UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of others similarly situated,

Petitioners-Plaintiffs,

v.

JUAN BALTASAR, Warden, Aurora ICE Processing Center, in his official capacity,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

PLAINTIFF-PETITIONER'S RESPONSE TO DEFENDANTS' MOTION FOR INDICATIVE RULING TO DISSOLVE THE INJUNCTION ENJOINING TRANSFER OR REMOVAL (ECF 79)

Plaintiff-Petitioner Nestor Esai Mendoza Gutierrez ("Plaintiff"), for himself and the class, files this response to Defendants' Rule 62.1 Motion (ECF 79).

I. Introduction

Defendants' motion does not satisfy the requirements for Rule 62.1 relief and should be denied or deferred. This Court entered a temporary restraining order (ECF 33)

on October 17, 2025 (later incorporated into an injunction, *see* ECF 47, p. 15), that granted individual relief to the Plaintiff and prohibited the removal of putative class members out of the District in aid of its own jurisdiction to consider the issues in this case without Defendants unilaterally changing the status quo and trying to deprive class members of potential future relief by removing them from the District of Colorado. Although Defendants now claim that the Court had no power to enter the transfer prohibition in the October 16 order, Defendants chose not to inform this Court about this alleged flaw for months and ultimately took no action to attempt to dissolve it before this Court. On the last possible day to do so, Defendants filed a notice of appeal instead.

But while this issue was still before this Court, Defendants actually filed *two* separate motions to modify the Court's October 17 order by seeking extremely limited relief from this Court – without ever claiming that there was a more fundamental fatal flaw in this Court's order. ECF 35 & 59. Rather than present their arguments to this Court in the first instance, Defendants instead chose to sit on their hands and file a notice of appeal, and only then ask for an "indicative ruling" that this Court erred. They have not sought a stay from the order (before this Court or the Tenth Circuit), nor sought to expedite the appeal (although they have sought to expedite appeals of the same issue in other Circuits). *See*, *e.g.*, *Buenrostro-Mendez v. Bondi*, No. 25-20496, Doc. 80-2 (5th Cir. Jan. 9, 2026) (granting motion to expedite); *Pizzaro-Reyes v. Raycraft*, No. 25-1982 (6th Cir. Nov. 25, 2025) (same); *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. Dec. 12, 2025)

(same); *Hernandez Alvarez v. Warden, Fed. Detention Center, Miami*, Nos. 25-14065 & 25-14075 (11th Cir. Dec. 11, 2025) (same).[1]

Defendants now – correctly – argue that their appeal to the Tenth Circuit has deprived this Court of jurisdiction over the relief granted in the October 17 order, but nonetheless ask this Court to issue an advisory "indicative" opinion on the very issue that is now pending on appeal. This is a wholly improper use of Rule 62.1, and this Court should deny the motion for three independent reasons.

First, Defendants seek the same relief before this Court – which they deprived of jurisdiction on this issue – as they seek in the Tenth Circuit. As this Court is in no better position to resolve the issues in Defendants' appeal than the Tenth Circuit, Rule 62.1 relief is improper.

Second, Rule 62.1 relief is inappropriate because granting the motion would not advance resolution of the litigation as a whole. Resolving the issues Defendants raise here would not resolve their appeal or even provide the Tenth Circuit with any additional information that would assist in resolving Defendants' appeal. Defendants effectively seek only an improper advisory opinion.

Third, Defendants' Rule 62.1 motion is procedurally defective because Defendants have not tethered it to a separate motion seeking relief from the Court's injunction. The plain text of Rule 62.1 requires a motion under the rule to be accompanied by a separate,

[1] In *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. Nov. 6, 2025), the government did not oppose the plaintiffs' request to expedite the appeal.

independent motion seeking some relief. As Defendants have not filed such an independent motion, their Rule 62.1 motion can be denied on this ground alone.

II. Factual and Procedural History

Defendants illegally imprisoned Plaintiff and hundreds of other people like him without bond in Defendants' immigration detention facility in Aurora, Colorado (Aurora Facility). Plaintiff filed this lawsuit first for himself (ECF 1), then for a class of similarly situated noncitizens (ECF 6). In the amended complaint, for himself Plaintiff sought *habeas corpus* relief, and for the class he requested relief under the Declaratory Judgment Act (28 U.S.C. § 2201), vacatur of Defendants' policies under the Administrative Procedure Act (28 U.S.C. § 1651), and any other appropriate relief under the All Writs Act (28 U.S.C. § 1651). ECF 6, ¶ 16.

While still imprisoned, Plaintiff then filed a motion for a temporary restraining order and/or preliminary injunction to secure his own release. ECF 14.

Plaintiff also contemporaneously moved to certify the class. ECF 15.

On October 17, 2025, this Court granted Plaintiff's request for a temporary restraining order. ECF 33 ("the TRO"). This Court ordered Plaintiff's "immediate" release until he received a bond hearing and entered an order "enjoining [Defendants] from removing [Plaintiff] and the class he proposes to represent from the United States or transferring them from the District of Colorado during the pendency of this action." *Id.* at p. 36.

On October 22, 2025, Defendants filed an emergency motion to "clarify" that the preliminary order did not restrain their ability to transfer noncitizens who had final removal

orders. ECF 34. Plaintiff did not oppose this request, and the Court quickly granted this motion. ECF 35.

On November 21, 2025, as part of the class certification briefing, Defendants filed a "notice" stating the Court should modify the October 17 order "to apply only to the class defined above, and not to" certain other detained noncitizens. ECF 45, p. 2. Also, in this "notice," for the first time, Defendants claimed that the prohibition on removing members of the putative class from the District of Colorado was barred by provisions of the Immigration and Nationality Act (INA) and the Tenth Circuit's decision in *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999). *Id.* at 2-3. Although Defendants submitted this "notice," Defendants took no affirmative action to modify or dissolve the TRO on these alleged grounds.

Then, on December 10, 2025, Defendants filed a second emergency motion to modify the prohibition on transfers, this time to permit the transfer of two class members who allegedly required inpatient psychiatric care that was unavailable at the Aurora Facility. *See* ECF 59, pp. 2-3 & ECF 61. Notably, despite one of these class members having been placed on "Level 1 Suicide Alert" since his detention at the Aurora Facility began in mid-November 2025 (ECF 61, p. 2) and displaying concerning symptoms like "walking around his cell in the nude, throwing food, and drinking water out of the toilet" (*id.* at p. 3), Defendants took no action to provide him with inpatient psychiatric care until December 10, three weeks after his arrival. Likewise, the other class member subject to the second emergency motion had been in custody since late-November 2025, "when he attempted to hang himself to death" while "refus[ing] mental health treatment" and

suffering symptoms like "smearing feces, nonsensical speech, and auditory hallucinations." *Id.* at 4. Defendants took no action on behalf of this class member either until over ten days after his detention began.[2] But, in any case, relief from the transfer prohibition was granted less than 48 hours after Defendants' emergency motion was filed. ECF 65 & 66.[3]

Neither of the two emergency motions alleged that the Court's prohibition on the removal of class members from the Court's jurisdiction was "contrary to statute and Tenth Circuit precedent." *Compare* ECF 34 & 59 *with* ECF 79, p. 2.[4] Defendants only raised that position in their November 21, 2025 "notice" which did not seek to modify or dissolve the prior order.

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[2] Plaintiff notes these circumstances because it is evident that Defendants did not act "quickly" to address class members' "urgent needs." *Contra* ECF 79, p. 6.

Likewise, Defendants' position that detained noncitizens may need to be transferred to other locations "to allow [them] to attend collateral legal proceedings in another location" (*id.* at p. 14) is similarly unavailing as prior to the TRO, ICE was not honoring writs from Colorado courts. B. Markus and A. Sherry, "ICE says it will stop letting detainees go to criminal court in some Colorado counties," COLO. PUB. RADIO, June 27, 2025, permalink: https://perma.cc/3AFA-873E.

[3] Notably, this matter would likely be resolved even more quickly today, as there is now a protective order in place that allows Defendants to meaningfully confer with Plaintiff's counsel regarding any "urgent" medical needs necessitating a transfer. *See* ECF 79, p. 7 & ECF 73.

[4] These two motions also demonstrate it is false that "Defendants did not have an opportunity to respond" to the relief ordered in the Court's October 17 order – in reality, they *twice* filed motions seeking relief from the order but chose not to address the larger issues they now raise while seeking Rule 62.1 relief. *See* ECF 35 & 59. Instead, they only informed the Court about the alleged problems with the relief in the order through their "notice" filed November 21, 2025, but did not affirmatively seek any actual relief.

Meanwhile, this Court certified the class on November 21, 2025. ECF 47. As part of this order, the Court clarified that the relief from the October 17 order only applied to members of the newly-certified class – as Defendants had notified the Court regarding just hours earlier. ECF 47, p. 15. On November 24, 2025, Plaintiff then moved for partial summary judgment on the class's claim for declaratory relief. ECF 49. This motion is now fully briefed and is pending.

On December 15, 2025 – one day before Defendants' deadline to do so – Defendants filed their notice of appeal of the Court's October 17 order and the subsequent modification in the grant of class certification. Defendants have informed the Tenth Circuit that they are appealing the merits of Plaintiff's unlawful detention without bond claim, and whether this Court "lack[ed] jurisdiction to enjoin [Defendants] from transferring class members out of the District of Colorado." No. 25-1460, ECF 11, p. 5 (10th Cir. Dec. 30, 2025). By doing so, Defendants "divest[ed] the district court of its control over those aspects of the case involved in the appeal." *Pueblo of Pojoaque v. State of N.M.*, 221 F.Supp.3d 1289, 1300 (D. N.M. 2016). *See also* ECF 79, p. 2 (Defendants: "the Court does not have jurisdiction to modify or dissolve" the TRO or injunction, due to Defendants' notice of appeal).

To date, Defendants have not sought to expedite the appeal, or to stay the relief this Court ordered in the TRO or the later modification thereof (either in this Court, or before the Tenth Circuit).[5] Defendants' deadline to file their opening appellate brief is February 9, 2026.

[5] It is a misrepresentation to say that Plaintiff has now "requested" the Court modify the

III. Legal Argument and Authorities

A. Legal Framework for Rule 62.1 Relief

Federal Rule of Civil Procedure 62.1 states "if a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: 1) defer considering the motion; 2) deny the motion; or 3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." "A district court's decision to make an indicative ruling is discretionary." *Silbersher v. Allergan, Inc.*, 18-cv-3018, 2024 WL 2044626, at *4 (N.D. Cal. May 7, 2024) (citing *Rabang v. Kelly*, C17-88, 2018 WL 1737944, at *2 (W.D. Wash. Apr. 11, 2018)).

Rule 62.1 relief is not appropriate when either of two factors exist. *See Silbersher*, 2024 WL 2044626, at *7.

First, when "the issues on which indicative rulings were sought [are] not ones where the district court would be in any better position than the court of appeals to decide," *id.*, Rule 62.1 motions are inappropriate. This is precisely the case here. This is in distinction from "the prototypical situation in which indicative rulings have been issued, namely, where new evidence has been discovered while an appeal is pending." *Id.*

Second, when "an indicative ruling would not ... result in judicial efficiency or obviate the need for an appeal," *id.*, they are also inappropriate. And this is also true here.

TRO. ECF 79, p. 5. Plaintiff has never requested any modification to the TRO. Rather, Plaintiff noted in his motion for summary judgment that different final relief – merely notifying class counsel of intended transfers of class members outside of the district – would afford sufficient relief. ECF 49, p. 20.

Notably, Defendants' motion does not engage with these factors in any meaningful way or discuss why this Court should issue a Rule 62.1 ruling – other than they disagree with the relief the Court ordered, while simultaneously appealing that order.

B. The Court Should Deny or Defer Rule 62.1 Relief

1. Rule 62.1 relief is inappropriate as Defendants seek the same relief here and in the Tenth Circuit

When issues underlying the Rule 62.1 motion "have been squarely presented to the [court of appeals] in the pending appeal" – as Defendants have here (*see* No. 25-1460, ECF 11, p. 5, (10th Cir. 12/30/25)) – "it is improper to issue an indicative ruling." *Silbersher*, 2024 WL 2044626, at *4.

> [T]here is little indication the drafters of [Rule 62.1] intended it to be used … to ask a district court to issue an indicative ruling reconsidering the same question being reviewed by the court of appeals. In effect, [appellants] are requesting this [District] Court to inform the [court of appeals] it believes its own opinion should be reversed. Indicative rulings allow for the timely resolution of motions which may further the appeal or obviate its necessity. For example, a meritorious Rule 60(b) motion to vacate a judgment because of newly discovered evidence makes an appeal of that judgment unnecessary. But an indicative ruling on the very issue on appeal only interrupts the appellate process.

Retirement Bd. of Policeman's Annuity & Ben. Fund of City of Chicago v. Bank of N.Y. Melton, 297 F.R.D. 218, 221 (S.D.N.Y. 2013) (deferring ruling on Rule 62.1 motion) ("*Retirement Bd.*"). Simply, "[t]he [court of appeals] needs no assistance from [the district court] in deciding the … issues [appellant] raises in the [m]otion…" *Silbersher*, 2024 WL 2044626, at *8.

Here, the Tenth Circuit does not need this Court's assistance in "deciphering the meaning of its own decision," *Retirement Bd.*, 297 F.R.D. at 222, in *Van Dinh v. Reno*,

197 F.3d 427 (10th Cir. 1999) or of 8 U.S.C. § 1252(f)(1), or § 1252(b)(2)(A)(ii), or § 1252(g). "Placing a district court in a position where it must predict the outcome of an appeal of its own decision" – as Defendants do here – makes Rule 62.1 relief "inappropriate." *Retirement Bd.*, 297 F.R.D. at 222.

2. An Indicative Ruling from this Court would not expedite resolution of the litigation

Rule 62.1 relief is only appropriate when the district court, by resolving an issue the court of appeals cannot, actually advances the end of the litigation. Typical situations where Rule 62.1 relief is warranted are cases where the law or the facts have changed between when a district court enters an order and when the appeal is resolved. Neither situation exists here.

First, "[t]his is not a case where, while an appeal is pending, an intervening change in the law called the district court ruling into question, perhaps making an indicative ruling the most expeditious court of action." *Retirement Bd.*, 297 F.R.D. at 222. There is no "intervening" change in the law here – Defendants rely on a case (*Van Dinh*) decided over a quarter century ago. Thus, Defendants seek an inappropriate advisory opinion, not proper Rule 62.1 relief. *See, e.g.*, *Columbian Fin. Corp. v. BancInsure, Inc.*, 650 F.3d 1372, 1376 (10th Cir. 2011) ("Article III has long been interpreted as forbidding federal courts from rendering advisory opinions" even though "an advisory opinion may sometimes be valuable").

Second, Rule 62.1 relief is not warranted because "[t]his is not a case involving newly discovered evidence or some inadvertence or mistake at the district court level, of which the appellate court would presumably be unaware." *Medgraph, Inc. v. Medtronic,*

Inc., 310 F.R.D. 208, 211 (W.D.N.Y. 2015) (denying Rule 62.1 motion). For example, in *Amerin Pharmaceuticals Ireland, Limited v. Food and Drug Administration*, 139 F.Supp.3d 437 (D. D.C. 2015) the district court granted a Rule 62.1 motion to inform the court of appeals that it would allow non-parties to intervene and thus avoid mooting the pending appeal. But no such compelling reason that advances the litigation exists here. "The Court of Appeals does not need this Court's advice or opinion" on whether this Court could have ordered the relief in the October 17 order or the subsequent modification thereof. *Medgraph, Inc.*, 310 F.R.D. at 211.

If the Court were to grant Defendants' Rule 62.1 motion – which it should not – it would not advance the conclusion of this litigation in any way. An indicative ruling from this Court would not speed the resolution of Defendants' appeal, or in any way provide the Tenth Circuit with additional helpful information. It would not even modify or dissolve the relief the Court granted because, as Defendants note (ECF 79, p. 2), this Court no longer has jurisdiction over that issue due to Defendants' appeal.

3. Defendants have not filed an independent motion for relief from the injunction

Finally, Defendants' motion is procedurally defective because it is not accompanied by a separate motion seeking relief from the October 17 order or the subsequent modification thereof.[6] "Under the Rule's plain text, 'a timely motion' that the Court lacks the jurisdiction to entertain must be made before the court can indicate how it would rule on such a motion. This makes sense: courts cannot indicate how they would

[6] This Court's local rules require that "A motion shall be filed as a separate document." D.C.Colo. LCivR 7.1(d).

rule on motions that have not been made." *Singleton v. Cannizzaro*, 397 F.Supp.3d 840, 845 (E.D. La. 2019). A Rule 62.1 motion is intended to be tethered to a separate motion identifying the relief sought – such as a Rule 60 motion for relief from judgment, or a Rule 15 motion to amend a pleading, or a Rule 24 motion to intervene – that would materially advance the resolution of the litigation. *See Medgraph, Inc.*, 310 F.R.D. at 210 (denying Rule 62.1 motion). For example, in *Singleton*, after the defendants filed an interlocutory appeal of the denial of a motion to dismiss on qualified immunity grounds, the plaintiffs sought to amend their complaint to dismiss their claims for damages. This amendment would have mooted the appeal and thus sped up resolution of the case, making Rule 62.1 relief appropriate. But the district court nonetheless denied the request for an indicative ruling "on a motion that has not been made" because the plaintiffs had not also actually contemporaneously moved to amend. *Singleton*, 397 F.Supp.3d at 845-46. *See also Medgraph, Inc.*, 310 F.R.D. at 210 ("Absent an underlying, predicate motion, there is no basis for relief under Rule 62.1"); *Fischer S.A. Comercio, Industria & Agricultura v. U.S.*, 36 C.I.T. 371, 2012 WL 726637 (2012).

Here, Defendants cannot seek Rule 62.1 relief "on a motion that has not been made" – namely a motion to modify the October 17 order in this case. *Singleton*, 397 F.Supp.3d at 845. Rule 62.1's text "clearly requires a predicate motion to have been filed – the Rule would not otherwise make sense." *Id.*

This Court should be "disinclined to extricate [appellants] from a procedural posture of [their] own making absent extraordinary circumstances." *Daulatzai v. Maryland*, 340 F.R.D. 99, 106 (D. Md. 2021). "If [appellants] wanted to argue to [the district court]

that [its] decision was erroneous ... they could have done so ... between that decision and their appeal." *Retirement Bd.*, 297 F.R.D. at 222. Defendants had 60 days to file a motion to extricate themselves from what they now claim is an injunction this Court lacked the power to enter. And they did so *twice*, but only seeking extremely limited relief, and never claiming that there was a more fundamental flaw in this Court's order. ECF 35 & 59. Rather than present their arguments to this Court in the first instance – or at least while this Court still had jurisdiction over its own orders – Defendants chose to appeal, deprive this Court of jurisdiction over the modified October 17 order (while not expediting the appeal or seeking a stay from the order's relief), and only then seek "relief" before this Court through their improper Rule 62.1 motion (which cannot actually modify or dissolve the litigation because Defendants deprived this Court of the jurisdiction to do so). Courts should not "allow [appellants] to wield their interlocutory appeal as both a sword and a shield, using it for whatever litigation position is most expedient." *Rabang*, 2018 WL 1737944, *3 (denying Rule 62.1 motion).

IV. Conclusion

For the reasons identified above, the Court should deny Defendants' motion for an indicative ruling.

Date: January 19, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2026, I electronically filed the foregoing **PLAINTIFF-PETITIONER'S RESPONSE TO DEFENDANTS' MOTION FOR INDICATIVE RULING TO DISSOLVE THE INJUNCTION ENJOINING TRANSFER OR REMOVAL** with the Clerk of the Court using the CM/ECF system, and that in accordance with Fed. R. Civ. P. 5, all counsel of record shall be served electronically through such filing.

s/ Scott Medlock
Counsel for Plaintiff-Petitioner and the Plaintiff Class