

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03307-RMR

HUMBERTO ROMEU-PEREZ,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
ROBERT HAGAN, Field Office Director, U.S. Immigration and Customs Enforcement,
and
JUAN BALTAZAR, Warden, Aurora Detention Center,
in their official capacities,

Respondents.

**RESPONDENTS' MOTION FOR LEAVE TO FILE SURREPLY
TO PETITIONER'S CONSOLIDATED REPLY (ECF No. 32) TO RESPONDENTS'
CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 31)**

Respondents move for leave to file a surreply to respond Petitioner's Consolidated Reply to Respondents' Consolidated Response to the Court's Order to Show Cause.¹ The Reply includes new factual allegations and arguments. There is good cause to grant Respondents leave to file the proposed surreply, as discussed below.

¹ Pursuant to D.C.COLO.LCivR 7.1(a), undersigned counsel conferred with Petitioner, through counsel, regarding this motion. Petitioner opposes Respondents filing a surreply because he believes that the documents related to the January 2, 2026 fear screening interview and OSUP revocation were available to Respondents to include when they filed their consolidated response, ECF No. 31, on January 6, 2026.

When a party puts forth a new argument or new materials in a reply brief, a court may either: (1) choose not to rely on the new argument or new evidence in determining the outcome of the motion; or (2) permit the nonmoving party to file a surreply. *Pippin v. Burlington Res. Oil & Gas Co.*, 440 F.3d 1186, 1192 (10th Cir. 2006) (citing *Beaird v. Seagate Tech.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998)); see also *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (“Generally, the nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant’s reply”).

Here, good cause exists because Petitioner asserts four new arguments in his Reply that were not previously raised. *First*, since the Amended Petition was filed, Petitioner has received a screening interview for his fear-based claim concerning his removal to Mexico, but he alleges he was denied counsel during that interview. See *id.* *Second*, he contends the outcome of that interview was “preordained” because the decision document is dated January 1, 2026, but the interview occurred on January 2, 2026. *Id.* *Third*, he argues that any revocation of his OSUP violates due process under the Fifth Amendment because Respondents have failed to identify which revoking official made that decision and failed to provide a Notice of Revocation as evidence in this action. See *id.* at 5-7. *Fourth*, Petitioner stated in the Amended Petition that he sought “an order barring his removal to any third country” without sufficient process as the remedy for purported third-country-removal procedural violations, ECF No. 22 at 12—relief similar to that at issue in the certified class action in *D.V.D. v. DHS*, 778 F. Supp. 3d

255 (D. Mass. 2025). In the Reply, however, Petitioner argues that he is seeking a *different* remedy for those alleged violations: “release from detention.” ECF No. 32 at 3.

Accordingly, Respondents seek leave to file a surreply addressing the new arguments. In the alternative, Respondents ask that the Court not consider the Reply’s new arguments in deciding the outcome here, in which case this motion should be denied as moot.

For the reasons set forth above, Respondents respectfully request that the Court grant them leave to file a surreply, and accept the proposed attached surreply and two supporting attachments for filing.

Dated: February 3, 2026.

PETER MCNEILLY
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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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Counsel for Petitioner

s/ Erika A. Kelley
U.S. Attorney's Office