IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-3307-RMR

HUMBERTO ROMEU PEREZ,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

PETITIONER'S CONSOLIDATED REPLY

Petitioner Humberto Romeu Perez is a Cuban national who was released on an Order of Supervision ("OSUP") in 2019. Since then, he has dutifully complied with its requirements. Nevertheless, on June 21, 2025, five masked ICE officers arrested him at his home with no immediate plan for his removal. It did so without providing him with notice that his OSUP had been revoked, no explanation for the revocation, and no opportunity to challenge the grounds for the revocation as Respondents' own regulations require. Instead, over the past six months ICE has shipped Mr. Romeu to various detention centers across the country hoping to find a way to remove him from the United States, specifically to Mexico. While ICE has broad authority to redetain noncitizens released on an OSUP and to remove them from the United States, it must do so in compliance with their own regulations and due process. As ICE has failed to do so in Mr. Romeu's case, this Court should, consistent with the majority view, grant his petition and order him released from detention under the terms of his improperly revoked OSUP.

ARGUMENT

I. This Court Has Habeas Jurisdiction to Hear His Due Process Claim.

A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241. Mr. Romeu brings this Petition for Writ of Habeas Corpus to challenge his continued detention while ICE seeks to remove him to a third country in violation of his due process right to a third country without a meaningful opportunity to challenge that removal. And indeed, multiple district courts have held that noncitizens may raise such claims through a habeas petition and have ordered release where ICE's attempts at third country removal have not complied with due process. *See, e.g.*, *Perez v. Bondi*, No. 2:25-CV-02390-CDS-BNW, 2026 WL 84492, at *2 (D. Nev. Jan. 12, 2026) (granting habeas relief and ordering petitioner's release after ICE made multiple attempts to remove to a third country without a meaningful opportunity to challenge the removal); *Rios v. Noem*, No. 25-CV-2866-JES-VET, 2025 WL 3141207, at *4 (S.D. Cal. Nov. 10, 2025); *Nguyen v. Bondi*, No. 2:25-CV-02024-TL, 2025 WL 3534168, at *10 (W.D. Wash. Dec. 10, 2025).

Yet, even if the Court finds it lacks jurisdiction to grant ultimate habeas relief on Mr. Romeu's due process claim, it retains the authority to temporarily enjoin his removal to retain jurisdiction to rule on the other claims in his petition. *See Busto v. Lyons*, No. 25-CV-03143-TPO, 2025 WL 3520347, at *3 (D. Colo. Dec. 9, 2025) (listing cases).

II. The Class Action in *D.V.D.* Does Not Bar Mr. Romeu's Claim

Mr. Romeu's membership in the class certified in *D.V.D. v. Dep't of Homeland Security*, does not bar his claim here. 778 F. Supp. 3d 355 (D. Mass. 2025). Respondents argue that his request for notice and a meaningful opportunity to be heard prior to removal

to a third country "is encompassed within the claims already presented in [*D.V.D.*]." Resp. 10. Yet, the relief Mr. Romeu seeks here—release from detention—is fundamentally different from the injunctive relief sought by the certified class in *D.V.D.* Further, while the Supreme Court stayed the preliminary injunction in that case without explanation, *see Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025), the dissent clarifies that the stay was likely based on dissatisfaction with the case's posture as a class action rather than the merits. *See D.V.D.*, 145 S. Ct. at 2160 (2025) (Sotomayor, J., dissenting) (highlighting Government's argument that § 1252(f)(1) bars classwide relief); *see also Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022) (Kavanaugh, J., concurring) (observing that a "stay order is not a decision on the merits, but instead simply stays the District Court's injunction *pending a ruling on the merits*.") (emphasis in original).

Section 1252(f)(1) bars district courts from "enjoin[ing] or restrain[ing] the operation of [8 U.S.C. §§ 1221-1231] . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." Thus, as even the *D.V.D.* dissent acknowledged, 8 U.S.C. § 1252(f)(1) may bar Mr. Romeu from obtaining the injunctive relief he seeks through a class action. *D.V.D.*, 145 S. Ct. at 2160. Further, even if the court in *D.V.D.* were to order *declaratory* relief on a classwide basis, Respondents have serially refused to abide by the declaratory judgment entered in favor of another certified, nationwide class in *Bautista v. Santacruz*, No. 5:25-cv-1873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). *See*, *e.g.*, *Singh v. Bowen*, 2026 WL 130587, at *2-3 (C.D. Cal. Jan. 15, 2025) (noting Government's continued denial of bond hearings to members of the certified Bond Eligible Class in *Bautista*, notwithstanding that Court's final declaratory judgment that class members were entitled to bond); *see*

also Resp. to Order to Show Cause, *Diaz Lopez v. Noem*, No. 1:25-cv-4089, at 18-19 (D. Colo. Dec. 30, 2025) (arguing that Government is not bound by declaratory judgment entered in favor of nationwide class certified in *Bautista*). Thus, an individual action likely represents the only avenue for Mr. Romeu to obtain the relief he seeks, and the Court should hear his claim.

III. Mr. Romeu Has Been Denied a Meaningful Opportunity to Be Heard.

While Mr. Romeu has received notice of ICE's intent to remove him to Mexico, he has been denied a meaningful opportunity to seek protection based on his well-founded fear of removal to that country as due process demands. *See* Tr. of Oral Argument at 33, *Bondi v. Riley*, No. 23-1270 (S. Ct. Mar. 24, 2025) (Assistant to the Solicitor General: "We would have to give the person notice of the third country *and give them the opportunity to raise a reasonable fear of torture or persecution in that third country*.") (emphasis added). For the past six months, Mr. Romeu has repeatedly told ICE officers that he fears removal to Mexico. Only after five months of detention, numerous transfers, and the entry of a Temporary Restraining Order (TRO) did ICE even acknowledge his stated fear of removal to Mexico. On January 2, 2026, Mr. Romeu was taken for a "screening interview" alone, despite repeated requests to have ICE call his counsel to join. Resp. 11. Further, Mr. Romeu informed undersigned counsel that the notice documenting the decision was dated January 1, 2026—one day prior to his interview. Thus, it seems clear that the results of the screening interview were preordained, and Mr. Romeu had no real opportunity to present his fear claim. Due process guarantees Mr. Romeu a meaningful opportunity to challenge his removal, not an interview the Government provides for show to validate a decision that it already made.

IV. Release is the Appropriate Remedy for ICE's Unlawful Revocation of Mr. Romeu's OSUP.

This Court should grant the habeas petition because Respondents' failure to comply with required regulations when it redetained Mr. Romeu in June 2025 violated his due process rights. The government "must adhere to its own rules and regulations when an individual's due process interests are implicated." *Barrie v. FAA*, 16 F. App'x 930, 934 (10th Cir. 2001) (discussing *United States ex. Rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)); *Accardi*, 347 U.S. at 267-68 (concluding that an agency action in violation of its own regulations and procedures offends due process).

Under 8 C.F.R. § 241.4(l), the Department of Homeland Security ("DHS") may revoke a noncitizen's release from custody on an OSUP only when, "in the opinion of the revoking official": (i) the purposes of the prior release from custody "have been served;" (ii) the noncitizen violates any condition of release; (iii) "[i]t is appropriate to enforce a removal order or to commence removal proceedings"; or (iv) "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i)-(iv). Upon revocation, DHS must notify the noncitizen "of the reasons for revocation of his or her release or parole. The [noncitizen] will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1).

Only certain ICE officials may revoke an OSUP: "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody a [noncitizen] previously approved for release," and "[a] district director may also revoke release of a [noncitizen] when, in the district director's opinion,

revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2). Additionally, if the noncitizen is not released after the informal interview, the Headquarters Post-Order Detention Unit Director is required to schedule a review process. 8 C.F.R. § 241.4(l)(3). That review process includes an additional custody interview—expected to be held within three months of the revocation—during which a final evaluation takes place and a final determination is subsequently made as to whether revocation and further denial of release are warranted. *Id.*

Critically, Respondents have ignored these procedural requirements. First, Respondents have not provided the requisite explanation for the reason for the re-detention beyond a conclusory assertion in a declaration submitted for purposes of this litigation that the OSUP was revoked to "execut[e] the final order of removal." *See* Lascano Decl. ¶ 14, ECF No. 31-1. Yet Officer Lascano does not identify who made the determination, leaving the Court with no way to know if the revoking official had the requisite authority to do so under 8 C.F.R. § 241.4(l)(2). *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 159-62 (W.D.N.Y. 2025) (holding that revocation of order of supervision must be approved by an ICE Executive Associate Director). And while Officer Lascano attaches two Notices of Removal to his declaration, conspicuously absent is a Notice of Revocation of Release, signed by an official with the requisite authority. *See*, *e.g.*, *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *2 (S.D. Fla. Aug. 8, 2025) (upon detention of noncitizen whose supervision was revoked because travel documents were obtained to effectuate removal, petitioner received a Notice of Revocation of Release that stated the reasons for revocation and that petitioner would "promptly be afforded an

informal interview"). Indeed, a notice setting forth the basis for the revocation of release is required by the regulations, as is "an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(l)(1). There is no evidence that any of these mandatory procedures were followed in Mr. Romeu's case. *see* Resp. 15 (acknowledging that Petitioner has "not been provided an interview to respond to the revocation of the OSUP"). And ICE's failure to follow its own regulations in revoking Mr. Romeu's OSUP deprived him of the process he was due when he was redetained. *See Sanchez v. Bondi*, 2025 WL 3484756, at *1 (D. Colo. Dec. 4, 2025); *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 226 (D. Mass. 2025).

Respondents answer that their violation of the regulations does not "warrant immediate release," Resp. 13, and that Mr. Romeu "has not shown prejudice from any violation," Resp. 15. Respondents' first argument runs counter to the majority view, which holds that habeas relief is available when ICE redetains a noncitizen in violation of its own regulations. *See Pham v. Bondi*, No. CIV-25-1157-SLP, 2025 WL 3243870, at *1 (W.D. Okla. Nov. 20, 2025) (listing cases); *see also Guerra v. Bondi*, No. CIV-25-1240-G, 2026 WL 114258, at *7 (W.D. Okla. Jan. 15, 2026) ("This Court, in agreement with the majority view, has 'found that such regulatory defects amount to due process violations that entitle a petitioner to habeas relief.'") (quoting *Hamidi v. Bondi*, No. CIV-25-1205-G, 2025 WL 3452454, at *3-4 (W.D. Okla. Dec. 1, 2025)).

Further, ICE's failure to follow its own regulations clearly prejudiced Mr. Romeu as he was unlawfully redetained and has remained detained for over six months without the procedural protections the regulations and due process guarantee him. *See K.E.O. v.*

Woosley, 2025 WL 2553394, *7 (W.D. Ky. Sept. 4, 2025) (concluding that "a three plus month gap is not 'upon revocation' as required"). If the government lacked the authority to detain Mr. Rivero without following the proper process, then "the Government lacks the authority to continue to detain him[.]" *Clark v. Martinez*, 543 U.S. 371, 376 n.3 (2005); *Liu v. Carter*, 2025 WL 1696526, at *2–3 (D. Kan. June 17, 2025) (reversing revocation of release when ICE failed to comply with the regulations). Accordingly, numerous courts have granted outright release when ICE fails to properly revoke an OSUP in compliance with their own regulations. *See, e.g.*, *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 165 (W.D.N.Y. 2025); *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 384 (D. Mass. 2017). And as one district court observed, Respondents' suggestion that the initial and ongoing procedural violations Mr. Romeu has suffered have not prejudiced him is "downright frightening." *Ceesay*, 781 F. Supp. 3d at 157.

> Procedure is not mere puffery, a gesture that is irrelevant so long as the result is correct. The Constitution safeguards not just substantive rights under the law but *due* process as well. That process is at the core of what our Constitution guarantees.

Id. (emphasis in original).

V. The Court Should Continue to Enjoin Mr. Romeu's Removal Pending a Decision on the Merits.

The Court should continue to enjoin Mr. Romeu's removal pending a final decision on his habeas petition. For the reasons explained above, Mr. Romeu is likely to succeed on the merits of his claims. Further, his removal to Mexico where he has a well-founded fear of persecution without a *meaningful* opportunity to raise a fear-based claim under 8

U.S.C. § 1231(b)(3) would cause irreparable injury as it would not only violate his right to due process but would moot the claims raised in his habeas petition. Finally, the balance of the equities and the public interest weigh in favor of a preliminary injunction. Removing Mr. Romeu in violation of his constitutional rights does not serve the public interest. *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."). Further, Respondents will not be adversely affected by a brief stay of removal pending a decision in this matter.

CONCLUSION

For the foregoing reasons, the Court should continue to enjoin Mr. Romeu's removal pending a final decision on his habeas petition, grant the petition, and order his release on the Order of Supervision that was improperly revoked by ICE.

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Respectfully submitted,

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