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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 Merven Tooy,
13 Petitioner,
14 v.
15 United States of America, *et al.*,
16 Respondents.

Case No. 2:25-cv-02286-CDS-BNW
**Opposition to Motion for
Reconsideration**

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19 POINTS AND AUTHORITIES

20 At a hearing on the morning of January 8, 2026, this Court granted Mr. Tooy's
21 § 2241 petition, concluding that he had established a due process violation. The
22 decision was predominantly based on Respondents' failure to present any evidence to
23 show that the deportation was reasonably foreseeable. On January 10, 2026, this
24 Court subsequently issued an order granting the petition. ECF No. 30.

25 After the hearing, Respondents moved for reconsideration based on purported
26 "new evidence," namely an itinerary, created at approximately 2:00 p.m. on January
27 8, 2026, showing that a flight had been booked for Mr. Tooy to Suriname for some

1 time in January 2026. ECF No. 28. On January 9, 2026, this Court issued a temporary
2 stay of its order until January 13, 2026, and ordered Respondents to submit an
3 unredacted version of the itinerary for in camera review by 3:00 p.m. on January 9,
4 2026. ECF No. 29; *see also* ECF No. 30. Mr. Tooy is unsure whether that unredacted
5 itinerary has been timely submitted.¹ The Court has requested Respondents to
6 provide a joint status report no later than January 22, 2026, advising the Court of
7 their status of compliance with the order. ECF No. 30.

8 Respondents' motion for reconsideration should be denied as the itinerary does
9 not establish "new evidence" that was previously unavailable to them. As such, it does
10 not present a ground to reconsider this Court's ruling. Respondents were provided a
11 full opportunity to present evidence of reasonable foreseeability, both in their
12 Response and then at the hearing. They provided absolutely nothing. Although the
13 itinerary was not produced until after the hearing, the underlying steps that ICE
14 intended to take to try to facilitate the deportation clearly were. Yet, Respondents did
15 not present even the bare minimum amount of evidence, such as a declaration from
16 the deportation officer working on Mr. Tooy's case, to explain what steps they
17 intended to take to facilitate this deportation. Under *Zadvydas*, Respondents had
18 that obligation here and they completely failed to meet it. There is no basis for this
19 Court to reconsider its decision as it remains correct.

20 Nevertheless, there is no doubt that Respondents have the right to proceed
21 forward with the removal. Mr. Tooy fully understands that and is not attempting in
22 any way to prevent that from happening. The issue here is Mr. Tooy's
23 unconstitutional indefinite detention. That will be remedied either through release
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27 ¹ Tooy would not receive an ECF notification for a document submitted for in
camera review. However, if it had been submitted on time, there would be a gap in
ECF numbers on the docket. But there is no gap between the Court's January 9, 2026
minute order (ECF No. 29) and its January 10, 2026 order (ECF No. 30).

1 or the deportation. Despite the flight now being scheduled, release does remain an
2 option here. Mr. Tooy has been totally compliant with ICE since he has been taken
3 into custody. On information and belief, Mr. Tooy has no fear of being deported to
4 Suriname. Conditions can be set that will ensure that he will appear at the ICE office
5 at the appropriate time so that he can be deported.

6 If this Court does not believe that release is feasible, it should extend the stay
7 of its order until a day in late January 2026 and require Respondents to provide either
8 a notice of compliance or a status report on that date. Based on the prior
9 “unavailability” of flights, Mr. Tooy has concerns that, even though a flight has been
10 booked, it still may not occur at the currently scheduled time. Thus, a stay of this
11 Court’s order would provide this Court with an opportunity to monitor whether the
12 deportation occurs. And if it does not go as scheduled, then Mr. Tooy should be
13 released from custody.

14 Accordingly, the motion for reconsideration should be denied.

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16 Dated January 12, 2026.

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Respectfully submitted,

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/s/ Jonathan M. Kirshbaum
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