

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
DENVER DIVISION

)	
HUMBERTO ROMEU PEREZ,)	
)	
Petitioner,)	Civil Action No. 1:25-cv-3307-RMR
v.)	
)	PETITIONER'S OPPOSITION TO
KRISTI NOEM, <i>et al.</i> ,)	RESPONDENTS' MOTION FOR LEAVE
)	TO FILE SURREPLY
)	
Respondents.)	
)	

INTRODUCTION

Petitioner Humberto Romeu Perez ("Mr. Romeu") opposes Respondents' Motion for Leave to File a Surreply to Mr. Romeu's reply brief. See ECF 33. But Mr. Romeu's reply did not raise any new arguments. See ECF 32. Rather, the reply merely responded specifically to the arguments and evidence made in Respondents' response brief. ECF No. 31. That is the very purpose of a reply memorandum, and the Court should not permit Respondents a second bite at the apple to cure any defects in their defense of the petition. The Court should deny Respondents' request to file a surreply and decide Mr. Romeu's petition based on the briefs the parties submitted in accordance with the local rules.

ARGUMENT

Surreplies are not contemplated by this district's local rules and are generally disfavored but for exceptional circumstances. See D.C.Colo.LCivR. 7.1(d); *Cont'l W. Ins. Co. v. Colony Ins. Co.*, No. 13-cv-01425-WYD-MJW, 2014 WL 2536519, at *2 (D. Colo. June 5, 2014); *Maccagnan v. Cherry Creek Sch. Dist. No. 5, Scott Siegfried*, No. 22-CV-

00503-CMA-KLM, 2023 WL 6127904, at *1 (D. Colo. Sept. 18, 2023); *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005).

Respondents contend a surreply is warranted here because Mr. Romeu raised four new arguments in his reply brief. (ECF Nos. 33 at 2-3 and 33-1 at 2). But Respondents are mistaken. First, Respondents claim that Mr. Romeu now claims he was denied counsel and asserts unfairness during the January 2, 2026 USCIS interview. This is true, but it is not a “new” argument. In addressing the deficiency of the January 2, 2026 interview simply reflects that the interview occurred *after* the Amended Petition was filed. But any argument about the procedural insufficiency of the January 2, 2026 interview is necessarily subsumed into the central theme of Mr. Romeu’s Amended Complaint, namely that Respondents have failed to afford him due process and follow their own regulations in regard to revocation of his supervision order and selection of a third country for removal. See ECF 22 at ¶ 53 (“Mr. Romeu cannot be removed to a third country until Respondents comply with required due process, including both notice of a country of removal and the opportunity to raise a fear of removal to that country.”). That is, the fact that Respondents continue to fail to provide Mr. Romeu with an interview that satisfies due process is not a new argument, whether it be that Respondents have failed to provide the interview at all or that (now having held it) the interview failed to satisfy due process by failing to connect to Mr. Romeu’s attorney, ECF 32-2 at 2, issuing the decision before the interview occurred, *id.* at 1, or providing no analysis whatsoever of the testimony Mr. Romeu presented, *id.* at 10-11 (stating simply “no” as to Mr. Romeu’s claims). In sum, Mr. Romeu’s argument that Respondents continue to fail to provide due process is not a *new* argument.

Second, Respondents essentially concede the heart of Mr. Romeu's complaint, namely that Respondents have violated their own regulations. After seven months in custody and nearly five months litigating this case, Respondents finally now provide Mr. Romeu with a Notice of Revocation signed by an appropriate government official. See ECF 33-3. But this is not a new argument raised by Mr. Romeu—rather, Respondents are simply hoping to slip in a new piece of evidence to counter the central point of Mr. Romeu's complaint and be excused for not creating the evidence in June 2025 when it should have been.

By regulation, Mr. Romeu was entitled to notice and an opportunity to respond “upon revocation” of the order of supervision—not seven months later. See 8 C.F.R. § 241.4(l). The interview must occur “promptly” to satisfy the regulation. *Id.* And yet, Respondents seek leave of this Court to file a surreply so that they may submit ECF 33-3, claiming now as a defense that “[a]s of February 2, 2026, ICE has provided Petitioner with a Notice of Revocation of Supervision, signed by the Acting Field Office Director.” ECF 33-1 at 5-6. However, Mr. Romeu has always challenged that he “was never notified of the reason for the revocation or provided an interview to respond to the reasons for the revocation at the time of his detention (or since), as DHS’s own regulations require.” ECF 22 at ¶ 60. Respondents’ feigned compliance with the regulations more than seven months after the fact is laughable and should be rejected. It also bears noting that the stated reason for needing to file a surreply is that Respondents claim Mr. Romeu introduced new evidence and arguments in his reply brief. Even if true, it is that much more egregious then that Respondents now attempt to present evidence *for the first time* in their proposed surreply. See ECF 33-3.

Finally, Respondents claim a surreply is necessary because Mr. Romeo never sought his release from custody as a remedy until his Reply brief. See ECF 33-1 at 6-7 (“For the first time in the Reply, Petitioner asserts that he seeks release based on his claim that he has not been provided notice and the opportunity to raise a fear-based claim concerning his removal to a third country.”). Respondents are wrong. In his Amended Complaint, Mr. Romeo asserted that “[a]s ICE continues to unlawfully detain him without affording him the basic procedural protections that the Constitution and the INA afford him, Mr. Romeo respectfully asks that the Court grant this Amended Petition for a Writ of Habeas Corpus *and order his release.*” ECF 22 at ¶ 6 (emphasis added). Moreover, in his prayer for relief to the Court, Mr. Romeo asked specifically that the Court “[o]rder Mr. Romeo’s release from immigration custody, with all of his belongings including his identification documents, and that any future detention complies with the applicable regulations[.]” ECF 22 at 14 ¶ 6. Mr. Romeo’s assertion that his detention is unlawful may have given rise to Respondents’ argument that the *D.V.D.* litigation would encompass his claims. ECF 31 at 10. But when Mr. Romeo replied with why Respondents are incorrect, that is not a “new argument.” And Respondents are not excused in filing a surreply simply because they didn’t read or understand that Mr. Romeo’s Amended Complaint has always sought his release from custody. See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”). Respondents are not entitled to the last word here.

Simply put, Mr. Romeu did not introduce new legal theories or arguments in his reply and has maintained the theory of the case since filing his Amended Complaint. See ECF 22. In his reply, Mr. Romeu has simply responded to Respondents' eleventh-hour perfunctory attempts to justify Mr. Romeu's detention. That reply does not justify a surreply from Respondents. See *James v. Boyd Gaming Corp.*, 522 F. Supp. 3d 892, 907 (D. Kan. 2021) (finding that the plaintiff did not improperly raise new material—evidence or legal argument—that would entitle defendants to a surreply when plaintiff was replying to the arguments and legal authority raised in defendants' response); see also *Pehr v. Rubbermaid, Inc.*, 87 F. Supp. 2d 1222, 1237 (D. Kan. 2000).

Any lingering issues and delay that Respondents continue trying to address are of their own making. Rather than using a surreply to respond in the rare circumstances in which it is warranted, Respondents submission is simply very late and lacks any merit. The Court should deny Respondents motion for leave and strike the surreply and attached documents.

CONCLUSION

For the foregoing reasons, Respondents' motion should be denied.

Dated: February 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 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 parties.

/s/ Joseph Moravec
Joseph Moravec, Esq.
Counsel for Petitioner