

SCOTT E. BRADFORD, OSB #062824

United States Attorney

District of Oregon

SUSANNE LUSE, OSB #142489

ARIANA N. GAROUSI, CSB #347758

SARAH E. FELDMAN, OSB #141458

Assistant United States Attorneys

1000 SW Third Ave., Suite 600

Portland, Oregon 97204-2936

Telephone: (503) 727-1000

Email: Susanne.Luse@usdoj.gov

Ariana.Garousi@usdoj.gov

Sarah.Feldman@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

L-J-P-L,

Petitioner,

v.

**CAMMILLA WAMSLEY; TODD
LYONS; KRISTI NOEM; PAMELA
BONDI; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; U.S.
DEPARTMENT OF HOMELAND
SECURITY,**

Respondents.

Case No.: 3:25-cv-01390-IM

**RESPONSE TO MOTION FOR
RECONSIDERATION**

Respondents, through counsel, respond to Petitioner's Motion for Reconsideration, ECF 39. This response is supported by the Declaration of Ariana N. Garousi ("Garousi Decl. MTR") and its accompanying exhibits, the Declaration of Christopher Sica ("Sica Decl. MTR"), and all filings of record.

INTRODUCTION

Petitioner, a noncitizen who has been previously removed twice, seeks reconsideration of the Court's decision finding lawful his detention pursuant to a reinstated removal order. Petitioner's request for reconsideration is predicated on arguments the Court already rejected and factual allegations that occurred well after Petitioner was detained. The circumstances Petitioner contends necessitate reconsideration have no bearing on the lawfulness of his August 7, 2025, detention. Because Petitioner has not met the high standard required to show reconsideration is necessary, the Court must deny his motion.

PROCEDURAL HISTORY

On August 7, 2025, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") pursuant to a reinstated removal order. On August 22, 2025, the Court denied Petitioner's habeas petition challenging his detention. ECF 38. As part of its Order denying the petition, the Court ordered Respondents to notify the Court of the date for which Petitioner's Reasonable Fear Interview ("RFI") was scheduled within a week of the issuance of the Order. *Id.* at 20. On August 28,

Respondents' counsel notified the Court via email that Petitioner's RFI was scheduled for Friday, August 29.¹

On September 25, 2025, Petitioner filed a Motion to Reconsider the Court's August 22 Order. ECF 39. The Court ordered Respondents to respond to Petitioner's motion by 10 a.m. on October 1, 2025. ECF 43.

LEGAL STANDARD

"Reconsideration is an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Adidas Am., Inc. v. Payless Shoesource, Inc.*, 540 F. Supp. 2d 1176, 1179 (D. Or. 2008) (quoting *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)); see also *MIL-Ray v. EVP Int'l, LLC*, No. 3:19-CV-00944-YY, 2021 WL 10416344, at *1 (D. Or. Nov. 23, 2021) ("Motions for reconsideration are generally disfavored.").

Under Rule 54(b) of the Federal Rules of Civil Procedure, any order "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P 54(b). "The rule, however, does not address the standards that a district court should apply when asked to reconsider an interlocutory order, and the Ninth Circuit has not established a standard of review." *DeFries v. Union Pac. R.R. Co.*, No. 3:21-CV-205-SI, 2025 WL 2193936, at *1 (D. Or.

¹ On August 26, Respondents' counsel notified the Court that Petitioner's RFI would take place on August 28. However, due to a technical issue at the ICE facility, Petitioner's RFI was rescheduled to August 29. Respondents' counsel promptly updated the Court when they learned the RFI was rescheduled.

July 31, 2025) (citations and quotations omitted). “Courts in this circuit generally look to the standards under Rule 59(e).” *Id.* (collecting cases).

“[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (citing *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir.1999)). “A motion for reconsideration ‘may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Id.* (emphasis in original) (citing *Kona Enters.*, 229 F.3d at 890).

ARGUMENT

I. The Court should deny Petitioner’s motion for reconsideration because Petitioner’s counsel failed to confer in good faith with Respondents’ counsel as required by LR 7-1(a).

“Under LR 7-1(a)(1), ‘the first paragraph of every motion must certify that . . . the parties made a good faith effort through personal or telephone conferences to resolve the dispute and have been unable to do so; or [that t]he opposing party willfully refused to confer.’” *Chalice Vineyards, LLC v. United States*, No. 6:24-CV-01559-MTK, 2025 WL 1446274, at *2 (D. Or. May 20, 2025) (alterations in original). “The Court may deny any motion that fails to meet this certification requirement.” *Id.* (citing LR 7-1(a)(3)); *Inhale, Inc. v. Inhale, LLC*, 6:19-cv-01780-AA, 2020 WL 6121942, at *4 (D. Or. Oct. 16, 2020) (denying motion for failure to comply with LR 7-1(a)); *Gelly v. Safe Transportation, Inc.*, No. 3:22-cv-00844-SB, 2023 WL 372668, at

*1 (D. Or. Jan. 24, 2023) (denying motion to dismiss for failure to comply with LR 7-1(a)(1)); *see also Tri-Valley CAREs v. U.S. Dep't of Energy*, 671 F.3d 1113, 1131 (9th Cir. 2012) (“Denial of a motion as the result of a failure to comply with local rules is well within a district court's discretion.”). “Simply sending an email to opposing counsel and not allowing sufficient time for a meaningful conference by telephone or in person is insufficient compliance with the local rules of this district.” *Ekeya v. Shriners Hosp. for Child., Portland*, No. 3:17-CV-195-SI, 2017 WL 3707396, at *2 (D. Or. Aug. 28, 2017).

Petitioner's counsel cannot plausibly “certify that they made a good faith effort to confer with Respondent's counsel through telephone conference” when Petitioner's counsel simply filed the motion to reconsider after being informed that Respondents' counsel was available to confer later the same afternoon. ECF 39 at 2. Petitioner's counsel contacted AUSA Garousi via phone at 9:30 a.m. and 9:31 a.m. respectively on September 25. Garousi Decl. MTR ¶¶ 4–5. Petitioner's counsel left the following voicemail:

Hi Ariana, this is Tess Hellgren from Innovation Law Lab. I'm calling to confer on two motions that Petitioner intends to file today in the case of LJPL and so would appreciate you calling me back as soon as you can. My number is

Id. ¶ 4. Petitioner's counsel left a similar message on AUSA's Garousi's desk phone.

Id. ¶ 5. Neither voicemail mentioned the types of motions to be filed, the grounds for the motions, or the apparent urgency of filing the motions that same day. *Id.* When AUSA Garousi could not be reached, Petitioner's counsel contacted AUSA Susanne Luse, who appeared in this case only to respond to the Court's order at ECF 5 before

AUSAs Garousi and Feldman entered appearances in the matter. *Id.* ¶ 6, Ex. C. AUSA Luse directed Petitioner’s counsel to AUSAs Garousi and Feldman for conferral. *Id.*

At 9:59 a.m., AUSA Garousi emailed Petitioner’s counsel of record notifying them that counsel for Respondents would be available to confer on the motions after 2:30 p.m. later that day. *Id.* ¶ 7, Ex. A. This was due to the press of other litigation and meetings scheduled during the intervening timeframe. AUSA Feldman sent a follow-up email at 10:30 a.m. requesting that Petitioner’s counsel send a description of the motions and the bases for them in an effort to aid the anticipated conferral call. *Id.* ¶ 8.

At 10:43 a.m., Respondents’ counsel received an email from Petitioner’s counsel stating that Petitioner intended to file his motion to reconsider “this morning [the morning of September 25] before 12 pm PT.” *Id.* ¶ 9, Ex. C. Petitioner’s counsel wrote, “Given the recent facts we have learned regarding Petitioner’s case, including an aborted removal to Guatemala, his still-pending immigration court proceedings, and his current detention at Camp East Montana at Fort Bliss, the motion is time-sensitive and we intend to request expedited consideration.” *Id.* After explaining the bases for the motion, Petitioner’s counsel closed the email with:

We reached your co-counsel in this case, Susanne Luse, by phone this morning and asked to confer. Susanne directed us to confer with you. Please let us know if you are available to share Respondents’ positions in the next hour. Otherwise, given the time-sensitive nature of this motion, Petitioner will outline our conferral efforts and proceed with filing the motions without Respondents’ position.

Id. When Respondents' counsel did not respond by Petitioner's counsel's self-imposed 12 p.m. deadline because of meetings and other pressing matters, Petitioner's counsel filed their motions.

Petitioner's counsel's LR 7-1 certification characterizes their efforts as "good faith" and states that "Respondents' counsel declined" to confer through telephone conference. Petitioner's counsel's efforts can hardly be characterized as good faith. Despite the fact that Petitioner's counsel was aware of the Court's Order denying the petition since August 22, Petitioner's counsel attempted to confer two and a half hours before they planned on filing the motion for reconsideration, whether or not Respondents' counsel was able to confer. And "[as] reasonably expected, [Respondents'] counsel was unable to drop everything and respond immediately to opposing counsel's thinly veiled attempt to confer in form but not in substance." *Chalice Vineyards, L.L.C.*, 2025 WL 1446274, at *4. The alleged urgency of Petitioner's filing does not excuse Petitioner's counsel from meaningfully conferring as required under the Local Rules. This is especially true when Respondents' counsel was willing and able to confer early in the afternoon—just not before 12 p.m. as Petitioner's counsel demanded. Petitioner's counsel grossly misrepresents Respondents' counsel's inability to confer on an hour's notice as refusal to confer.

Petitioner's counsel cannot flout the rules they find inconvenient. Given Petitioner's counsel's lack of due regard for the Local Rules and the fact that Petitioner's counsel did not give Respondent's counsel a meaningful opportunity to

discuss the issues raised in the motion, the Court should deny Petitioner's motion for reconsideration.

II. Petitioner has not demonstrated sufficient grounds for reconsideration.

a. Petitioner has not demonstrated the Court committed clear error in denying his habeas petition.

Though Petitioner styles his motion as one to reconsider the Court's order denying his habeas petition, the arguments he presents largely do not differ from those he made before the petition was denied. He raises the same grounds—(1) the INA bars dual, concurrent proceedings; (2) Respondents did not comply with 8 C.F.R. § 241.8 because Petitioner did not receive notice of reinstatement in his language of choosing; and (3) detention is not mandatory under 8 U.S.C. § 1231(a)(2)—that he unsuccessfully raised in briefing and at oral argument. But rehashing the same arguments and facts previously presented to the Court is an insufficient ground to grant a motion to reconsider. *Sam v. Deutsche Bank Nat. Trust Co.*, No. 03:13-cv-01521-MO, 2013 WL 6817888 *2 (D. Or. Dec. 23, 20 13) (“[Appellants] have to show in their motion for reconsideration that they raised a legitimate basis for reconsideration, meaning something other than re-raising arguments previously made or asserting new legal theories or new facts which could have been presented before the initial hearing.”); *American Fireglass v. Moderustic Inc.*, No. 15-CV-2866 JLS, 2019 WL 4918042, *1 (S.D. Cal. Oct. 4, 2019) (cleaned up); *Wagnier v. National City Mortg. Inc.*, No. 09cv2721–GPC–BGS, 2013 WL 3810592, at *2 (S.D. Cal. July 22, 2013) (denying motion for reconsideration where the motion reflected

the same arguments, facts, and case law that were previously considered and ruled upon by the court).

Petitioner raises the argument that Respondents did not comply with the requirements of 8 C.F.R. § 241.8 because the notice of reinstatement was not provided in his preferred language, Mam. ECF 39 at 11–12.² Petitioner contends he “learned Spanish as a second language and can speak it at a rudimentary level and use it for simple interactions in daily life.” ECF 30. ¶ 2. Despite being served his 2024 Notice to Appear (“NTA”) in Spanish and signing the certificate of service to acknowledge service, Sica Decl. ¶ 3, ECF 26, Petitioner alleges that the reinstatement order lacked “fundamental fairness” because it was not in Mam, ECF 39 at 11–12.

Even if Petitioner was entitled to notice of reinstatement in his native language, he has not and cannot demonstrate prejudice.³ “In order to make out a due process violation, . . . the alien must show that ‘a better translation would have made a difference in the outcome.’ *Kotasz v. INS*, 31 F.3d 847, 850 n.2 (9th Cir. 1994) (quoting *Acewicz v. INS*, 984 F.2d 1056, 1063 (9th Cir. 1993)); *see also Aden v. Holder*, 589 F.3d 1040, 1046–47 (9th Cir. 2009) (concluding there was no due process violation where petitioner failed to demonstrate prejudice from alleged errors in translation);

² Pin cites refer to ECF pagination.

³ Respondents do not concede that the Form I-871 Notice of Intent/Decision to Reinstate Prior Order needed to be translated into or explained in Mam. *Cf. Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1155–56 (9th Cir. 2004) (“[In] order to receive generally adequate notice, an alien must be informed, in a language he understands, of his rights and responsibilities in regard to the deportation hearing, the time and place of that hearing and the consequences of failing to appear.”). ICE communicated the contents of the notice and notified Petitioner of his ability to contest ICE’s findings in Spanish, a language Petitioner has some understanding of. ECF 28, Ex. C at 12.

Luna-Arenas v. Garland, 842 F. App'x 144, 145 (9th Cir. 2021) (holding that petitioner could “not show that he was prejudiced by any potential due process violation relating to the Notice [of Intent to Issue a Final Administrative Removal Order] not being translated to his native language because” he was statutorily ineligible for the relief he sought).

Here, Petitioner was removed from the United States in 2009 and 2014. Bell Decl. ¶ 9, ECF 16. Despite the opportunities during briefing, oral argument, and the present motion, Petitioner offers no evidence to dispute these removals. The underlying facts remain true regardless of whether Petitioner received notice in his preferred language: he was previously removed twice and subject to reinstatement. Any alleged due process violation has not resulted in prejudice such that release from detention would be appropriate.

Additionally, Petitioner challenges the Court's application of 8 U.S.C. § 1231(a)(2) to Petitioner. Petitioner's argument is premised on his flawed logic that reinstatement of a removal order is a proceeding and that he cannot be in dual proceedings. *See* discussion *infra* Section II.b. Therefore, in Petitioner's view, “the reinstatement of that order is not administratively final,” and he is not subject to mandatory detention. ECF 39 at 13. Petitioner's position is plainly contradicted by Ninth Circuit precedent. In *Padilla-Ramirez v. Bible*, 882 F.3d 826, 831 (9th Cir. 2017), the Ninth Circuit held that a reinstated removal order is administratively final. Because the reinstated removal order is administratively final, the removal period begins from the date the order was reinstated. *See* 8 U.S.C. § 1231(a)(1)(B).

Adopting Petitioner's position would result in absurdity. Any noncitizen who illegally reenters the United States after having been previously removed would receive a windfall for illegally reentering. That someone who has flouted immigration laws multiple times would somehow be in a better position than someone who has only recently been ordered removed would be illogical. Moreover, it would render useless Congress's decision to place the subsection governing reinstatement of removal orders in a statute titled "Detention and removal of aliens ordered removed." *See* 8 U.S.C. § 1231. Petitioner's argument is wrong.

Petitioner largely presents arguments that he previously raised before the Court. To the extent he has presented new arguments, they do not warrant reconsideration of the Court's order denying the petition for the reasons previously discussed.

b. Petitioner's new factual allegations do not affect his lawful detention.

Petitioner further seeks to fashion a motion for reconsideration based on events wholly irrelevant to the detention authority Respondents asserted over Petitioner on August 7 and the facts that informed that determination. A habeas petition is a challenge to detention. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("The writ simply provided a means of contesting the lawfulness of restraint and securing release."). A motion for reconsideration of that same habeas petition must argue facts or law related to the circumstances at the time of the detention or else the motion would not be challenging the same detention the petition challenges.

Petitioner alleges that Respondents did not afford him access to counsel during his RFI. However, even if true, a habeas petition before the district court is not the proper vehicle to challenge an alleged due process violation that occurred during an RFI. Only the appropriate federal circuit court of appeals has jurisdiction to review reasonable fear determinations and reinstate orders:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e).

8 U.S.C. § 1252(a)(5); *see Diego v. Garland*, No. 23-1583, 2024 WL 3311068, *1 (9th Cir. 2024) (citing 8 U.S.C. § 1252(a)(1), (5) to find jurisdiction to deny petitioner's due process claims relating to his reasonable fear interview).

Notably, a negative reasonable fear finding results in removal, not detention. As such, release from detention, the only remedy available for a habeas petition, would not be an appropriate remedy for Petitioner's purported lack of counsel at the RFI. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[The] essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”); *Thuraissigiam*, 591 U.S. at 117. Petitioner's allegation that he was denied access to counsel during his RFI is inconsequential to Respondents' lawful detention of Petitioner on August 7.

Similarly, Petitioner's ongoing 240 proceedings do not bear on ICE reinstating Petitioner's removal order and placing him in mandatory detention. Petitioner again

argues, without support, that he cannot be subject to “dual, concurrent proceedings,” citing his 8 U.S.C. 1229a proceedings (“1229a proceedings”) as one proceeding and his reinstatement “proceedings” as another. ECF 39 at 8–10.

In finding that the reinstatement was lawful, the Court correctly recognized that a “[reinstatement] of [a] prior order of removal is not a removal proceeding.” ECF 38 at 12. The Court pointed out removal proceedings under 8 U.S.C. § 1229a are the “sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.” ECF 38 at 16 (quoting 8 U.S.C. § 1229a(a)(3)). But when a noncitizen has a prior removal order, he has already been found removable. ECF 38 at 13 (citing *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 491 (9th Cir. 2007)). The case law makes clear that reinstatement is not a type of proceeding, *Morales-Izquierdo*, 486 F.3d at 491, and Petitioner offers no authority to the contrary.

Petitioner further argues that the Immigration Judge’s (“IJ”) denying of ICE’s motion to dismiss demonstrates why ICE could not reinstate Petitioner’s removal order during the pendency of his 1229a proceedings. This argument fails for multiple reasons. First, as the Court pointed out in its decision and the case law makes clear, reinstatement is not a proceeding. Second, the Court did not rely on the dismissal of Petitioner’s 1229a proceedings in reaching its decision that the Petitioner’s detention was lawful. Indeed, the Court found there was no requirement that 1229a proceedings must be dismissed before ICE can reinstate a prior order of removal. ECF 28 at 16–18.

And third, as he failed to do during earlier briefing and oral argument, Petitioner does not point to relevant authority that necessitates dismissal of 1229a proceedings before reinstating a removal order. ECF 39 at 8–10. The BIA decisions Petitioner cites merely indicate that ICE cannot unilaterally dismiss proceedings once jurisdiction has vested with the IJ; only the IJ can order dismissal at that point. *Id.* at 8. Respondents do not contest that only an IJ can dismiss the 1229a proceedings since an NTA has been filed. But to find support for Petitioner’s position that ICE cannot reinstate a removal order unless and until 1229a proceedings have been dismissed by an IJ, one would have to make the misguided, unsupported assumption that reinstating a removal order is a proceeding. And the case law clearly holds to the contrary. *Morales-Izquierdo*, 486 F.3d at 491.

To the extent Petitioner also argues that he could have 1229a proceedings and withholding-only proceedings occurring at the same time concluding in a “nonsensical result,” this is unpersuasive. The motion to dismiss was rejected by the Immigration Court because Petitioner was the Lead Respondent in a consolidated case where his minor child was a Rider Respondent. ECF 41, Ex. A at 1. The Immigration Court clerk further explained that no motion to sever was filed with the motion to dismiss Petitioner’s 1229a proceedings. *Id.* ICE’s motion to sever is currently before the IJ but has yet to be ruled on despite the 10-day waiting period having passed. Sica Decl. MTR ¶ 7.

However, ICE is not barred from reinstating Petitioner’s prior order of removal because his daughter’s proceedings were consolidated with his own. What’s more, at

no point was Respondent ever in withholding-only proceedings. Respondent declined to proceed with his RFI and accepted removal. ECF 40 ¶ 5. Petitioner's immigration counsel's opinion is based on speculation and assumes the Immigration Court would not consolidate 1229a and withholding-only proceedings. Importantly, an IJ would not be able to openly disregard a reinstatement of removal order to grant Petitioner a form of relief he is statutorily ineligible for. *See Perez-Guzman v. Lynch*, 835 F.3d 1066, 1082 (9th Cir. 2016) (“[Petitioner] is not eligible to apply for asylum under § 1158 as long as he is subject to a reinstated removal order.”).

In sum, the “newly discovered” factual allegations have no bearing on Respondents' lawful detention of Petitioner on August 7. Neither the contention that Petitioner was not afforded counsel during his RFI nor that the Court has yet to dismiss his 1299a proceedings are “of such a nature that they would probably change the” Court's Order denying petition.⁴ *See Infusion Resources, Inc. v. Minimed, Inc.*, 351 F.3d 688, 696–97 (5th Cir. 2003). Accordingly, Petitioner has not demonstrated the Court's Order should be reconsidered.

CONCLUSION

Respondents respectfully request the Court deny Petitioner's Motion to Reconsider the Court's order denying his habeas petition.

⁴ Petitioner's transfer from the Northwest ICE Processing Center similarly has no bearing on whether Petitioner's detention on August 7 was lawful. His later transfers were not circumstances to be considered at the time of his detention. To the extent Petitioner challenges that those transfers were unlawful, the District of Oregon is an inappropriate venue to bring such a claim because the events did not occur here.

Respectfully submitted this 1st day of October, 2025.

SCOTT E. BRADFORD
United States Attorney
District of Oregon

/s/ Ariana N. Garousi
ARIANA N. GAROUSI
Assistant United States Attorney
Attorneys for Respondents