IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ROMAN ANTALOLEVICH SUROVTSEV, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	Civil Action No. 3:25-CV-3065-E

MOTION TO VACATE ORDER PROHIBITING REMOVAL
(WITH REQUEST FOR EXPEDITED CONSIDERATION BY FRIDAY, NOVEMBER 14, 2025)

Less than two weeks ago, another judge in this district denied a habeas petition filed by immigration detainee Roman Surovtsev, with a 19-page opinion explaining that Surovtsev is subject to "an indisputably valid order of removal issued against him in 2014" and was likely to be removed to Ukraine in the reasonably foreseeable future. *See* Order, *Surovtsev v. Noem*, No. 1:25-CV-160-H (N.D. Tex. Oct. 31, 2025). Surovtsev did not appeal or seek reconsideration but instead filed this new habeas petition in which the Court yesterday issued an order that bars Surovtsev's removal from the country prior to January 13, 2026. The government now moves to vacate this order—which although not styled as such, is in the nature of a preliminary injunction—because Surovtsev is not entitled to any such relief. That is because, as explained below, (1) his current habeas petition represents an abuse of the writ after he just recently litigated another petition, and (2) he has no chance of success on the merits, and thus no right to interim relief. A ruling is respectfully requested by Friday, November 14, 2025 because prior arrangements are in place to carry out Surovtsev's removal as soon as Monday, November 17, 2025.

I. Background

After committing a burglary and an armed carjacking in California in or around 2003 and spending approximately 11 years in prison, Surovtsev was ordered removed to Russia or Ukraine in 2014. (*See* App.[1] 001; *see also* Doc. 2 at 1.) The government was not able to execute Surovtsev's removal from the country at that time, though, and he was released on supervision. (Doc. 1, ¶ 5.)

Earlier this year, on August 1, 2025, Surovtsev was re-detained by immigration authorities in order to attempt to execute on his removal order. (Doc. 1, ¶ 5.) Shortly thereafter, on August 20, 2025, Surovtsev filed a petition for writ of habeas corpus to in the Dallas Division, styled *Surovtsev v. DHS*, Civil Action No. 3:25-CV-2246-E-BW. Because Surovtsev was actually in detention in the Abilene Division, though, the case was transferred to that division on August 26, 2026, where it received the new cause number of 1:25-CV-160-H and was assigned to Judge Hendrix.

Surovtsev apparently also was simultaneously taking action in California state court to undo his carjacking-related convictions, with the result—he reports in his new petition filed in this case—that on September 3, 2025, the California state court vacated those convictions. (Doc. 1, ¶ 6.) The ground for vacatur cited by the California state court was that Surovtsev purportedly did not knowingly accept the immigration consequences of his guilty pleas back in 2003 when he had pled guilty to the carjacking-related offenses. (*See* Doc. 1, ¶ 6; Doc. 1-4.)

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[1] "App. __" citations refer by page number to the materials in the accompanying appendix.

Notwithstanding this development in California state court on September 3, 2025, Surovtsev took no action based on the vacatur of his guilty-plea convictions in his then-pending habeas action before Judge Hendrix but instead continued to rely on the other arguments he had been raising (which largely alleged that the government failed to show that it would be able to remove him). With Surovtsev content to let the case in front of Judge Hendrix proceed in this posture, focused on the likelihood that the government would in fact be able to execute his removal order, the government filed a response on September 20, 2025; Surovtsev filed a reply on September 25, 2025; the government filed a further response to certain issues identified by the Court on October 9, 2025; and Surovtsev then filed a further reply on that same day. *See Surovtsev v. Noem*, No. 1:25-CV-160-H (N.D. Tex.). On October 31, 2025, Judge Hendrix entered an order denying Surovtsev's petition, explaining that Surovtsev was subject to an "indisputably valid order of removal issues against him in 2014," and that there was a "significant likelihood of Surovtsev's removal to Ukraine . . . in the reasonably foreseeable future." *See* Order at 1, 18, *Surovtsev v. Noem*, No. 1:25-CV-160-H (N.D. Tex. Oct. 31, 2025) (copy at App. 002–20).

Less than two weeks later, having been transferred to an immigration detention facility in the Dallas Division, Surovtsev filed this new action on November 10, 2025, in which he again seeks a writ of habeas corpus. (*See* Doc. 1.) In conjunction with his new petition, Surovtsev also seeks a temporary restraining order to prevent his removal from the country, under a speculative theory that he will be able to reopen his removal proceedings in immigration court and ultimately will be able to undo or obtain relief

against his order of removal there. Yesterday, this Court issued an order that prohibits Surovtsev's removal prior to January 13, 2026, with an explanation that at that time, the Court anticipates ruling on Surovtsev's motion for a temporary restraining order. (*See* Dkt. No. 4.) Meanwhile, the government had already made arrangements to execute that removal (to Ukraine) on this coming Monday, November 17, 2025. The government therefore requests that the Court expedite consideration of this motion, and act no later than Friday, November 14, 2025 to vacate its November 11, 2025 order—which exceeds the permissible duration of even a temporary restraining order under Rule 65, and is really in the nature of a preliminary injunction—for the reasons discussed below, so that the government can proceed with its pre-existing arrangements to remove Surovtsev to Ukraine on this coming Monday, November 17, 2025.

II. Argument and Authorities

The Court is no doubt familiar with the heavy burden borne by a party who seeks the extraordinary relief of a temporary restraining order or preliminary injunction, including the need to show a substantial likelihood of success on the merits plus that the other equitable factors support relief. *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). And here, although it was not styled as such, the Court's November 11, 2025 order was in the nature of a temporary restraining order or preliminary injunction insofar as it extends for a period of over 60 days, which is well beyond the 14-day limit on a temporary restraining order in Rule 65(d) (and as such, the order, or the refusal to dissolve it, would be immediately appealable). *See In re Criminal Contempt Proceedings Against Gerald Crawford*, 329 F.3d 131, 136–37 (5th Cir. 2003):

28 U.S.C. § 1292(a)(1).

Here, the Court should vacate or dissolve its November 11, 2025 order because as discussed below there are two, independent reasons that Surovtsev cannot show any likelihood of success on his claims—and thus he has no right to a temporary restraining order or preliminary injunction, and likewise no right to the similar relief embodied in the Court's November 11, 2025 order.

A. Surovtsev's current petition—his second in this district in a matter of weeks—is subject to dismissal as an abuse of the writ.

As discussed above, Surovtsev filed another petition for writ of habeas corpus in this district earlier this year that was still pending, and was the subject of ongoing briefing by the parties, into mid- and even late-October—well *after* Surovtsev had convinced the California state court in early September to vacate his underlying carjacking-related convictions. Yet Surovtsev chose not to raise any argument in the prior habeas case about that vacatur, even though the same arguments he raises here were clearly available to him at the time. That constitutes an abuse of the writ and is a sufficient reason he is not entitled to any relief, including any temporary restraining order, in this action.

"In general, there are two circumstances where a § 2241 application should be dismissed as an 'abuse of the writ,'" and one of those is that "a petitioner can abuse the writ by raising a claim in a subsequent petition that he could have raised in his first, regardless of whether the failure to raise it earlier stemmed from a deliberate choice."

Beras v. Johnson, 978 F.3d 246, 252 (5th Cir. 2020).[2] That is the situation here. Surovtsev seeks relief based on a speculative theory that he may be able to reopen his removal proceedings and undo his order of removal in immigration court by first getting the California state court to vacate his convictions. But there is no reason he could not have raised that claim in the prior habeas action in front of Judge Hendrix.

Surovtsev might argue that he had not yet obtained relief from the California state court at the time he filed his earlier petition (on August 20, 2025), so therefore his new habeas petition should not be considered abusive. But that kind of timing-based argument fails to show that the habeas claim he is attempting to assert now was not available to him then. For one thing, part of Surovtsev's habeas theory depends on ultimately receiving favorable relief from the immigration court, but the fact that Surovtsev has not yet received any relief from immigration court has not stopped him from filing for habeas. So the same is true with respect to the relief he did receive on September 3, 2025 in the California state court. Put another way, if the absence of any favorable order from the California state court at the time Surovtsev's earlier petition was filed in late August rendered his habeas claim unavailable then, it would also be the true that the absence of any favorable order from the immigration court at this time would likewise render a habeas claim unavailable right now. But Surovtsev clearly is not taking that position, because he has filed for habeas. If a habeas claim is available to him now notwithstanding the lack of any favorable ruling from the immigration court at this time,

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[2] The other circumstance is when the same claim is raised a second time. *See Beras*, 978 F.3d at 252.

it was similarly available back when his first habeas petition was filed, notwithstanding the lack of any ruling from the California state court then.

In any event, the precise timing of the initial filing of Surovtsev's earlier habeas petition vis-a-vis the California state court's ruling—which occurred a mere few days later and which Surovtsev surely knew was in the works at that time he filed for habeas in the earlier action—is irrelevant. That is because Surovtsev could have amended or supplemented his habeas petition in the interim after receiving relief from the California state court on September 3, 2025. As of that date, the government still had not even responded to the petition, and would not do so for several more weeks (until September 20, 2025). And Surovtsev also filed two more briefs in the habeas action before Judge Hendrix ultimately ruled, in a decision issued on October 31, 2025. Surovtsev's ability to amend or supplement his habeas pleading makes clear that his decision to instead wait to see if he could get a favorable decision from Judge Hendrix on his other theories, and then attempt a second bite of the apple in this new case after receiving an adverse ruling, constitutes an abuse of the writ, in much the same way that choosing not to amend a complaint to add an available claim will give rise to the abuse-of-the-writ doctrine's closely related cousin of res judicata. *See Davis v. DART*, 383 F.3d 309, 315–16 (5th Cir. 2004) (res judicata applied where the plaintiff failed to take action to assert a claim that became available for litigation during the course of her earlier lawsuit).

B. Surovtsev cannot show that the decades-later vacatur of his California convictions will have any effect on the validity of his longstanding order of removal.

A second independent reason that Surovtsev's request for a temporary restraining

order should be denied is because he fails to show any likelihood of successfully undoing his order of removal. Surovtsev's theory is that now that he has succeeded (with the apparent collusion of the local prosecutor) in having the California state court vacate his prior carjacking-related convictions, he will be able to reopen his removal proceedings in immigration court and obtain relief there against his long-final order of removal, and this Court should enter some kind of emergency relief in anticipation of his doing so and then later obtaining immigration-court relief against his removal. (*See* Doc. 2 at 2–3.)

But as the Fifth Circuit has explained in a recent case with strikingly similar facts, " a motion to reopen removal proceedings must 'be filed within 90 days of the date of entry of a final administrative order of removal.'" *Rosa Arevalo v. Bondi*, --- F.4th ----, 2025 WL 3089051, at *2 (5th Cir. 2025) (quoting 8 U.S.C. § 1229a(c)(7)(C)(i)). Surovtsev is obviously well outside that deadline, given that his removal order dates from 2014, so presumably he will rely on some kind of equitable tolling argument. But his request for a temporary restraining order fails to show that there are valid bases for tolling here, and thus Surovtsev fails to show any likelihood of success. And further, any such argument—which Surovtsev fails to make—would also seem to be destined for failure under applicable law. "[T]he deadline for filing a motion to reopen is subject to equitable tolling if the movant establishes '(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.'" *Id.* (quoting *Lugo-Resendez v. Lynch*, 831 F.3d 337 344 (5th Cir. 2016)). The "first element requires the litigant to establish that he pursued his rights with reasonable diligence, not maximum feasible diligence, and the second element requires

the litigant to establish that an extraordinary circumstance beyond his control prevented him from complying with the applicable deadline." *Id.* (cleaned up).

Here, Surovtsev cannot show any diligence in pursuing his rights or extraordinary circumstances. His order of removal was issued in 2014, and so by that time he was without a doubt aware of the adverse immigration consequences of his carjacking-related guilty pleas in 2003. But he did nothing for over a decade, and apparently never sought relief against his conviction in the California state court until some time within the last few months, in 2025. There is nothing extraordinary about his circumstances, nor did he act with diligence. In *Rosa Arevalo*, for example, the Fifth Circuit considered an alien who had waited two years after the State of Illinois passed a statute allowing convictions to be vacated due to immigration consequences before seeking such relief and then attempting to reopen immigration proceedings, and upheld the determination that no diligence was shown. *See Rosa Arevalo* 2025 WL 3089051, at *2. Notably, the law in the Ninth Circuit—the jurisdiction in which Surovtsev apparently is seeking to reopen his removal proceedings—is also similarly against Surovtsev. *See Lara-Garcia v. Garland*, 49 F.4th 1271, 1277 (9th Cir. 2022) (rejecting a similar argument where "Petitioner did not seek to have his conviction expunged until nearly a decade after he was convicted in 2008, and he has presented neither argument nor evidence explaining why he could not have done so earlier than 2018"); *Hernandez v. Bondi*, No. 23-90, 2025 WL 2427052, at *1 (9th Cir. Aug. 22, 2025) (not designated for publication) (no diligence shown where the alien "failed to move for reopening until 2021 despite being ordered removed in 2011," "did not allege that she took any action to vacate her conviction from 2011 to

2018," and "waited nearly an additional 18 months before moving to vacate her conviction" after a new law took that she was apparently relying on took effect in California in January 2017); *Prado Canela v. Bondi*, No. 23-1091, 2025 WL 2375212, at *1 (9th Cir. Aug. 15, 2025) (not designated for publication) ("A petitioner who moves to reopen based on a vacated criminal conviction does not establish diligence when there is a substantial, unexplained delay between the conviction and his pursuit of postconviction relief.").

Surovtsev similarly has not shown that there is any likelihood of success on his claims here, which are dependent on reopening his removal proceedings some decade after he was removed, based on information (the adverse immigration-law effect of his California state court conviction) that he by definition was well aware of at the time he was ordered removed but that he did not timely act on by seeking to vacate the California state court convictions until just a little over two months ago. He therefore fails to show any likelihood of successfully reopening his removal proceedings, because he cannot show any grounds for equitable tolling, and he is not entitled to relief here.

III. Conclusion

The Court should vacate (or dissolve) its November 11, 2025 order.

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CERTIFICATE OF CONFERENCE

This is to certify that the government has conferred with petitioner's counsel about the relief requested herein, and it is opposed.

/s/ Ann E. Cruce-Haag
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CERTIFICATE OF SERVICE

On November 12, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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