IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02720-RMR

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

Petitioner-Plaintiff,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, 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;
DAREN K. MARGOLIN, Director for Executive Office of Immigration Review, in his official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR AN INDICATIVE RULING UNDER RULE 62.1 TO DISSOLVE THE INJUNCTION ENJOINING TRANSFER OR REMOVAL, ECF No. 79

Respondents-Defendants ("Defendants") reply to Petitioner-Plaintiff's ("Plaintiff's") response, ECF No. 85, to the Motion for an Indicative Ruling Under Rule 62.1 to Dissolve the Injunction Enjoining Transfer or Removal, ECF No. 79 ("Motion for an Indicative Ruling"). As explained in the Motion for an Indicative Ruling, the Immigration and Nationality Act ("INA") and binding Tenth Circuit precedent make clear that the Court's order restraining transfer or removal of class members is improper. Notably, Plaintiff does not make any arguments to the contrary regarding the merits of Defendants' request to dissolve the injunction. Rather, Plaintiff argues that the Court should deny or defer considering the Motion for an Indicative Ruling because the relief Defendants now seek is the same relief sought through the appeal currently pending before the Tenth Circuit, granting the motion would not advance the litigation, and because, according to Plaintiff, the motion is procedurally improper. These arguments are not persuasive and are not grounds on which to deny or defer the motion. Rather, the Court should indicate that it would grant the Motion for an Indicative Ruling.

I. Plaintiff does not contest that the Court's order runs afoul of the INA and Tenth Circuit precedent.

Defendants explained in the Motion for an Indicative Ruling that 8 U.S.C. §§ 1252(f)(1) and 1252(a)(2)(B)(ii) both bar the class-wide injunctive relief that the Court granted in the order on the Motion for a Temporary Restraining Order ("TRO"), ECF No. 33 at 36, as modified in the order granting the Motion for Class Certification, ECF No. 47 at 15. ECF No. 79 at 10-13. Specifically, Defendants explained that § 1252(f)(1) deprives district courts of authority to enjoin the operation of 8 U.S.C. § 1231(g) on a class-wide basis. Section 1252(f)(1) provides that "no court (other than the Supreme

Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter [relevant here, § 1231] . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." Section 1231(g), in turn, provides that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). Defendants also explained that § 1252(a)(2)(B)(ii) strips district courts of jurisdiction to review discretionary decisions made by the Attorney General, such as the decision under § 1231(g) about where to house detainees. Defendants directed the Court to *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999), in which the Tenth Circuit held that district courts could not issue class-wide relief barring transfer of detainees based on the INA. ECF No. 79 at 12.

In his response, Plaintiff does not address the merits of these points. Instead, he argues that the Motion for an Indicative Ruling should fail for other reasons. In other words, if the Court is convinced that it *can* issue an indicative ruling as requested by Defendants here it *should* because Plaintiff has presented no argument against Defendants' substantive position on the Court's order prohibiting transfer or removal of class members.

II. Plaintiff's arguments against the Motion for an Indicative Ruling fail.

Rather than engaging with the merits, Plaintiff takes several factors from an unpublished, out-of-circuit district court order and faults Defendants for not analyzing those factors. ECF No. 85 at 8 (citing *Silbersher v. Allergan, Inc.*, 18-cv-3018, 2024 WL

2044626 (N.D. Cal. May 7, 2024)). Specifically, Plaintiff argues that courts considering a motion for an indicative ruling must consider (1) whether "the district court would be in any better position of the court of appeals" to decide the issue, and (2) whether an indicative ruling would "result in judicial efficiency or obviate the need for an appeal." *Id.* (quoting *Silbersher*, 2024 WL 2044626, at *7).

As a threshold matter, neither Rule 62.1 nor any Tenth Circuit precedent require the Court to consider these factors. The text of Rule 62.1(a) is clear: "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." Fed. R. Civ. P. 62.1(a). The Rule does not impose consideration of any other factors when determining whether to grant such a motion.

Regardless, to the extent the Court believes such factors would be helpful in determining whether to indicate it would grant the requested relief here, those factors, as explained below, weigh in favor of granting the Motion for an Indicative Ruling.

a. The Court is well-positioned to consider the relief sought.

Plaintiff argues that because this issue—whether the Court's order prohibiting transfer or removal or class members—is the same one pending before the Tenth Circuit, it is not appropriate for the Court to weigh in at this stage. ECF No. 85 at 9-10. But it is entirely appropriate for the Court to consider this issue.

This Court has already been apprised of the problems that the transfer prohibition can cause. *See* ECF Nos. 59–66 (filings related to need to transfer class members so they could receive appropriate medical care). And the Court has before it information that the Tenth Circuit does not on the appeal—namely the Motion for an Indicative Ruling and the attached declaration of Supervisory Detention and Deportation Officer Alexander Hall. ECF No. 79. In that Declaration, Mr. Hall describes the harm that could be caused (to both Respondents and detainees) if the Court does not dissolve the injunction. *See generally* ECF No. 79-1 (Movant's App'x, Decl. of A. Hall). In light of *Van Dinh*'s prohibition on class-wide injunctions in circumstances such as this one, particularly when viewed alongside the potential harms to Respondents and noncitizen detainees that could result from leaving the injunction barring removal or transfer of class members in place, this Court has an adequate basis to determine that it would dissolve this aspect of its preliminary injunction.

Plaintiff also argues that the fact that Defendants did not move to dissolve the injunction before filing a notice of appeal weighs against granting the Motion for an Indicative Ruling here. ECF No. 85 at 2. Contrary to Plaintiff's characterization, Respondents have not "s[a]t on their hands" regarding this issue. *Id.* On November 21, 2025, Defendants expressly alerted the Court to the issue *before* the Court granted class certification. ECF No. 45 at 2-3 (citing *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999)). In its subsequent order granting class certification, the Court moved forward with enjoining Respondents from removing class members from the United States or transferring them from the District of Colorado during the pendency of the

action. ECF No. 47 at 15. In doing so, the Court did not address Respondents' arguments that such relief was improper. *Id.*

Shortly thereafter, Respondents brought an emergency motion before the Court seeking modification of the order on the Class Certification Motion to allow for the transfer of two individuals who needed specialized care. ECF No. 59. Respondents then filed Notice of Appeal of the order granting the Motion for a TRO and the order granting the Class Certification Order. ECF No. 68. Finally, ten days after the Court granted the emergency motion as to the two class members, Respondents filed the Motion for an Indicative Ruling, the need for which became particularly acute in light of the previous emergency order. ECF No. 79. In short, Respondents did not improperly delay seeking to dissolve the transfer restriction.

b. Indicating the Court would dissolve the injunction will streamline the appeal.

Plaintiff also argues that if the Court were to grant the Motion for an Indicative Ruling, this would not advance the conclusion of the litigation in any way. Specifically, he argues that Defendants seek an "inappropriate advisory opinion, not proper Rule 62.1 relief." ECF No. 85 at 10.

Plaintiff's arguments are misplaced. As an initial matter, Plaintiff is wrong that an indicative ruling from the Court would constitute an inappropriate advisory opinion. Rule 62.1 exists so that a court can indicate to the court of appeals whether it would grant the motion *if* the court of appeals made a limited remand to the district court to rule on the motion. To the extent that a district court's indication that it would grant the motion is "advisory"—i.e., that the district court cannot grant the relief unless and until the court of

appeals remands to the district court—all indications that a district court would grant the motion are advisory. Yet, the Federal Rules of Civil Procedure expressly sanctions such indications.

Also, if the Court were to indicate that it would grant Defendants' motion to dissolve the preliminary injunction, such a ruling would likely advance the appeal in this matter. As other courts have explained, Rule 62.1(a) exists to "promote judicial efficiency and fairness"—for example, where an indicative ruling would obviate the need for the appeal. *See Amarin Pharms. Ireland Ltd. v. Food & Drug Admin.*, 139 F. Supp. 3d 437, 447 (D.D.C. 2015). An indicative ruling would obviate an aspect of the appeal here. The Tenth Circuit would not need to consider the propriety of the Court's class-wide injunction barring removal or transfer of class members, thereby promoting efficiency. An indication from the Court that it would grant the Motion for an Indicative Ruling would likely streamline the appeal, obviating the need for the Tenth Circuit to consider an issue that would already be resolved.

It is true that some courts have suggested that Rule 62.1 did not appear to be intended to be used "to ask a district court to issue an indicative ruling reconsidering the same question being reviewed by the court of appeals." *Retirement Bd. of Policemen's Annuity and Ben. Fund of City of Chicago v. Bank of N.Y.*, 297 F.R.D. 218, 221 (S.D.N.Y. 2013). But that rationale does not apply with any force here given that the Court ordered the at-issue injunctive relief without a full opportunity for Defendants to brief the propriety of the Court's order. The Court now has before it argument and record demonstrating why the relief it granted as part of the order on the Motion for a

TRO, and then modified in its order on the Motion for Class Certification, was not proper. The Court would simply be weighing in on the propriety of the class-wide injunctive relief with the benefit of briefing for the first time.

c. The Motion for an Indicative Ruling is not procedurally defective.

Finally, Plaintiff argues that the Court should deny the Motion for an Indicative Ruling because it is procedurally defective. ECF No. 85 at 11. Specifically, he argues that the motion to dissolve the injunction needed to be filed as a separate motion from the Motion for an Indicative Ruling. *Id.* at 11-12.

There is no requirement in Rule 62.1 that the motion for an indicative ruling and the underlying motion on which the movant seeks relief would need to be filed separately. Rule 62.1 states that "[i]f 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" defer considering the motion, deny the motion, state it would grant the motion if remanded to it, or state that the motion raises a substantial issue. Fed. R. Civ. P. 62.1(a). To be sure, "some district courts appear to have adopted the position that there must be a separate, predicate motion for relief." *Halderman v. Herring Networks, Inc.*, 783 F. Supp. 3d 1042, 1047 (E.D. Mich. 2025). But the majority of courts do not impose such a formalistic requirement. *Id.* (collecting cases). Instead, the majority approach is to "accept[ ] a freestanding Rule 62.1(a) motion if the moving party sufficiently states the merits of its substantive arguments in the brief." *Id.* (citation modified); *see also Index Newspapers LLC v. City of Portland*, 3:20-cv-1035-SI, 2022 WL 72124, at *2 (D. Or. Jan. 7, 2022) (collecting cases). Such an approach "avoids

unreasonably elevating form over substance and is consistent with the maxim that the Rules of Civil Procedure are to be interpreted to 'secure the just, speedy, and inexpensive determination of every action and proceeding.'" *Halderman*, 783 F. Supp. 3d at 1047-48 (quoting Fed. R. Civ. P. 1)). There is no procedural reason the Court cannot move forward with ruling on the Motion for an Indicative Ruling.

CONCLUSION

The Court should grant Defendants' Motion for an Indicative Ruling. As to the merits of Defendants' request to dissolve the injunction prohibiting transfer or removal of class members, Plaintiff does not contest Defendants' position that the INA and *Van Dinh* bar such an order. In addition, an indicative ruling is appropriate here given that it could streamline the pending appeal.

Dated: February 2, 2026

PETER MCNEILLY
United States Attorney

s/ Benjamin Gibson
Benjamin Gibson
Brad Leneis
Timothy Bart Jafek
Assistant United States Attorneys
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
benjamin.gibson@usdoj.gov
brad.leneis2@usdoj.gov
timothy.jafek@usdoj.gov

Attorneys for Respondents-Defendants Executive Office of Immigration Review, U.S Department of Homeland Security, Aurora Immigration Court, and U.S. Immigration and Customs Enforcement,

and Juan Baltasar, Robert Hagan, Kristi Noem, Todd Lyons, Pamela Bondi, and Sirce Owen in their official capacities

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Benjamin Gibson
Benjamin Gibson
U.S. Attorney's Office