IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR ABDULAZIZ TRABELSI,

Petitioner–Plaintiff,

v.

JEFFREY CRAWFORD, *et al.*,

Respondents–Defendants.

Case No. 1:24-cv-01509-RDA-LRV

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER–PLAINTIFF'S MOTION TO VACATE

The federal government has removed Petitioner–Plaintiff Nizar Trabelsi from the United States, mooting this action. As a result, Mr. Trabelsi cannot seek appellate review of the Court's memorandum opinion and order of December 2, 2024, in which the Court dismissed four of Mr. Trabelsi's claims for lack of jurisdiction. Because the federal government mooted this action before Mr. Trabelsi could seek appellate review of that dismissal—and, even more important, because Mr. Trabelsi bears no responsibility for causing the mootness of this matter—Mr. Trabelsi respectfully requests that the Court vacate its December 2 order pursuant to Federal Rule of Civil Procedure 60(b)(6).[1]

BACKGROUND

The United States extradited Mr. Trabelsi from Belgium in 2013, placing him on trial for alleged federal crimes. ECF No. 1 at ¶ 42. The proceedings lasted a decade. *Id.* ¶ 44. During that time, the United States held Mr. Trabelsi in highly restrictive pre-trial detention. *Id*. ¶ 43.

[1] Counsel for Respondents–Defendants have indicated that they oppose the relief sought herein.

Finally, in July 2023, a federal jury acquitted Mr. Trabelsi of all charges. *See* Judgment of Acquittal, *United States v. Trabelsi*, Crim. No. 06-89 (D.D.C. July 17, 2023). Rather than immediately returning Mr. Trabelsi to Belgium or giving him the opportunity to return on his own, ECF No. 1 at ¶ 49, the United States transferred him from pre-trial detention to immigration detention, placing even harsher restrictions on his movement, religious exercise, human contact, and communication with the outside world, *id.* ¶¶ 65–91. It then began the formal process of attempting to remove Mr. Trabelsi not to Belgium, but to Tunisia, where he was born. *Id.* ¶ 49.

Because Mr. Trabelsi was in the United States against his will and had no desire to stay, he did not contest his removability. He did, however, seek to prevent the government from removing him to Tunisia, where he was—and is—likely to be tortured. *Id*. ¶ 52. Specifically, on October 19, 2023, he applied to an immigration judge ("IJ") for withholding of removal to Tunisia under the Convention Against Torture ("CAT"). *Id.* On August 30, 2024, the IJ granted Mr. Trabelsi's application, prohibiting his removal to Tunisia under CAT and specifying Belgium as his country of removal. ECF No. 33 at 8–9. The government sought review by the Board of Immigration Appeals ("BIA"). *Id.* On February 25, 2025, the BIA affirmed the IJ's decision.

While the immigration proceedings went forward, on August 28, 2024, Mr. Trabelsi filed this separate action, a consolidated petition for habeas corpus and complaint for injunctive relief. ECF No. 1. He brought seven claims in all. *Id.* at 17–24. Four sounded in habeas, challenging the legal basis for Mr. Trabelsi's detention and seeking his release. *Id.* at 17–22. The remaining three consisted of constitutional and statutory challenges to the conditions of Mr. Trabelsi's confinement. *Id.* at 23–24. The government moved to dismiss Mr. Trabelsi's habeas claims and moved for summary judgment on his conditions claims. ECF No. 38. Mr. Trabelsi opposed both motions and filed his own motion for time to conduct discovery. ECF Nos. 45, 46.

On December 2, 2024, the Court granted the government's motion to dismiss Mr. Trabelsi's habeas claims, holding that Congress had stripped district courts' jurisdiction over such claims in the Immigration and Nationality Act. ECF No. 50 (the "Habeas Order") at 13. The Court's jurisdictional ruling in the Habeas Order did not extend to Mr. Trabelsi's conditions claims, and the government's motion for summary judgment, along with Mr. Trabelsi's motion for time to conduct discovery, remains pending.

On or about August 8, 2025, the government removed Mr. Trabelsi to Belgium, rendering all of Mr. Trabelsi's claims moot.

ARGUMENT

A party to a civil suit generally has the right to appeal an adverse decision of the district court. *See* 28 U.S.C. §1291. But this right is lost when the case becomes moot before the losing party can obtain appellate review. When that happens, the "customary practice" is for the court to vacate the adverse decision. *Catawba Riverkeeper Found. v. N. Carolina Dep't of Transp.*, 843 F.3d 583, 592 (4th Cir. 2016); *see United States v. Munsingwear*, 340 U.S. 36, 39 (1950) (when an appeal becomes moot "while on its way" to appellate review, the "established practice" is to "vacate the judgment below).[2] This so-called "*Munsingwear* vacatur" serves important purposes: "A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance" or the "unilateral action of the party who prevailed below," "ought not in fairness be forced to acquiesce in the judgment." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S.

[2] Appellate courts' authority to vacate prior orders based on mootness comes from 28 U.S.C. § 2106, while district courts' authority to vacate prior orders based on mootness comes from Rule 60(b)(6). *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 120 (4th Cir. 2000). Nothing in either authority "requires or suggests that different standards govern the vacatur decisions of the respective courts." *Id.*; *see also id.* at 121 (explaining that the "considerations that are relevant to appellate vacatur for mootness are also relevant to, and likewise largely determinative of, a district court's vacatur decision for mootness").

18, 25 (1994). Courts may deviate from this customary practice when the party seeking vacatur (here, Petitioner) mooted the case through "voluntary action," or when the public interest so demands. *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 117 (4th Cir. 2000) (quoting *Bancorp*, 513 U.S. at 25). No deviation is warranted here, and the Court should follow the ordinary course and vacate the Habeas Order.

"The principal condition to which" courts look when determining whether to vacate a prior order in a mooted case is whether the party seeking vacatur "caused the mootness by voluntary action." *Bancorp*, 513 U.S. at 24. If the answer is "no," vacatur is typically appropriate. *Eden, LLC v. Justice*, 36 F.4th 166, 172 (4th Cir. 2022) (stating that when plaintiffs' ability to appeal is "frustrated" by circumstances beyond their control, it "typically provides 'sufficient reason to vacate' the judgment against them" (quoting *Catawba*, 843 F.3d at 592)); *see also Bancorp*, 513 U.S. at 25 n.3 (explaining that "mootness by happenstance," wherein no party bears responsibility for the mootness, "provides sufficient reason to vacate").

That "principal condition" is satisfied here. *Bancorp*, 513 U.S. at 24. There can be no question that this action was mooted by circumstances beyond Mr. Trabelsi's control. From the moment of his extradition to the moment of his removal, the United States exercised total dominion over Mr. Trabelsi's physical whereabouts. He desperately wished to leave the United States, and if the government had permitted him to voluntarily remove himself, he would have done so. ECF No. 1 ¶¶ 118–20. But the United States alone had the power to remove him. Its decision to do so after he filed suit, and after the Court issued the Habeas Order, is what mooted this action. Vacatur is justified on that basis alone. *Bancorp*, 513 U.S. at 25 n.3.

Vacatur is also in the public interest. As the Fourth Circuit has recognized, courts' "adherence" to the customary practice of vacating orders based on mootness—when the losing party did

not voluntarily cause the mootness—"promotes the 'orderly operation of the federal judicial system' and thus protects the public interest." *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 327 (4th Cir. 2021) (quoting *Bancorp*, 513 U.S. at 27); *see also Catawba*, 843 F.3d at 592 ("Because events beyond the parties' control have mooted this appeal, leaving the district court's decision undisturbed would not serve the public interest."). To be sure, the public has a countervailing interest in judicial precedents. *Hirschfeld*, 14 F.4th at 327. But that interest alone is not enough to prevent vacatur; if it were, no judicial order could ever be vacated on account of mootness. *Catawba*, 843 F.3d at 592 (vacating district court order and observing that the public's interest in judicial precedents "did not prevent the Court in *Bancorp* from standing by the proposition that mootness by happenstance provides sufficient reason to vacate" (cleaned up)); *see also Hirschfeld*, 14 F.4th at 327 (vacating panel opinion when case was mooted by happenstance, despite recognizing public interest in judicial precedents). Indeed, today, any deleterious effect of vacating judicial orders due to mootness is ameliorated by the fact that such orders "remain available as a persuasive source" and thus continue to serve "'the legal community as a whole.'" *Hirschfeld*, 14 F.4th at 328 (quoting *Bancorp*, 513 U.S. at 26).

Vacatur in this matter would also promote the public interest and the orderly operation of the federal judiciary by depriving the government of a perverse incentive to manipulate removable immigrants' habeas cases. If vacatur were unavailable in circumstances like these, the government could use its extraordinary power over the removal process to moot removable immigrants' habeas cases whenever it received favorable decisions in district (or appellate) courts, thereby curating a body of government-friendly caselaw insulated from review. As the Supreme Court has remarked, "[i]t would certainly be a strange doctrine that would permit a [party] to obtain a favorable judgment, take voluntary action that moots the dispute, and then retain the benefit of the judgment.'"

Azar v. Garza, 138 S. Ct. 1790, 1792 (2018) (per curiam) (quoting *Arizonans for Official English*, 520 U.S. at 75). To be clear, Mr. Trabelsi does not (and need not, under the vacatur standard) contend that the government so manipulated the timing of *his* removal—only that declining to vacate the Habeas Order would increase the risk of such mischief in the future. For this reason, too, vacatur is appropriate.

CONCLUSION

For the foregoing reasons, Petitioner–Plaintiff Nizar Trabelsi respectfully requests that the Court vacate its memorandum opinion and order of December 2, 2024, ECF No. 50.

Respectfully submitted, September 18, 2025

/s/ Sophia Leticia Gregg

Sophia Leticia Gregg
VSB No. 91582
ACLU of Virginia
P.O. Box 26464
Richmond, VA 23261
804.774.8242
sgregg@acluva.org

Brett Max Kaufman*
Charlie Hogle*
Judy Rabinovitz *
ACLU Foundation
125 Broad St., 18th Floor
New York, NY 10004
212.549.2500
bkaufman@aclu.org

Cecillia D. Wang*
ACLU Foundation
425 California Street, Suite 700
San Francisco, CA 94104
415.343-0775
cwang@aclu.org

A. Nicole Hallett*
Supervising Attorney
Mariam Nadi
Student Attorney
Edwin F. Mandel Legal Aid Clinic
6020 South University Avenue
Chicago, Illinois 60637
203.910.1980
nhallett@uchicago.edu

Jonathan Hafetz*
Seton Hall Law School
1109 Raymond Blvd.
Newark, NJ 07102
jonathan.hafetz@shu.edu

Counsel for Petitioner–Plaintiff
*Admitted Pro Hac Vice