal Bench

By **Steven Gordon** (July 21, 2025)

On June 24, the U.S. Department of Justice filed a lawsuit against the U.S. District Court for the District of Maryland and all 15 of its judges, challenging a new standing order that requires the court clerk to enjoin for two business days the deportation of any noncitizen detained in Maryland who files a habeas petition.[1]

At the same time, the DOJ sought the recusal of the Maryland district judges and asked the U.S. Court of Appeals for the Fourth Circuit to designate a judge from another district to handle the case — in the District of Maryland. U.S. District Judge Thomas Cullen, a judge in the Western District of Virginia, will preside over the case.



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This suit has drawn nationwide attention and has generated hyperbolic commentary. For example, on June 25, the Washington Post reported that legal "experts described the move as an unprecedented attack on judicial independence, while government lawyers said it was necessary to preserve President Donald Trump's authority over immigration." [2]

Leaving aside the political hoopla, this suit raises very interesting legal issues relating to the validity of the standing order and the approach that the DOJ has taken to challenge it.

## The Standing Order and its Rationale

The standing order provides that, upon the filing of a habeas petition by a noncitizen detained in Maryland, the government is enjoined and restrained from removing the petitioner from the continental U.S. or altering their legal status until 4 p.m. on the second business day following the filing of the petition, unless the deadline is extended by the judge assigned to the case.[3]

The court said the order was promulgated to preserve the status quo and potential jurisdiction of the court while it determines whether it has jurisdiction, to ensure that petitioners are present and able to participate in the proceedings, and to ensure that the government has an opportunity to brief and present arguments in its defense.[4]

The court explained: "The recent influx of habeas petitions concerning alien detainees ... that have been filed after normal court hours and on weekends and holidays has created scheduling difficulties and resulted in hurried and frustrating hearings." [5]

The order appears to be modeled on a similar standing order adopted by the Fourth Circuit that imposes a temporary administrative stay for 14 days pending review of a motion to stay removal in an immigration case.[6]

Such administrative-stay provisions hold a ruling in abeyance to allow an appellate court the time necessary to review it without reflecting any position on its merits.[7] The U.S. Supreme Court has described the purpose of an administrative stay as being to buy time for an appellate court to consider a stay pending appeal.[8]

But a stay is not the same thing as an injunction. The Supreme Court has emphasized they are different forms of relief that serve different purposes. An injunction tells someone what

to do or not to do, whereas a stay operates upon the proceeding itself, either by halting some portion of the proceeding or by temporarily divesting an order of enforceability.[9]

The District of Maryland's standing order does not purport to stay the underlying order of removal; instead it says that it enjoins and restrains the government from removing the petitioner. It is an injunction — or temporary restraining order — rather than a stay.

### **The DOJ Complaint**

The DOJ's complaint contends in sharp terms that the district court's "sense of frustration and a desire for greater convenience do not give [the court] license to flout the law."

The DOJ asserts three grounds for relief: (1) that the standing order does not satisfy the requirements for an injunction or a temporary restraining order; (2) that district courts generally lack jurisdiction over removals and that the standing order unlawfully enjoins removals without any consideration of whether the court has jurisdiction over the particular case; and (3) that the standing order is invalid because it was not adopted in conformity with the requirements for promulgating local rules.

### **The Validity of the Standing Order**

An analysis of the law confirms that the standing order is, indeed, flawed in the ways that the DOJ alleges.

First, the standing order automatically grants any habeas petitioner a two-day injunction without regard to the merits of their particular case. However, preliminary injunctions and temporary restraining orders are supposed to be granted on a case-by-case basis following the court's assessment of the facts of the individual case.

The Supreme Court has instructed that preliminary injunctive relief is an extraordinary remedy never awarded as of right.[10]

To obtain such relief, a plaintiff must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest.[11] Yet the standing order grants injunctive relief to all habeas petitioners without any such showing.

Nor could the district court have avoided these issues by casting the standing order as a stay rather than an injunction because that was not an option. A stay may be granted either by the tribunal that issued an order or by the appellate court in the event an appeal is taken.[12] But there is no authority for a court conducting a collateral review, like a habeas proceeding, to stay an order under review.

Second, the Maryland district court lacks jurisdiction over most habeas petitions by noncitizens. Congress provided in Title 8 of the U.S. Code, Section 1252(a)(5) that the "sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals." [13] Congress has further provided that this limitation applies to habeas petitions, as well.[14]

While there may be a limited set of habeas claims to which these limitations do not apply, and where district courts can grant relief to a petitioner facing removal, those cases will be relatively few and far between.[15]

Thus, the Maryland district court lacks jurisdiction over most of the habeas cases covered by the standing order.

A district court may not grant a preliminary injunction if it lacks subject matter jurisdiction over the case.[16] The Supreme Court has cautioned that, without jurisdiction, a court cannot proceed at all and that to do so offends fundamental principles of separation of powers.[17]

This means that in most or perhaps all the habeas cases at issue, the standing order restrains the executive branch from acting in situations where the court lacks any authority.

Finally, the standing order is invalid because it does not comply with the requirements for issuing a local rule. Congress has authorized district courts to adopt local rules after a notice-and-comment procedure and, in Title 28 of the U.S. Code, Section 2071, directed that "no rule may be prescribed" by any other procedure.[18] This prerequisite was not followed here.

The standing order is in substance a local rule and so must comply with the requirements for local rules. The name given to a local procedure is irrelevant — if it controls practice in a district court, effectively it is a local rule and must be created in accordance with the provisions governing local rules.[19] Adopting local rules through the device of standing orders contravenes the Rules Enabling Act.[20]

### **The Validity of DOJ's Litigation Approach**

The question remains whether the DOJ's lawsuit challenging the standing order is valid and appropriate, especially when alternative approaches were potentially available. For example, the DOJ might have appealed an individual habeas case in which the order was applied or filed a petition for mandamus in the Fourth Circuit.

The DOJ's complaint notes that there are potential barriers to appealing an individual case in which the order was applied. These include the argument that a TRO — if the standing order is deemed to impose a TRO — is generally not appealable, and a mootness argument if the order is dissolved before an appeal could be concluded.

In all likelihood, however, both of these barriers could be easily overcome. Appellate courts allow appeals of TROs if, in a particular case, the need for immediate appeal overcomes the reasons for the general rule that appeal unavailable.[21] And mootness does not pose a major problem since an exception is commonly made for issues that are capable of repetition, yet evading review.

The complaint does not indicate why the DOJ decided against seeking a writ of mandamus to challenge the standing order.

The writ traditionally is used to confine a lower court to a lawful exercise of its prescribed jurisdiction. However, the party seeking the writ must have no other adequate means to attain the desired relief.[22] Here the DOJ believes that it can obtain relief through the suit it has filed.

The DOJ relies on the U.S. Court of Appeals for the First Circuit's 2000 decision in *Stern v. U.S. District Court for the District of Massachusetts* as authority for suing the district court.

Quoting Stern, the complaint asserts that "'the proper method for mounting a facial challenge to the validity of' the Orders 'is through an action for declaratory and/or injunctive relief filed in the district court.'"[23]

However, while Stern teaches that a challenge to a local rule should be filed in the district court, it does not discuss whom the defendants should be.

It is jarring that the complaint names all the U.S. district judges in the District of Maryland as parties-defendant, especially since Federal Rule of Appellate Procedure 21 was amended in 1996 to ensure that judges are not named as parties in petitions for mandamus.

The advisory committee note explains that in most instances a writ of mandamus is not actually directed toward a judge in any more personal way than an order reversing a court's judgment. Therefore, the rule was amended to change the tone of mandamus proceedings so that they don't appear to be aimed at judges personally. These same considerations apply equally to a lawsuit in district court that challenges a local rule.

However, there is precedent for the DOJ's approach of naming both the district court and all of its sitting judges. The Stern suit initially named only the district court as a defendant. Thereafter, the plaintiffs apparently became concerned about whether the U.S. District Court for the District of Massachusetts was an entity that could be sued, and, to avoid any problem, amended the complaint, adding the judges individually.[24]

That same approach was taken in an earlier case challenging a local rule of the U.S. District Court for the District of Rhode Island that named both the court and the individual judges as defendants.[25]

It appears, however, that no court has analyzed whom the parties-defendant should be in a suit challenging a local rule or standing order of a federal district court. The DOJ here simply follows the pleading decisions made by previous plaintiffs in similar cases.

In sum, while there is precedent for filing a lawsuit against federal judges to challenge a local rule, the DOJ had at least one alternative course open to it.

And the DOJ coupled its decision to sue the judges with some notably sharp language in its complaint, deliberately strikes a pugnacious posture toward a federal district court in a high visibility case.

## **Conclusion**

When the legal issues are sorted out, this case is not the unprecedented attack on the judiciary that it may appear to be at first blush. Rather, it is a normal, albeit unusual, challenge to a new district court rule decked out in aggressive language.

While the DOJ's challenge to the standing order has substance, it demonstrates the need to tone down such challenges in the future by taking judges out of the line of fire.

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[1] U.S. v. Russell, Case 1:25-cv-02029 (D. Md.).

[2] Salvador Rizzo and Katie Mettler, "DOJ sues all federal judges in Maryland over deportation order," Washington Post, June 25, 2025.

[3] Amended standing order 2025-01, Misc. No. 00-308 (D. Md. 5/28/25).

[4] Id.

[5] Id.

[6] 4th Circuit standing order 19-01.

[7] See Rachel Bayefsky, Administrative Stays: Power and Procedure, 97 Notre Dame L. Rev. 1941, 1951-58 (2022).

[8] See United States v. Texas, 144 S.Ct. 797, 798-99 (Mem.) (2024) (Barrett, J., concurring) & at 802 (Sotomayor, J., dissenting).

[9] See Nken v. Holder, 556 U.S. 418, 428-29 (2009).

[10] See Winter v. NRDC, 555 U.S. 7, 24 (2008).

[11] Id. at 20.

[12] See Fed. R. Civ. P. 62; Fed. R. App. P. 8.

[13] 8 U.S.C. § 1252(a)(5).

[14] See REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302.

[15] See Mahdawi v. Trump, --- F.Supp.3d ----, 2025 WL 1243135 (D. Vt. Apr. 30, 2025).

[16] Shell Offshore Inc. v. Greenpeace Inc., 864 F.Supp.2d 839, 842 (D. Alaska 2012).

[17] Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94 (1998).

[18] 28 U.S.C. § 2071; see also Fed.R.Civ. P. 83(a).

[19] Brown v. Crawford Cty., 960 F.2d 1002, 1009 n.8 (11th Cir. 1992).

[20] In re Dorner, 343 F.3d 910,913 (7th Cir. 2003).

[21] See 16 Fed. Prac. & Proc. Juris. § 3922.1 (3d ed.).

[22] See Cheney v. U.S. Dist. Ct. for the Dist. of Columbia, 542 U.S. 367, 380-81 (2004).

[23] Stern v. U.S. Dist. Ct. for Dist. of Mass., 214 F.3d 4, 11 (1st Cir. 2000).

[24] See *Stern v. Supreme Judicial Court for Com. of Mass.*, 16 F.Supp.2d 88, 90 (D. Mass. 1998).

[25] See *Whitehouse v. U.S. Dist. Court*, 53 F.3d 1349 (1st Cir. 1995).