

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MANUEL YAX ZAPETA,

Petitioner,

v.

Case No. 2:25-cv-697-JLB-KCD

TODD LYONS, Director, United States  
Immigration and Customs Enforcement  
("ICE"), et al. (official capacity),

Respondents.

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**Response in Opposition to Motion for Reconsideration**

The Federal Defendants (together, ICE) oppose the Petitioner Manuel Yax Zapeta's Motion to Amend Judgment (Doc. 32). Specifically, the Court was correct that it lacks jurisdiction because this action is moot. (Doc. 31). In that regard, nothing changed since the Court dismissed this case.

As ICE argued and the Court recognized, this was a habeas case limited to whether Zapeta's detention was lawful, and his request was for release only. (Doc. 31 at 7 ("Here, Petitioner's sole challenge is the legality of his detention.")); *see also* (Docs. 1 at 7-9; 4 at 13-15 (challenging lawfulness of detention and seeking only release)). That's it. This case has never been about the validity of the removal order or ICE's decision to execute removal. Nor could it be. The Court lacked jurisdiction over such matters. 8 U.S.C. §§ 1252(b)(9), (g); Camarena v. ICE, 988 F.3d 1268, 1273-74 (11th Cir. 2021); Alvarez v. ICE, 818 F.3d 1194, 1203 (11th Cir. 2016).

Because this case solely concerned a challenge to detention itself, removal and release rendered the habeas action moot. *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1289 (11th Cir. 2019); *Soliman v. INS*, 296 F.3d 1237, 1243 (11th Cir. 2002); *Djadju v. Vega*, 32 F.4th 1102, 1106-07 (11th Cir. 2022); *Mehmood v. U.S. Att’y General*, 808 Fed. Appx. 911, 913-14 (11th Cir. 2020). So the Court’s decision was correct, and reconsideration is improper.

Zapeta addresses three purported exceptions to the mootness doctrine. None change the outcome.

First—the capable of repetition, yet evading review doctrine—was already rejected by the Court. (Doc. 31 at 7-8). There is no basis to reconsider that decision since the holding was correct. While Zapeta’s Motion attempts to reframe this action as a broad challenge to ICE’s ability to remove aliens during the pendency of habeas actions, this doctrine only applies to reasonably foreseeable disputes between the same parties. *E.g.*, *Mehmood*, 808 Fed. Appx. at 913-14. Put different, it does not apply here.

Second—the collateral consequences doctrine—was not addressed because Zapeta never raised it. (Doc. 31 at 6 n.5). Of course, it is improper to reconsider decisions based on arguments a party never made beforehand. *E.g.*, *Banister v. Davis*, 590 U.S. 504, 508 (2020) (“In particular, courts will not address new arguments or evidence that the moving party could have raised before the decision issued.”). This alone is sufficient to deny the Motion. Apart from that dispositive problem, however, Zapeta misunderstands the doctrine.

This mootness exception might apply “when a detention has a tangible

collateral consequence.” *Salmeron-Salmeron*, 926 F.3d at 1290 (cleaned up). So an alien must demonstrate “that a collateral consequence of his imprisonment persists after his release.” *Djadju*, 32 F.4th at 1107. In that regard, the allegations and relief sought matter. *Id.* (“The fundamental question is whether events have occurred that deprive us of the ability to give the appellant meaningful relief.”).

Again, this was a habeas case related to detention itself—not removal. All collateral consequences Zapeta now raises on reconsideration have nothing to do with his detention; instead, these consequences all stem from removal. Zapeta did not (and could not) challenge removal through this habeas action though. The only relief the Court could grant would have been release from detention. Yet release occurred almost two months ago. (Doc. 28 at 4, 13-15).

The single immigration-related case on which Zapeta relies demonstrates his misunderstanding. *Hanif v. Stewart*, No. 15-00145-WS-N, 2018 WL 1702412, at \*5-6 (S.D. Ala. Mar. 1, 2018), *R&R adopted*, 2018 WL 1583524 (Mar. 30, 2018). There, a habeas action was live despite release because petitioner challenged a state criminal conviction that had collateral consequences on his immigration status. *Hanif* is simply in line with Eleventh Circuit precedent like *Salmeron-Salmeron*. Tellingly, *Salmeron-Salmeron* mentioned the collateral consequences doctrine before holding a similar habeas petition was moot. 926 F.3d at 1290. For aliens—like Zapeta—who only seek habeas on detention, removal moots the action:

In the immigration context, this Court has held previously that a habeas petition filed by a subsequently deported alien who challenges not only his detention, but also his final order of removal, may survive a

mootness challenge. [Petitioner] only challenged his detention, and not his final order of removal. Thus, his habeas claim is moot.

*Id.* (internal citations omitted).

And third—the all necessary steps doctrine—was never raised and likewise has no application here. It may apply where “appellant has taken all steps necessary to perfect the appeal and to preserve the status quo before the dispute becomes moot.” *B&B Chem. Co. v. EPA*, 806 F.2d 987, 990 (11th Cir. 1986). “This exception, however, is an extremely narrow one that has been limited primarily to criminal defendants who seek to challenge their convictions notwithstanding that they have been released from custody.” *Ethredge v. Hail*, 996 F.2d 1173, 1176-77 (11th Cir. 1993).

Zapeta relies on an exception applicable to criminal appeals. “As this case does not involve an appeal, this exception does not apply.” *See, e.g., Kim v. Gentry*, No. 5:23-cv-01740-MHH-HNJ, 2025 WL 468670, at \*2 n.2 (N.D. Ala. Jan. 13, 2025), *R&R adopted*, 2025 WL 467462 (Feb. 11, 2025). Neither Zapeta nor ICE found any district court cases ever applying the narrow necessary steps doctrine at all—much less in the context of a habeas concerning a previously removed alien. In fact, applying this doctrine would make any habeas case live when an alien is removed during the pendency of legal proceedings; but that isn’t the law. *Salmeron-Salmeron*, 926 F.3d at 1290 (holding habeas moot when removal occurred during action); *Soliman*, 296 F.3d at 1243-44 (same during appeal); *Mehmood*, 808 Fed. Appx. at 913-14 (same).

At bottom, it is clear this case was—and remains—moot. There is no relief alleged that the Court could grant. Recognizing this, Zapeta seeks extraordinary relief

by writ to create a live controversy where none exists. As already stated, the All Writs Act does not create jurisdiction. Likewise, the unalleged request for mandamus has no basis as the Court cannot order release that already occurred.

The Motion lays bare what was already clearly implied: this whole case was an attempt to stop lawful, imminent removal. The only real avenue to challenge that removal, however, was at the Eleventh Circuit. Instead, Zapeta filed for habeas relief in this Court as a last-ditch effort to temporarily halt a removal already in progress.

For those reasons, the Court's should not reconsider its correct holding and instead deny the Motion.

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Respectfully submitted,

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