UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID DAMBROSIO, Petitioner, v. JOSEPH D. McDONALD, Jr., Sheriff, Plymouth County Sheriffs Office, MA; ANTONE MONIZ, Superintendent, Plymouth County Sheriffs Office, MA; GOVERNOR KRISTI NOEM, Secretary of the Department of Homeland Security; TODD LYONS, Assistant Secretary of Immigration & Customs Enforcement; PAMELA BONDI, U.S. Attorney General; PATRICIA HYDE, Boston Field Office Director for Detention and Removal, Immigration and Customs Enforcement, Respondents.	Civil Action No. 1:25-cv-10782-FDS

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO REOPEN, RECONSIDER, AND TO VACATE JUDGMENT

Respondents, by and through their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, respectfully submit this opposition to Petitioner's April 10, 2025, Motion to Reopen, Reconsider, and To Vacate Judgment, Doc. No. 27.

RELEVANT FACTS

Petitioner David Dambrosio ("Petitioner"), who is lawfully detained by U.S. Immigration and Customs Enforcement ("ICE"),[1] is an Italian national with a final order of removal entered against him. Doc. No. 1, at 3; Doc. No. 24. On April 2, 2025, he filed a petition for writ of habeas

[1] As described more fully herein, Petitioner's detention is lawful under 8 U.S.C. § 1231(a).

corpus. Doc. No. 1. At that time, administrative removal proceedings were pending based on Petitioner's years-long overstay of his 2017 Visa Waiver Program ("VWP") admission to the United States. Doc. No. 25 (Notice of Intent). Specifically, ICE had previously notified Petitioner of his removability, and he had contested the allegations only by asserting that he was "going th[r]ough[] [with a] VAWA application [be]cause [he is a] victim of abuse or extreme cruelty by [his] citizen wife." *Id.* On April 3, the Court set a hearing for April 7, Doc. No. 9, as well as setting April 17, 2025, as the due date for Respondents' response to the habeas petition, Doc. No. 8, at ¶ 2.

On April 5, Acting Field Office Director Hyde signed a Final Administrative Order of Removal concerning Petitioner. Doc. No. 24. On April 7, prior to the hearing scheduled by the Court, ICE personally served the removal order upon Petitioner, as the form itself directs. *Id.* Consistent with the requirement of personal service, the ICE officer "explained this . . . Order to the alien in the English language, . . . confirm[ing] that he[] understood it . . . without the need of an interpreter." *Id.* Petitioner then notified his counsel of the order. *See* Pet'r Emer. Mot. for Stay at 4, *D'Ambrosio v. Bondi*, No. 25-1342 (1st Cir. Apr. 8, 2025).[2] Such orders are administratively final. *See* 8 C.F.R. § 217.4(b) (providing no administrative review of "district director['s]" determination); *see also id.* § 1.2 ("district director" includes "field office director"); *compare* 8 U.S.C. § 1101(a)(47)(B)(ii) (order final on expiration of time to appeal to Board of Immigration Appeals), *with* 8 C.F.R. § 1003.1(b) (scope of Board's jurisdiction does not include ICE removal orders); *Johnson v. Guzman Chavez*, 594 U.S. 523, 534-35 (2021) (discussing administrative

[2] The Court may take judicial notice of proceedings in other courts if relevant to the matters at hand, as they are here. *See Perez-Tino v. Barr*, 937 F.3d 48, 54 n.3 (1st Cir. 2019).

finality of different form of ICE removal order where "there was nothing left for the BIA to do" owing partly to lack of administrative review).

At the April 7, 2025, hearing, the government provided a copy of the removal order (and, the following day, filed ICE's Notice of Intent to Remove). Doc. No. 24, 25. The government asserted that, whatever the source of detention authority prior to issuance of the VWP removal order, the source had become the post-removal provision at 8 U.S.C. § 1231 based on issuance of the order. The government also contended that, apart from detention issues, the Court's jurisdiction was barred by 8 U.S.C. § 1252(a)(5), (b)(9), and (g), and that Petitioner's challenges to efforts to remove him—including his effort to preserve his adjustment of status application under VAWA—belong in the court of appeals on a petition for review.

The following day, April 8, 2025, Petitioner filed with the First Circuit a petition for review of his removal order. *See* Docket, *D'Ambrosio v. Bondi*, No. 25-1342 (1st Cir.). Later that evening, he moved the court of appeals for a stay of removal. *See id.* The following morning, April 9, the court of appeals issued an order signed by a clerk bearing a caption reading in part "Pursuant to 1st Cir. R. 27.0(d)" (which rule concerns "Motions Decided by the Clerk") and reading:

> Petitioner has filed a motion to stay removal. This order is issued in accordance with First Circuit Local Rule 18.0. Removal of the petitioner is hereby stayed for ten business days from the date of this order. The government shall file its response to the motion in accordance with the Local Rule.

Order of Court, *D'Ambrosio v. Bondi*, No. 25-1342 (1st Cir. Apr. 9, 2025). Rule 18.0 describes as "administrative" the relevant clerk order, and states that it is part of several procedures "ensur[ing] the orderly presentation of issues" and "preserv[ing] the Court's ability to make considered decisions" in immigration cases. The government timely filed its opposition to the stay

motion on April 11; and Petitioner, a reply on April 14. On April 18, 2025, a three-judge panel of the First Circuit denied the Petitioner's stay motion and vacated the April 9, 2025, administrative stay. *See* Exh. A (attached hereto).

Meanwhile, on April 9, 2025, the Court issued its decision in the present matter. Doc. No. 26 ("Dec."). Relying on 8 U.S.C. § 1231(a) as the source of ICE's detention authority for Petitioner, the Court concluded that "the record does not provide any basis to conclude that petitioner's present detention violates the Constitution or federal law." Dec. at 3. The Court noted that, under section 1231(a) "and the recent issuance of the final removal order, the Attorney General is legally required to detain petitioner until his removal, which is to occur within 90 days." Dec. at 3. Thereafter, the Court noted, "petitioner may have a basis to challenge his detention" but, "at this point, his detention is both permissible and mandatory." *Id.* The Court added that Petitioner's less-than-three-months detention was not unconstitutional, and that his claim regarding improper denial of a bond hearing under 8 U.S.C. § 1226(a) "does not bear on his current mandatory detention under § 1231(a)." Dec. at 4. Finally, the Court recognized that Petitioner's adjustment of status application did not render his detention illegal, and that the Court lacked jurisdiction to the extent Petitioner "asserts that he should be permitted to *remain* in the United States while his visa applications are reviewed," citing *Aziz v. Chadbourne*, 2007 WL 3024010, at *1 (D. Mass. Oct. 15, 2007). Dec. 5.[3]

[3] The Court's decision mooted Respondents' need to respond by April 17, 2025, to the habeas petition, as previously directed. *See* Doc. No. 8, at 1. In the unlikely event that the habeas petition is restored to the Court's docket, Respondents would request that the Court also reset the due date for their response. The present filing addresses only the Court's April 9, 2025, decision to the extent called into question by Petitioner's Motion to Reopen, Reconsider, and to Vacate Judgement.

The next day, April 10, Petitioner filed the pending "Motion to Reopen, Reconsider, and to Vacate Judgement." Doc. No. 27.

ARGUMENT

Reopening or Reconsideration of the Court's April 9, 2025, Order is Unwarranted as Petitioner's New Evidence is Legally Irrelevant.

A. Standard for Reconsideration

"A motion for post-judgment relief filed within 28 days of entry of judgment is made under [Federal Rule of Civil Procedure] 59(e), and all other motions for post-judgment relief are made under Rule 60(b)." *Merchia v. Va. Bd. of Med.*, No. CV 18-11136-FDS, 2019 WL 1961075, at *1 (D. Mass. Apr. 2, 2019) (Saylor, J.), *aff'd*, 2022 WL 18670793 (1st Cir. Nov. 14, 2022) (unpublished). Because Petitioner's motion was filed within 28 days of judgment, it is appropriately treated as a motion for relief under Rule 59(e) rather than a Rule 60(b) motion. "Rule 59(e) grants federal courts the power to vacate judgments, but such relief is 'granted sparingly, and only when the original judgment evidenced a manifest error of law, if there is newly discovered evidence, or in certain other narrow situations.'" *Merchia*, 2019 WL 1961075, at *1 (quoting *Fontanillas-Lopez v. Morell Bauza Cartagena & Dapena, LLC*, 832 F.3d 50, 55 (1st Cir. 2016)) (further internal marks and citation omitted). "'A motion for reconsideration is not the venue to undo procedural snafus or permit a party to advance arguments it should have developed prior to judgment, nor is it a mechanism to regurgitate old arguments previously considered and rejected." *Merchia*, 2019 WL 1961075, at *1 (quoting *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (internal quotation marks and citations omitted)).

B. The Petition for Review and the First Circuit's Temporary Administrative Stay of Removal Did Not Affect the Source of Authority for Petitioner's Detention.

Petitioner does not dispute the Court's determination that ICE's April 7, 2025, removal order changed the source of authority for Petitioner's detention to 8 U.S.C. § 1231(a). *See* Doc. No. 27, at 3, 16, 18-19. In fact, he correctly indicates that at least during April 7, 2025, the source of authority for detaining him was section 1231(a), owing to the issuance of an administratively final removal order. *See id.* He is mistaken, however, that the source of authority thereafter reverted to a pre-removal basis for detention based on new evidence he presented—mainly, the filing of a petition for review and the issuance of a 10-day administrative stay. *See id.* at 2, 10 (citing Exhs. 8, 9); *see also id.* at 3, 16, 18.

As the Court recognized, section 1231(a) establishes a 90-day "removal period" during which an alien subject to removal, such as Petitioner, must be detained. *See* Dec. at 3. The beginning of the removal period is defined as follows:

> The removal period begins on the latest of the following:
>
> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). Subsection (i) clearly applied to Petitioner as of April 7, 2025, with the issuance of an "administratively final" order of removal. Petitioner asserts, however, that his removal order lost its finality with the issuance of the First Circuit's April 9 order imposing an administrative stay of removal. *See* Doc. No. 27, at 3, 7-8, 10. Petitioner is mistaken.

The key word in subsection (i) is "administratively," modifying the word "final." Nothing about proceedings in the court of appeals changes the administrative finality of a removal order, unless the circuit court grants a petition for review. *Cf.* 8 U.S.C. § 1252(a)(1) (cross-referencing the Hobbs Act); 28 U.S.C. § 2349(a), (b) (authorizing court of appeals to enter judgment determining validity of agency order, the operation of which may be stayed pending review). This is necessarily so because the court of appeals' jurisdiction depends on the order's administrative finality; depriving a removal order of its administrative finality would strip the court of appeals of its jurisdiction. *See* 8 U.S.C. § 1252(a)(1) (providing jurisdiction to review "a final order of removal"); *cf. Gutierrez v. Holder*, 708 F.3d 1098, 1098-99 (9th Cir. 2013) (order) (grant of reopening undermines finality of removal order, depriving court of appeals of jurisdiction); *Gao v. Gonzales*, 464 F.3d 728, 729-30 (7th Cir. 2006) (same). Even the grant of a stay by the court of appeals does not change the administrative finality of a removal order—although the stay prevents execution of the order. *See Guzman Chavez*, 594 U.S. at 534-35 ("DHS is free to remove the alien *unless* a court issues a stay[,] . . . reinforc[ing] why Congress included 'administratively' before the word 'final' in the first provision" of section 1231(a)(1)(B)). Because the administrative finality of Petitioner's order was unaffected by his petition for review and the First Circuit's administrative stay, subsection 1231(a)(1)(B)(i) remains as the relevant authority defining the beginning of Petitioner's "removal period" and the source of his detention authority under section 1231, contrary to the only argument he fully asserts regarding detention authority.

To be sure, under section 1231(a)(1)(B)(ii), further events in connection with a court of appeals' stay of removal could affect both the beginning of a "removal period" and section 1231 as the operative source of detention authority. But Petitioner makes no express argument in that regard—never even citing subsection (ii), except in a block quote along with the subsection (i).

See Doc. No. 27, at 9. He has therefore waived any claim that, by operation of subsection (ii), authority for his detention reverted to a pre-removal source. *See United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (issues waived when "merely averted to in a perfunctory manner" because "[i]t is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones"). In any event, subsection (ii) does not apply in the present case for two reasons, leaving subsection (i) in place to signify the beginning of Petitioner's removal period and the current source of authority for his detention.

The first reason that subsection (ii) does not apply here is that a clerk's order granting a 10-day "administrative" stay of removal, without any review or action by a judicial officer, is insufficient to trigger that provision. By its terms, the provision is clearly intended to apply in tandem with "judicial[] review[]" of the order of removal. Yet an administrative stay issued by a clerk—a stay that is subject to a 10-day limit that simply leads to a judicial decision on the merits of a stay motion after time for government opposition—is not a stay accompanying "judicial[] review[]" of the removal order. If a clerk's grant of an administrative stay were sufficient by itself to trigger subsection (ii), then detention authority would continue under section 1226 until the conclusion of the petition for review—possibly even if judicial officers nevertheless denied the stay motion on its merits (as they did here). That would be an absurd result, primarily because the judicial denial of a stay would permit removal of the alien while the petition for review remained pending, *see* 8 U.S.C. § 1252(b)(3)(B), such that a "removal period" should be triggered--yet on Petitioner's theory, an alien in his circumstances, who could be removed, would never have been subject to a "removal period" and post-removal detention authority under section 1231 despite having an administratively final removal order with no impediment to actual removal. *Cf. Guzman*

Chavez, 594 U.S. at 544 (Congress judged aliens ordered removed to pose different flight risk than those not yet ordered removed); *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001) (upon entry of a final order of removal, "the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody"); *id.* at 699 (basic purpose of statute is "assuring the alien's presence at the moment of removal").

Petitioner cites *Reid v. Donelan*, 64 F. Supp. 3d 271, 277 (D. Mass. 2014), for the proposition that section 1226 "continues to govern in situations such as Petitioner's where the noncitizen is detained, but a removal order is being judicially reviewed and a stay of removal is in effect." Doc. No. 27, at 9. But while this rule may govern when Senate-confirmed judicial officers of the courts of appeals have issued a stay of removal on its merits following full briefing of a stay motion, the *Reid* court was wrong to suggest that it applies even while a stay motion is pending in the court of appeals. *See* 64 F. Supp. 3d at 276-77. For that proposition, *Reid* cited *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 n.5 (9th Cir. 2008), which had reasoned that it was "unlikely that Congress would have intended that DHS's removal efforts begin as soon as an alien's removal order is administratively final" when "an alien files a timely petition for review and requests a stay." *Id.*

That proposition is flatly contradicted by the 1996 statute that enacted section 1231, which was "designed to expedite removal and restrict the ability of aliens to remain in this country pending judicial review" in part by repealing the automatic stay that previously arose upon the filing of a petition for review. *See Nken v. Holder*, 556 U.S. 418, 443 (2009) (Alito, J., dissenting) (describing Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, Div. C, Sept. 30, 1996, 110 Stat. 3009–546 ("IIRIRA")); *see also* IIRIRA, 110 Stat. 3009-598 to -607 (enacting section 1231). The unpersuasiveness of *Prieto-Romero* is even more

pronounced given that aliens have 30 days from issuance of a final order of removal to petition for review, *see* 8 U.S.C. § 1252(b)(1)—and even upon filing a petition, still might not immediately file a stay motion. The idea the "removal period" may not begin—notwithstanding an administratively final removal order—simply because a petition for review and stay motion are eventually filed (with or without a clerk-issued administrative stay) is wholly meritless and this Court should reject it.

In any event, the second reason that subsection (ii) does not apply here is that the provision contemplates that a judge-ordered stay of removal has been issued by the court of appeals. Here, however, a panel of First Circuit judges has denied Petitioner's stay motion. *See* Exh. A. Subsection (ii) therefore has no application here, leaving subsection (i) to signify that Petitioner is subject, and has been subject since April 7, 2025, to detention under section 1231 based on his "administratively final" removal order. The Court was therefore correct to rely on that statute to deny the limited portion of Petitioner's habeas petition over which it had jurisdiction.[4]

[4] Because the Court correctly relied on section 1231, its discussion of section 1226 in footnote 2 of its decision, Doc. No. 26, at 4 n.2, as well as Petitioner's challenge thereto, Doc. No. 27, at 6, 16-17, need not be considered here. In addition to disputing the statutory basis for Petitioner's detention, his Motion to Reopen reiterates several arguments concerning the merits of the VWP removal order, *see id.* at 11-15, over which the Court ruled that it lacked jurisdiction, *see* Doc. No. 26, at 4 n.1, 5. Petitioner does not expressly challenge the jurisdictional limits recognized by the Court, however, and so the arguments concerning the merits of the removal order are not addressed here.

CONCLUSION

For the reasons set forth above, the Motion to Reopen, Reconsider, and to Vacate Judgment should be denied.

Dated: April 24, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 24, 2025.

/s/ W. Manning Evans
W. MANNING EVANS

Exhibit A

Dambrosio v. McDonald, et al.,
No. 1:25-cv-10782-FDS (D. Mass.)

United States Court of Appeals
For the First Circuit

No. 25-1342

DAVID D'AMBROSIO,

Petitioner,

v.

PAMELA J. BONDI, U.S. Attorney General,

Respondent.

Before

Gelpí, Lynch and Kayatta,
Circuit Judges.

ORDER OF COURT

Entered: April 18, 2025

Petitioner David D'Ambrosio seeks a stay of removal pending the resolution of his petition for review. Because petitioner has not made the required "strong showing that he is likely to succeed on the merits" of his petition, Nken v. Holder, 556 U.S. 418, 434 (2009), the request for a stay of removal is denied. The administrative stay entered in accordance with Local Rule 18.0 is vacated.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Karen Weinstock
Oil
Amber Ashley Arthur