

DHS, ICE Held In Contempt Over Asylum-Seeker Deportations

By **Jared Foretek**

Law360 (August 6, 2026, 10:03 PM EDT) -- A Maryland federal judge held U.S. Immigration and Customs Enforcement in civil contempt for wrongfully deporting more than 50 unaccompanied minors with a blanket court order barring their removal, writing that the subsequent efforts to bring some of the minors back didn't right the initial wrong.

"This court agrees with class counsel that 'a post-violation demonstration of good faith does not undo the violation,'" U.S. District Judge Stephanie A. Gallagher wrote in her opinion Thursday.

The contempt order against DHS, U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services comes more than a year after attorneys for a class of young asylum seekers alerted the court that one of its members had been deported to El Salvador, in violation of a 2024 class action settlement prohibiting ICE from removing any members with pending asylum applications.

Plaintiffs quickly **moved to enforce the deal**, but the new round of litigation **escalated quickly** in January, when multiple days of evidentiary hearings showed that more than 50 confirmed class members and another 50 potential class members had been removed.

In April, the plaintiffs **moved to hold DHS in contempt**, accusing the government of knowingly using flawed systems in place for identifying class members and calling the incident a "colossal failure." According to the plaintiffs, USCIS excluded thousands of class members from the list of those protected by the court order, was slow to make additions and only turned updated lists over to ICE once a month prior to last November. ICE, meanwhile, never properly trained officers on the rules of the agreement, violating court-ordered implementation requirements, the plaintiffs said.

On Thursday, Judge Gallagher agreed, calling out the government for continuing to improperly remove individuals even after learning that noncompliance was more widespread than first believed. Testimony from the ICE official whose team is responsible for putting stay-or-removal alerts into the agency's "ENFORCE Alien Removal Module" — or EARM — confirmed that there was no written policy or procedure for how officers should add notices into the system, the judge said. Even some individuals who had the alerts on their profile had been deported, she said.

"By removing, by defendants' count, more than fifty confirmed class members — sometimes in disregard of notifications in their EARM profiles — pursuant to a final order of removal by adjudicating their asylum applications, defendants have squarely and substantively violated the prohibition (and deprived class members of a core benefit of the settlement agreement)," the judge said.

The government said its voluntary reports of wrongful removals demonstrated its good-faith effort, calling the contempt motion "unfounded" and arguing that it ignored DHS's efforts at facilitating some of the class members' returns. The agency also defended its compliance procedures, arguing that because of the huge number of potential class members, some errors were inevitable.

But Judge Gallagher said Thursday that substantial compliance with a court order isn't measured by success rate. Instead, she said, the test was whether a party takes "all reasonable steps" to ensure compliance.

"The standard does not simply connote some particular acceptable rate of successful compliance that

may be considered 'substantial,'" she said. "[DHS'] processes have proven inadequate to prevent noncompliance, and after becoming aware of this inadequacy, defendants have not taken all reasonable steps to prevent future noncompliance."

In an earlier order, Judge Gallagher ordered that ICE run EARM checks prior to carrying out deportations.

The original class action stemmed from a 2019 USCIS policy change requiring asylum officers to redetermine whether an application still qualified as an unaccompanied minor, potentially stripping individuals of protections they had when they originally filed. The 2024 settlement rescinded the policy and blocked ICE from removing individuals who had previously been designated as unaccompanied children whose asylum applications were still pending when they turned 18.

Representatives for DHS did not immediately respond to Law360's requests for comment Thursday. In a statement, an attorney for the plaintiff class cheered the ruling.

"DHS ignored a judge's direct order, over and over, even after getting caught the first time," Michelle Mendez, legal director at the National Immigration Project, said. "They violated the settlement agreement repeatedly. Their actions have been contemptible and we're glad Judge Gallagher called it exactly that."

The asylum seekers are represented by Brian T. Burgess, Elaine Herrmann Blais and Kevin J. DeJong of Goodwin Procter LLP, Wendy Wylegala of Kids in Need of Defense, Michelle N. Mendez and Rebecca Scholtz of National Immigration Project, Kristen Jackson of Public Counsel, and Mary Tanagho Ross of Bet Tzedek Legal Services.

The government is represented by Brett A. Shumate, Anthony Nicastro, Catherine M. Reno, Ruth Ann Mueller, Jaime A. Scott, Evan P. Schultz, Jeffrey Alderette and Larissa K. Johnson of the U.S. Department of Justice's Civil Division.

The case is J.O.P. et al. v. U.S. Department of Homeland Security et al., case number 8:19-cv-01944, in the U.S. District Court for the District of Maryland.

--Additional reporting by Britain Eakin, Tom Lotshaw, Ali Sullivan. Editing by Linda Voorhis.