

**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 EXPEDITED RULING
TO VACATE ORDER DIRECTING RESPONDENTS NOT TO REMOVE
PETITIONER FROM THE UNITED STATES (ECF No. 18)**

Respondents move for an expedited ruling to vacate the Court's December 11, 2025, Order directing Respondents not to remove Petitioner from the United States until or unless that order was vacated by this Court or the Court of Appeals for the Tenth Circuit. See ECF No. 18. As discussed below and in prior briefing, Petitioner has had all the process he is due prior to his removal to Mexico. U.S. Immigration and Customs Enforcement (ICE) is now prepared to effectuate his removal there within the next week. But that removal cannot be effectuated unless and until this Court's prior do-not-remove order is vacated.

1. On October 20, 2025, Petitioner Humberto Romeu-Perez, proceeding *pro se*, filed an Application for a Writ of Habeas Corpus, asserting that his continued detention by ICE violated due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001), asserting that his removal was not likely in the foreseeable future since both Cuba and Mexico have refused to accept him, and no other third country had accepted him for removal. See ECF No. 1-1 at 1-2.

2. On December 11, 2025, ICE officials notified Petitioner, that he would be removed to Mexico and served him with a Notice of Removal. ECF No. 31-1 ¶ 31. Petitioner refused to sign the Notice. *Id.* The same day, counsel for Petitioner contacted ICE and asserted Petitioner's claim of fear of removal to Mexico. *Id.* ¶ 32. Petitioner was therefore not removed to Mexico. *Id.* A hold was instituted on Petitioner in the ICE system so that he would not be removed from the United States. *Id.*

3. Also on December 11, 2025, Petitioner's counsel entered his appearance in this action, see ECF No. 15, and filed the Emergency Motion for Temporary Restraining Order, see ECF Nos. 16 & 17, on Petitioner's behalf. In the Motion, Petitioner seeks a temporary restraining order precluding Respondent from removing Petitioner to Mexico pending a reasonable fear interview and adjudication of the claims asserted in the Motion. See ECF Nos. 16 & 17.

4. The same day, Judge Nina Y. Wang granted in part and reserved in part the Motion. See ECF No. 18 at 3. Judge Wang ordered Respondents not to remove Petitioner "from the United States until and unless this Court or the United States Court

of Appeals for the Tenth Circuit” vacates the Order. *Id.*

5. On December 17, 2025, Petitioner filed the Amended Petition. See ECF No. 22. In the Amended Petition, Petitioner asserted three claims for relief under 28 U.S.C. § 2241. *Id.* First, Petitioner alleged a violation of the Immigration and Nationality Act, 8 U.S.C. § 1231(b), contending Respondents failed to follow the prescribed framework to remove Petitioner to a third country, Mexico. *Id.* at ¶¶ 44-48. Second, Petitioner alleged a violation of due process under the Fifth Amendment of the United States Constitution, contending Respondents failed to provide Petitioner with a “meaningful opportunity” to raise a fear of removal to Mexico. *Id.* at ¶¶ 49-53. Third, Petitioner alleges a violation of the *Accardi* doctrine, see *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), claiming that Respondents failed to follow regulations (at 8 C.F.R. § 241.4(l)) when Petitioner’s OSUP was revoked on June 21, 2025. *Id.* at ¶¶ 54-63. For a remedy, Petitioner sought release from ICE custody. *Id.* at 14.

6. On December 19, 2025, ICE referred Petitioner to U.S. Citizenship and Immigration Services (“USCIS”) for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3) because he alleged that he feared he would be subject to detention or mistreatment if removed to Mexico, based on his criminal history (child sex assault, among other things) in the United States. ECF No. 17 at 2; see also ECF No. 31-1 ¶ 6.

7. On January 2, 2026, USCIS conducted Petitioner’s third country screening interview. *Id.* ¶ 35. USCIS determined that Petitioner failed to establish that it is more

likely than not that he will be persecuted or tortured in Mexico based on race, religion, nationality, membership in a particular social group, or political opinion. *Id.*; see also 8 U.S.C. § 1231(b)(3). Thus, USCIS determined he was not eligible for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 36.

8. On January 6, 2026, Respondents filed a consolidated response to the Amended Petition and Emergency Motion. See generally ECF No. 31. Respondents argued that none of the claims in the Amended Petition were cognizable habeas claims, and even if they were, Petitioner failed to establish any due process violation by Respondents that would warrant his release. *Id.* at 9-21. Specifically, his challenge to the process he received regarding his removal to a third country was not a cognizable habeas claim, and such a claim is encompassed in non-opt-class in a certified class action pending in the District of Massachusetts, see *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025). *Id.* at 10. Moreover, Petitioner could not establish a due process violation because he received notice and the opportunity to be heard regarding his removal to a third country, Mexico. *Id.* at 11. Petitioner received notice of his removal to Mexico on two occasions (September 6, 2025, and December 11, 2025). *Id.* He had the opportunity to be heard during a fear screening with USCIS on January 2, 2026. *Id.* Following that interview, USCIS determined that he was not eligible for protection under 8 U.S.C. § 1231(b)(3) because he failed to establish that it is more likely than not that he will be persecuted or tortured in Mexico based on a protected characteristic. *Id.* Regarding the revocation of his Order of Supervision (OSUP), Respondents argued that

for any alleged violation of due process, Petitioner should receive the process provided by the regulations, not release. *Id.* at 16.¹

9. Petitioner filed a consolidated reply and reasserted his claims in the Amended Petition. See ECF No. 32.

10. The Mexican Government has accepted Petitioner for removal. See Ex. A, Declaration of Sean Christner (February 19, 2026) ¶ 9. On February 19, 2026, Petitioner was scheduled to be transferred to the Florence Service Processing Center in Florence, Arizona, so that he could be staged for removal. *Id.* ¶ 7. However, Petitioner was not transferred, and he remains at the Denver Contract Detention Facility because of the Court's December 11, 2025, Order prohibiting Respondents from removing him from the United States. *Id.* ¶ 7; see also ECF No. 18 at 3.

11. Should this Court vacate the Order, ICE can transfer Petitioner for staging and remove him to Mexico on or about February 26, 2026. See Ex. A ¶ 10. Thus, Petitioner's removal is likely in the reasonably foreseeable future. *Id.* ¶ 11.

12. The Court has discretion to vacate its prior order prohibiting Respondents from removing Petitioner from this District. See, e.g., *Elephant Butte Ir. Dist. of N.M. v. U.S. Dep't of Interior*, 538 F.3d 1299, 1306 (10th Cir. 2008) (“[E]very order short of a final decree is subject to reopening at the discretion of the district judge.” (citation omitted)); *Friedman v. Dollar Thrifty Auto. Grp., Inc.*, No. 12-cv-02432-WYD-KMT, 2015 WL 8479746, at *2 (D. Colo. Dec. 10, 2015) (noting that the court has “plenary power to

¹ ICE provided Petitioner a Notice of Revocation Supervision on February 2, 2026.

revisit and amend interlocutory orders as justice requires” (citation omitted)). Indeed, the Court’s order expressly contemplated that the Court might vacate it at some point in the future; the Order stated that the Petitioner shall not be removed from the United States “until and unless this Court or the United States Court of Appeals for the Tenth Circuit vacates this Order.” ECF No. 18.

13. Given the developments since the Court entered its Order prohibiting Petitioner’s removal, and in the interest of justice, the Court should exercise its discretion to vacate that Order. As discussed above, since the Court entered the Order, Petitioner has received all the process he is entitled to concerning removal to a third country under 8 U.S.C. § 1231(b) and revocation of his OSUP. And Petitioner fails to establish that his detention violates due process as set forth in *Zadvydas*, because his removal is likely in the reasonably foreseeable future—indeed, but for the Court’s Order, Respondents could have remove Petitioner to Mexico today. See Ex. A ¶ 7.

14. Currently, Petitioner remains in detention because he cannot be removed until the Court’s December 11, 2025, Order is vacated. Petitioner’s removal to Mexico would resolve this action. If Petitioner is removed, he will no longer be in ICE custody, and this habeas case (in which he challenges his continued detention pending removal) will become moot. See *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir. 2010) (“The crucial question [in determining mootness] is whether granting a *present* determination of the issues offered will have some effect in the real world.” (emphasis in original)); *Francis v. Lynch*, 622 F. App’x 455, 455-56 (5th Cir.

2015) (challenge under *Zadvydas* to length of detention awaiting removal became moot when the petitioner was removed). But Respondents cannot effectuate removal unless and until the Order is vacated.

15. In the interest of justice, the Court should vacate its Order, at ECF No. 18, prohibiting Respondents from removing Petitioner.

16. If this motion is granted, undersigned counsel will notify the Court of Petitioner's removal from the United States to Mexico by filing a status report within five business days after Petitioner is removed.

17. Undersigned counsel certifies under D.C.COLO.L.CivR 7.1(a) that undersigned counsel conferred about this motion with Petitioner, through counsel, who stated that Petitioner opposes the relief sought because he claims that the Court should maintain jurisdiction over this matter until there is a ruling on the habeas petition (Amended Petition, ECF No. 22).

18. Pursuant to D.C.COLO.L.CivR 7.1(g), a proposed order is filed herewith.

For the reasons set forth above, Respondents respectfully request that the Court enter an order, on an expedited basis, vacating its Order of December 11, 2025, directing Respondents not to remove Petitioner from the United States (ECF No. 18).

Dated: February 20, 2026.

PETER MCNEILLY
United States Attorney

s/ Erika A. Kelley
Erika A. Kelley
Assistant United States Attorney

U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0103
Email: erika.kelley@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 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:

khirst@blessingerlegal.com
jmoravec@blessingerlegal.com

Counsel for Petitioner

I further certify that on February 20, 2026, I sent the foregoing to the following individual via email as a representative of Respondents:

C. Kasperson
ICE counsel

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