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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 ALEX RIVERA GIORGES and SOKHA
14 KHAN,

15 Petitioners-Plaintiffs,

16 v.

17 SERGIO ALBARRAN, San Francisco Field
18 Office Director, U.S. Immigration and Customs
19 Enforcement, *et al.*,

20 Respondents.

) No. 5:25-cv-07683-NW

) **RESPONDENTS' OPPOSITION TO**
) **PETITIONERS' MOTION FOR**
) **RECONSIDERATION (DKT. 22)**

1 Respondents submit this opposition to Petitioners' motion for reconsideration (Dkt. 22, the
2 "Motion").

3 The Motion should be denied because Petitioners fail to show that they are entitled to
4 reconsideration. Under Local Rule 7-9(b), reconsideration is allowed only if Petitioners can
5 demonstrate one of the following:

6 (1) That at the time of the motion for leave, a material difference in
7 fact or law exists from that which was presented to the Court before entry
8 of the interlocutory order for which reconsideration is sought. The party
9 also must show that in the exercise of reasonable diligence the party
10 applying for reconsideration did not know such fact or law at the time of
11 the interlocutory order; or

12 (2) The emergence of new material facts or a change of law
13 occurring after the time of such order; or

14 (3) A manifest failure by the Court to consider material facts or
15 dispositive legal arguments which were presented to the Court before such
16 interlocutory order.

17 *See* Civil Local Rule 7-9(b). Petitioners contend that they are entitled to reconsideration because of "a
18 material factual misapprehension" and (2) decisions from two other district court judges. Neither
19 represents a permissible ground for reconsideration. Nor can Petitioners' stated grounds be construed as
20 a "a change in law occurring after the time of such order" or "a manifest failure of the Court to consider
21 material facts."¹ The Motion should be denied.

22 First, Petitioners have identified no change in law. Instead, they only identify two district court
23 orders that addressed similar arguments involving the *Zepeda Rivas* settlement and came out the other
24 way. "A decision of a federal district court judge is not binding precedent in either a different judicial
25 district, the same judicial district, or even upon the same judge in a different case." *Camreta v. Greene*,
26 563 U.S. 692, 709 (2011) (citation omitted); *see also Lewis v. Tesla, Inc.*, No. 24-CV-08178-AMO,
27 2026 WL 16882, at *2 (N.D. Cal. Jan. 2, 2026) ("non-binding decisions do not constitute an intervening
28 change in controlling law" for purposes of motion for reconsideration under Local Rule 7-9(b)).

¹ Petitioners do not appear to seek relief under the first prong: "That at the time of the motion for
leave, a material difference in fact or law exists from that which was presented to the Court before entry
of the interlocutory order for which reconsideration is sought. The party also must show that in the
exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at
the time of the interlocutory order."

1 Petitioners identify no binding authority that warrants a different result, and Local Rule 7-9 does not
2 provide for reconsideration simply where movant identifies non-binding authority that reaches a
3 different outcome. In any event, the two district court cases cited by Petitioners do not specifically
4 analyze situations involving mandatory detention under 8 U.S.C. § 1226(c) for aggravated felony
5 convictions, and thus are as inapplicable as they are non-binding. *See Doe v Albarran*, No. 25-CV-
6 08774-VC, 2025 WL 3141224, at *2 (N.D. Cal. Nov. 10, 2025) (analyzing detention under 8 U.S.C. §§
7 1226(a) & 1225, not 1226(c)); *Cux Jocop v. Albarran*, No. 25-CV-09059-JD, 2025 WL 3124081, at *1
8 (N.D. Cal. Nov. 7, 2025) (no discussion of 1226(c)). Nor did either case discuss a final order of removal
9 and Section 1231(a), to which Petitioner Giorges is subject.

10 Second, Petitioners do not identify a “manifest failure of the Court to consider material fact.”
11 Petitioners argue that two “factual misapprehensions” are found in the Court’s order (Dkt. 17):

12 1. the *Zepeda Rivas* court “reviewed Rivera [Giorges]’s application for relief, found
13 he posed neither a flight risk nor a danger to the community, and released him pursuant to the
14 terms negotiated in the governing settlement agreement.”

15 2. “Petitioners were released on bond within the unique circumstances created by the
16 COVID-19 crisis and the *Zepeda Rivas* settlement agreement.”

17 *See* Motion at 2. Petitioners fail to explain how either of these statements in the Court’s order is
18 (1) material or (2) a manifest failure to consider a particular fact. Petitioners agree that they were
19 initially released on bond in 2020 “under the exigent circumstances of the pandemic.” *Id.* Petitioners
20 then try to argue that, by the time the *Zepeda Rivas* settlement was reached approximately a year and a
21 half later in June 2022, the pandemic was over and had no effect on the settlement. Petitioners’ factual
22 assertion about the end date of the COVID-19 pandemic is incorrect: the federal COVID-19 public
23 health emergency did not end until May 11, 2023, almost a year after the *Zepeda Rivas* settlement.²
24 And, in any event, it is impossible to extract the COVID-19 pandemic from the *Zepeda Rivas* case. The
25 parties could not have known in June 2022 – the month that the United States surpassed 1 million deaths
26
27

28 ² *See* https://archive.cdc.gov/www_cdc_gov/coronavirus/2019-ncov/your-health/end-of-phe.html
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1 from COVID-19³ – when the pandemic would come to end. And so, the parties negotiated a settlement
2 that addressed the unique circumstances of the ongoing pandemic, and Petitioners were put on notice
3 from the very beginning that in three years’ time the *Zepeda Rivas* settlement would come to an end.
4 *See* Dkt. 17 at 13 (“That the settlement agreement had an expiration date indicates that Petitioners’
5 release was, for all intents and purposes, temporary.”). Put another way, “had the exigent circumstances
6 caused by the pandemic not occurred, both Giorges and Khan would have remained in detention.” *See*
7 *id.* At bottom, the Court’s description of the *Zepeda Rivas* settlement and the temporary nature of the
8 release was accurate and does not represent a “manifest failure of the Court to consider a material fact”
9 that would warrant reconsideration.

10 For these reasons, the Motion should be denied.

11 DATED: February 6, 2026

Respectfully submitted,

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14 United States Attorney

15 /s/ Michael A. Keough
16 MICHAEL A. KEOUGH
Assistant United States Attorney

27
28 ³ *See* <https://www.cdc.gov/museum/timeline/covid19.html>.