

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ALLAN MICHEL DIAZ-CRUZ,)
)
Petitioner,)
)
v.)
)
KRISTI NOEM, Secretary, Department of)
Homeland Security; PETE FLORES,)
Commissioner, Customs and Border)
Protection; RICARDO WONG, Field)
Office Director, ICE ERO Chicago; and)
C. CARTER, Warden, FCI-Leavenworth,)
)
Respondents.)
_____)

Case No. 25-3162-JWL

MOTION TO ALTER OR AMEND JUDGMENT

On October 3, 2025, after the Court’s October 2, 2025, Memorandum and Order, but before the October 13, 2025, deadline to release Petitioner on supervision, Petitioner was removed to Mexico. Because Petitioner has been removed from the United States, mooting this matter, Respondents respectfully request that the Court vacate its October 2, 2025, Order and Judgment, and dismiss this case as moot.

Factual and Procedural Background

Petitioner filed this action on August 13, 2025. On September 8, 2025, Respondents filed a response to the Court’s order to show cause. Petitioner filed a traverse on September 28, 2025.

On September 25, 2025, Petitioner was served with a Notice of Removal, informing him of ICE’s intention to remove him to Mexico. Decl. of Bradley W. McNary, ¶ 6, attached as Exhibit 1. In preparation for his removal, on or about September 30, 2025, Petitioner was moved from FCI Leavenworth to the Camp East Montana Detention Facility in El Paso, Texas. *Id.* at ¶ 7. On or about October 2, 2025, Petitioner was transferred to the Port Isabel Service

Processing Center in Los Fresnos, Texas, to stage for removal to Mexico. *Id.* at ¶ 8. On or about October 3, 2025, Petitioner was removed to Mexico. *Id.* at ¶ 9. As of October 3, 2025, Petitioner was no longer in ICE custody. *Id.*

On October 2, 2025, this Court issued a Memorandum and Order concluding Petitioner had met his burden to provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future” and that Respondents had “not rebutted that showing.” ECF 7, pp. 4-5. This Court ordered Respondents to “release petitioner from custody, subject to an appropriate order of supervision, by October 13, 2025,” and to “provide notice to [the] Court when that release is effected.” ECF 7, p. 6.

Legal Argument

I. Legal Standards

A. Fed. R. Civ. P. 59(e)

Fed. R. Civ. P. 59(e) allows a party to seek to alter or amend a judgment “no later than 28 days after entry of the judgment.” “Rule 59 provides the mechanism by which a court can (1) set aside a verdict and order a new trial; or (2) reconsider a prior entry of judgment.” *Jones v. Colvin*, No. 14-1311-JWL, 2015 WL 5883910, at *1 (D. Kan. Oct. 8, 2015) (quoting practice commentary overview to Fed. R. Civ. P. 59). Subsection (e) of Rule 59 provides the avenue for relief when there has not been a trial. *Id.*

Grounds warranting a motion to reconsider under Fed. R. Civ. P. 59(e) “include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.” *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000). Such a motion “is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.” *Id.*

B. Mootness

Under Article III of the Constitution, Federal Courts may only adjudicate live controversies. See U.S. Const. Art. III, § 2, cl. 1. An “actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” *Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (cleaned up); see also *Jordan v. Sosa*, 654 F.3d 1012, 1023 (10th Cir.2011) (recognizing the “mootness doctrine” provides that once the “controversy ceases to exist, the federal court must dismiss the action for want of jurisdiction”). Where circumstances change while a case is pending that extinguish a party’s legally cognizable interest in the action, the case is moot. *Green v. Haskell Cnty. Bd. of Comm’rs*, 568 F.3d 784, 794 (10th Cir.2009); see also *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (recognizing a case becomes moot if an event occurs that “makes it impossible for the court to grant any effectual relief whatever to a prevailing party”) (quotation omitted). Where a matter is moot, the Court lacks subject-matter jurisdiction. *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010).

II. Vacating the Court’s October 2, 2025, Order and Judgment is proper.

Here, new events occurred after Respondent filed its response to the Court’s order to show cause and shortly before and immediately after the Court’s October 2, 2025, Order and Judgment. These new events, specifically Petitioner’s removal from the United States, moot this case. And, because such events occurred while Respondents remain subject to Orders of this Court to take a specific action, vacatur and setting aside the judgment is proper.

A similar situation arose in the District of Colorado, where the court vacated its prior grant of an application for writ of habeas corpus. There, the applicant challenged his detention and requested an individualized bond hearing pursuant to 8 U.S.C. § 1226(a). *Beltran v. Holder*,

No. 13-CV-03067-WJM, 2014 WL 321369, at *1 (D. Colo. Jan. 29, 2014). On January 16, 2014, the Court granted the applicant's request, ordering ICE to provide an individualized bond hearing within 14 days of the entry of the Order. *Id.* Final judgment was entered on January 23, 2014. *Id.* On January 27, 2014, the respondents filed a motion to amend judgment under Fed. R. Civ. P. 59(c), asking the court to vacate the judgment requiring an individualized bond hearing and to dismiss the action as moot in light of action taken by the Board of Immigration Appeals (BIA) on January 15, 2014. *Id.* The court granted respondents' request. *Id.* at *2-3. In doing so, it recognized that the BIA's actions mooted the claim of unlawful detention and that there was no remedy the court could issue concerning the legality of the applicant's past detention. *See id.*

Similarly, here, the Court granted the petition, ordering Respondents to release Petitioner under an appropriate order of supervision and to provide notice to the Court once the release is effected. ECF 7, p. 6. Based on new events taken after Respondents' motion and Petitioner's removal to Mexico, the relief sought by Petitioner is not proper and the case is now moot. *See Vaupel v. Ortiz*, 244 F. App'x 892, 896 (10th Cir. 2007) (deeming a habeas petition moot where the petitioner was "released from detention upon his removal to Australia," there was no indication of a "secondary or collateral injury," and no grounds for issuing "an advisory opinion regarding the legality of [the petitioner's] detention"); *see also Namgyal Tsering v. U.S. Immigration & Customs Enf't*, 403 F. App'x 339, 343-44 (10th Cir. 2010) (stating, where the petitioner had been removed, that "this case is not properly brought as a habeas case but that, even if it had been, we can provide [the petitioner] no relief where (1) he no longer is in ICE custody, and (2) he has not demonstrated, among other things, collateral consequences resulting from his deportation"); *Ferry v. Gonzales*, 457 F.3d 1117, 1131-32 (10th Cir. 2006) ("Ferry's

challenge to the legality of his detention without an opportunity for bond or a bond hearing is moot. Ferry’s administrative removal order has been executed, and thus, Ferry is no longer in the custody of the DHS to benefit from a bond determination or release.”)

Accordingly, based on the new evidence and events that have occurred since September 8, 2025, Respondents respectfully request that the Court vacate the October 2, 2025, memorandum and order (ECF 7) and judgment (ECF 9), and dismiss the petition as moot.¹

Respectfully submitted,

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¹ Vacatur is commonly used by Courts where an order in the habeas context has been rendered moot by subsequent acts while the matter is pending on appeal—in such situations, the appellate courts direct that the district court’s order be vacated and the case dismissed as moot. *See, e.g., Boyce v. Ashcroft*, 268 F.3d 953, 955 (10th Cir. 2001) (vacating judgment and remanding to district court with directions to vacate its judgment as moot where prisoner’s habeas action became moot on appeal) (citing *Great W. Sugar Co. v. Nelson*, 442 U.S. 92 (1979), for the proposition that, “[w]here it appears upon appeal that the controversy has become entirely moot, it is the *duty* of the appellate court to set aside the decree below and to remand the cause with directions to dismiss”).

CERTIFICATE OF SERVICE

I certify that on October 8, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties, including:

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