

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

Civil Action No. 26-cv-00289-RMR

LUIS GONZALEZ TOMATZIN,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora ICE Processing Center,

GEORGE VALDEZ, in his official capacity as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement

TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security, and

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,

Respondents.

RESPONDENTS' MOTION TO RECONSIDER ORDER GRANTING IN PART AND DENYING IN PART RESPONDENTS' MOTION TO VACATE (ECF No. 13) AND GRANTING PETITIONER'S MOTION TO AMEND/CORRECT/MODIFY (ECF No. 15)

Respondents respectfully request that this Court reconsider its March 10, 2026, Order, ECF No. 16, granting in part and denying in part Respondents' Motion to Vacate (ECF No. 13) and granting Petitioner's Motion to Amend/Correct/Modify (ECF No. 15) (the "Motion"). Pursuant to D.C.COLO.LCivR 7.1(a), Respondents have conferred with counsel for Plaintiff, who opposes the relief sought herein.

BACKGROUND

In December 2025, Petitioner was detained by Immigration and Customs Enforcement (ICE). ECF No. 1 ¶ 63. On January 23, 2026, he filed this habeas proceeding, challenging his detention under 8 U.S.C. § 1225(b)(2). *See generally* ECF No. 1. The Court ordered Respondents to show cause as to why the Petition should not be granted on or before February 3, 2026. *See* ECF No. 4. Respondents timely responded and explained their position that Petitioner, who entered without inspection, was subject to mandatory detention under § 1225(b). *See* ECF No. 8 at 2.

On March 6, 2026, the Court granted the Petition and entered an order directing Respondents to: (1) immediately release Petitioner within 24 hours of the Order; (2) file a status report within two days of the Order to certify compliance; (3) provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five days of the date of the Order at which the government will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk; and (4) file a status report confirming compliance within two days of that hearing. *See* ECF No. 11 at 4-5.

Pursuant to the Court's Order, Respondents released Petitioner from custody on March 6, 2026. *See* ECF No. 12.

On March 9, 2026, Respondents filed a motion to vacate the portion of the Court's March 6, 2026 Order directing Respondents to provide Petitioner with a bond hearing because Petitioner had already been released. *See* ECF No. 13 at 2. Thus, a bond hearing was not necessary and holding one would not serve any functional

purpose. *Id.* at 3. Petitioner opposed the motion because he believed the order should be modified, rather than vacated. *Id.* at 1.

The same day, Petitioner responded to Respondents' Motion to Vacate and contemporaneously filed a "Motion to Modify the Court's March 6, 2026 Order (ECF No. 11)". See ECF Nos. 14 & 15. Petitioner agreed that holding a bond hearing was no longer necessary. ECF No. 14. at 2. However, Petitioner opposed vacating the portion of the Order relating to the bond hearing because the circumstances that "necessitated this habeas corpus" could be "repeated at a later date." *Id.* In the Motion, Petitioner requested that the Court modify its Order to require a bond hearing "if Petitioner is re-detained by Respondents at *any* future date." See ECF No. 15 at 2 (emphasis added).

The following day, the Court amended its prior order (ECF No. 11) as follows:

The Court orders (1) in the event of Petitioner's re-detention, that a bond hearing under 8 U.S.C. § 1226(a) be held within **five days** of the date of detention, and (2) the government bears the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk, and that Respondents file a status report at the time and with the contents set forth in the March 6, 2026 Order [11], will also apply to that hearing, if it becomes necessary.

ECF No. 16.

At the time the Court granted the motion, Respondents had not yet filed a response to Petitioner's Motion.

ARGUMENT

As a general matter, "[a] district court has discretion to revise interlocutory orders prior to entry of final judgment." *Sherwood v. BRT Corp.*, No. 12-cv-02782-RM-KMT, 2014 WL 5762105, at *2 (D. Colo. Nov. 5, 2014) (quoting *Trujillo v. Bd. of Educ. of*

Albuquerque Pub. Sch., 212 F. App'x 760, 765 (10th Cir. 2007)). "A motion to reconsider must do two things: First, it must demonstrate some reason why the court should reconsider its prior decision. Second, it must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Id.* (quoting *Shield v. Shetler*, 120 F.R.D. 123, 126 (D. Colo. 1988)).

Here, there is good cause for this Court to reconsider its prior order, which amounts to an award of prospective injunctive relief without the benefit of full briefing from the parties. As explained below, reconsideration should be granted and the order amended for two reasons. First, a speculative future detention does not present a live controversy or establish that Petitioner is currently suffering any concrete injury that warrants the Court's intervention. Second, any challenge to a future detention would need to be brought in a new habeas action in the jurisdiction of confinement.

I. Any speculative, future detention does not present a live controversy.

Petitioner's claims challenging his detention are moot because he has been released from detention. *See Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir. 2010) ("The crucial question [in determining mootness] is whether granting a *present* determination of the issues offered will have some effect in the real world." (emphasis in original)); *Abdala v. I.N.S.*, 488 F.3d 1061, 1065 (9th Cir. 2007) ("[P]etitioners' claims were rendered moot because successful resolution of their pending claims could no longer provide the requested relief"). "For a habeas petition to continue to present a live controversy after the petitioner's release . . . there must be some remaining 'collateral consequence' that may be redressed by success on the

petition.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). A collateral consequence must present a “concrete and continuing injury.” *Id.* at 14. The collateral consequence must “be specifically identified,” and “only concrete disadvantages or disabilities that [have] in fact occurred, that [are] imminently threatened, or that [are] imposed as a matter of law” are sufficient. *Id.* at 8.

Petitioner has failed to establish that he continues to suffer from any specific, concrete disadvantage or disability, much less that such injury requires a bond hearing under 8 U.S.C. § 1226(a). As Respondents explained in their Motion to Vacate, Respondents have no current intent to detain Petitioner again absent a change in circumstances. ECF No. 13 at 2-3.

Notably, Petitioner does not provide any reason to believe that he is at risk of being detained again pursuant to 8 U.S.C. § 1225(b)(2). Rather, in the Response to the Motion to Vacate, he sought blanket relief from *any* future detention. ECF No. 15 at 2. But there are other provisions of the Immigration and Nationality Act under which Petitioner could be detained; Sections 1225(b)(2) and 1226(a) are not the only provisions that allow for detention of noncitizens. For example, 8 U.S.C. § 1226(c) *requires* detention of noncitizens who have committed certain crimes. That section does not provide for a bond hearing. Similarly, 8 U.S.C. § 1231(a)(2)(A) *requires* detention of noncitizens following the entry of a final order of removal and does not provide for a bond hearing.

Nevertheless, the Court’s order would require that Petitioner be provided a bond hearing under Section 1226(a) even if he is detained under Sections 1226(c) or 1231.

Thus, the Court's order effectively holds that Sections 1226(c) and 1231 are unconstitutional despite the fact that the Court has not been squarely presented with, or analyzed, questions about the constitutionality of those provisions.

Because Petitioner has been released and fails to provide any reason to believe that he is at risk of being again detained under the same circumstances challenged in this habeas action, there is no live controversy and his claims in this action are moot. The Court cannot order relief at this time for a future detention under unknown circumstances and unknown legal authority.

II. Any challenge to a future detention would need to be brought in a new habeas action.

Any challenge to a future detention, if it occurred, would need to be filed in a new habeas action. Indeed, at this time it is unknown where Petitioner would be detained if he is, in fact, detained again. Since a habeas petition must be brought in the district in which the Petitioner is detained, Petitioner would need to bring a new habeas petition if he seeks relief for any future detention. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) ("For 'core habeas petitions,' 'jurisdiction lies in only one district: the district of confinement.'") (*quoting Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)).

Moreover, Plaintiff did not seek relief related to any speculative future detention in the Petition. *See* ECF No. 1 at 21. Rather, a request for such relief was improperly raised for the first time in opposition to Respondents' Motion to Vacate. *See Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *4 (N.D. Cal. Aug. 6, 2025) ("[A] request for affirmative relief is not proper when raised for the first time in an opposition.").

Since Petitioner has received the relief requested in the Petition—immediate release from custody, ECF No. 1 at 21—and the fact or location of any future detention is entirely speculative, the Court should decline to order additional relief.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court reconsider its Order; grant in full Respondents' Motion to Vacate, ECF No. 13, vacating the portion of the Order requiring a bond hearing; and deny Petitioner's Motion to Modify, ECF No. 15.

Dated: March 13, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Scott Brian Petiya
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Counsel for Petitioner

I further certify that on March 13, 2026, I sent the foregoing via email to the following individual as a representative of Respondents:

C. Kasperson
ICE Counsel

s/ Erika A. Kelley
U.S. Attorney's Office