IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01156-NRN

OCTAVIO GUTIERRES REYNA,

Petitioner,

v.

TODD BLANCHE[1], Acting U.S. Attorney General;
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security;
TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement;
GEORGE VALDEZ, Field Officer Director, Denver Field Office, Immigrations and Customs Enforcement; and
JUAN BALTAZAR, Warden of Denver Contract Detention Facility Processing Center, in their official capacities,

Respondents.

RESPONDENTS' UNOPPOSED EXPEDITED MOTION TO VACATE ORDER DIRECTING RESPONDENTS NOT TO REMOVE PETITIONER FROM THE UNITED STATES (ECF No. 5)

Respondents move to vacate the Court's March 23, 2026, Order directing Respondents not to remove Petitioner from the United States until or unless that order has been vacated by this Court or the Court of Appeals for the Tenth Circuit. *See* ECF No. 5. U.S. Immigration and Customs Enforcement (ICE) is prepared to effectuate his removal. As discussed below, Petitioner has had all the process he is due prior to his

[1] This filing amends the caption to identify the current official capacity Respondents. See Fed. R. Civ. P. 25(d) (when an officer is named in his official capacity, "[t]he officer's successor is automatically substituted as a party" and "[l]ater proceedings should be in the substituted party's name").

removal to Mexico. But that removal cannot be effectuated unless and until this Court's prior do-not-remove order is vacated.

BACKGROUND

Petitioner is a citizen of Mexico. ECF No. 10 at 2. He was arrested by ICE in February 2026. *Id.* Upon his detention, Department of Homeland Security (DHS) initiated removal proceedings against Petitioner. *Id.* On March 20, 2026, Petitioner filed an Application for a Writ of Habeas Corpus, asserting that his continued detention by ICE violates the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. *Id.* at 3. On March 23, 2026, the Court ordered Respondents to show cause as to why the Petition should not be granted. ECF No. 5 at 2.

That Order also ordered Respondents not to remove Petitioner from the District of Colorado or the United States of America unless or until that order was vacated by this Court or the Court of Appeals for the Tenth Circuit, "pursuant to the All Writs Act, and in order to preserve the Court's jurisdiction." *Id.*

On March 30, 2026, Respondents responded to the Court's Order to Show Cause, explaining that the Petition should be denied because Petitioner was subject to mandatory detention under § 1225(b) under the interpretation of that provision adopted by the Fifth and Eighth Circuits. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th Cir. 2026); *Avila v. Bondi*, -- F.4th --, 2026 WL 819258, at *2–6 (8th Cir. Mar. 25, 2026). Respondents argued that, if the Court agrees and determines that Petitioner is detained under § 1226(a) and grants the petition, the appropriate relief is for the Court to direct a bond hearing be conducted pursuant to § 1226(a) before an immigration

judge.

On April 1, 2026, the Court granted the Petition for Writ of Habeas Corpus and ordered Respondents to: (1) provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days of the Court's order, i.e. by April 8, 2026, and (2) file a status report to certify compliance with the Court's order within three days of the bond hearing, stating whether Petitioner has been granted bond, and, if Petitioner's request for bond was denied, the reasons for that denial. ECF No. 10.

Respondents provided Petitioner with a bond hearing on April 8, 2026. The immigration judge ordered that bond was denied to Petitioner because "DHS met its burden under the habeas order to show that Respondent is a danger to the community." ECF No. 11 at 3 (Respondents' Status Report).

Petitioner now has been ordered removed. On April 10, 2026, the immigration judge issued an oral order for Petitioner's removal to Mexico; the immigration judge provided a summary of that order on April 17, 2026. Both DHS and Petitioner waived appeal from the immigration judge's removal order. Petitioner has thus had all the process he is due prior to his removal to Mexico, and his removal order is final.

ARGUMENT

The Court should vacate its order barring Petitioner's removal.

Now that Petitioner has been issued a final removal order, the government is now mandated by law to seek to execute that removal order. *See* 8 U.S.C. § 1231(a)(1)(A) (providing that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days"). But

Respondents cannot carry out their statutory obligation to effectuate the removal for Petitioner unless and until the Order is vacated.

At this point, the Court's do-not-remove order is not necessary to preserve the Court's ability to rule on the habeas petition. The Court indicated that it entered that portion of its order to preserve its jurisdiction to rule on the habeas petition. But the Court has already ruled on the petition, and Respondents have complied with the Court's order. The do-not-remove provision is thus not necessary to carry out the purposes for which it was issued. 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 "unless or until this Court or the Tenth Circuit Court of Appeals vacates this Order." ECF No. 5.

The Court should vacate its do-not-remove order promptly because leaving that order in place will unnecessarily leave Petitioner in detention. Currently, Petitioner remains in detention because he cannot be removed until the Court's March 23, 2026, Order is vacated. Petitioner's removal to Mexico would end that that detention and resolve this habeas 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 v. Davis,* 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d

653 (2001) to length of detention awaiting removal became moot when the petitioner was removed).

Undersigned counsel certifies under D.C.COLO.L.CivR 7.1(a) that undersigned counsel conferred about this motion with Petitioner, who does not oppose the motion or relief requested.

CONCLUSION

The Court should issue an order vacating its prior order to the extent it directed Respondents not to remove Petitioner from the United States until or unless that order has been vacated by this Court or the Court of Appeals for the Tenth Circuit. *See* ECF No. 5. 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.

Dated: April 23, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Lila M. Bateman
U.S. Attorney's Office