

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

**LUIS GONZALEZ TOMATZIN,** )  
)  
Petitioner, ) Case No. 1:26-cv-00289-RMR  
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. Immigrations )  
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. )

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**PETITIONER’S RESPONSE TO RESPONDENTS’ MOTION TO RECONSIDER  
ORDER (ECF No. 17)**

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Petitioner, Luis Gonzalez Tomatzin, by and through undersigned counsel, submits this Petitioner’s Response to Respondents’ Motion to Reconsider the 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”). Petitioner respectfully requests that the Court deny Respondents’ Motion.

On March 10, 2026, this Court granted in part and denied in part Respondents' Motion to Partially Vacate part of its March 6, 2026 Order granting Petitioner's Petition for Writ of Habeas Corpus, and granted Petitioner's Motion to Modify that order, amending its original order "to recite the following: 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.

On March 13, 2026, Respondents filed a Motion to Reconsider the amended Order. ECF No. 17. Petitioner opposes this motion, and it should be denied by the Court.

#### **Argument**

As Respondents note in their motion, "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." *Shields v. Shetler*, 120 F.R.D. 123, 126 (D. Colo. 1988); *see also Berg v. United Airlines, Inc.*, No. 23-cv-01766-NYW-SBP, 26 US Dist LEXIS 25650 at \*6 (D. Colo. Feb. 6, 2026). A motion to reconsider is not "a second chance for the losing party to make its strongest case or to dress up arguments that previously failed." *Berg*, 26 US Dist LEXIS 25650 at \*6.

In their Motion to Reconsider, Respondents argue that the Court's March 10, 2026 order requiring a bond hearing under the specified conditions in the event of Petitioner's re-detention, addresses a "speculative future detention [that] does not present a live controversy or establish that Petitioner is currently suffering any concrete injury that warrants the Court's intervention."

ECF No. 17 at 4. They contend that they have “no current intent to detain Petitioner again absent a change in circumstances,” and thus Petitioner is not at risk of being re-detained under 8 U.S.C. §1225(b)(2). *Id.* Respondents, engaging in some speculation of their own, suggest that Petitioner might in the future be detained under a different statute, and that they should not then be required to hold a hearing under §1226(a), or that he might be detained in a different jurisdiction, and that any relief at that point must be sought in a new habeas action. ECF No. 17 at 4-6.

Respondents did not raise these arguments, apart from the contention that they do not intend to re-detain petitioner, in their initial Motion to Vacate. *See* ECF No. 13. As such, they are improperly attempting to use the Motion to Reconsider as a “a second chance...to make [their] strongest case or to dress up arguments that previously failed.” *Berg*, 26 US Dist LEXIS 25650 at \*6. Therefore, the Motion to Reconsider should be denied.

Further, present circumstances caused by Respondents actions in numerous other cases involving noncitizens in immigration detention, and who have filed petitions for habeas corpus, indicate that a future re-detention of Petitioner should not be treated as a merely speculative event, and undermines the credibility of Respondents’ contention that they do not intend to re-detain him. As the Court observed in its original Order granting Petitioner’s petition, Respondents have sought to detain numerous noncitizens under 8 U.S.C. §1225(b)(2) when it does not apply to them, and when this and other Courts have already ruled as such in many other cases. ECF No. 11 at 3-4. They continue to argue before District and Circuit Courts that they should be permitted to detain all noncitizens apprehended under comparable circumstances to Petitioner without affording those detainees the opportunity to seek release on bond, regardless of how many times the Courts have rejected their arguments. *See e.g., Hernandez Murillo v. Juan Baltasar*, No. 25-cv-04163-TPO, 26 US Dist LEXIS 48199 at \*3-\*6. This does not lend

credence to Respondents' contention that they do not intend to re-detain Petitioner. If this Court grants Respondents' Motion to Reconsider, and Respondents do re-detain Petitioner in the future, he would be required to go through the entire process of seeking habeas relief again, which would waste the time and resources of the Court and undermine the efficient administration of justice.

Another recent pattern in Respondents' actions in similar cases would also, if this Court grants their Motion to Reconsider, put Petitioner at serious risk of unlawful detention again. If the portion of the Court's prior orders that Respondents request be vacated is so vacated, Respondents would no longer be subject to the requirement that, at any future bond hearing, "the government bears the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk." ECF No. 16. Throughout the country, where federal District Courts have granted habeas petitions and ordered that bond hearings be held, Immigration Judges ("IJs") have then simply denied bond in fundamentally unfair proceedings, contrary to due process. *See Kyle Cheney, Judges keep ordering immigration hearings- but say the results are often a sham*, POLITICO (Mar. 6, 2026, 10:00 AM EST), <https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660>. In these cases, Respondents have held bond hearings in order to give the appearance of compliance with the Courts' orders, but those hearings have been "fundamentally flawed or even pre-cooked, designed to result in findings of 'danger to the community' or 'flight risk' without a fair consideration of the evidence." *Id.*

In one such case, the District Court found that the bond decision that followed a grant of habeas corpus, "has indications of predetermined outcome," as its conclusion was "untethered by the facts and any logical conclusion to be determined from the facts," and "no fact cited in the

order” supported its conclusion. *Lozhkhina v. Noem et. al*, No. 6:26-cv-3001-MDH, Doc. No. 14 (W.D. Mo. Feb. 10, 2026). In another, the District Court ordered a petitioner’s immediate release because the bond proceedings did not comply with due process or law. *Picado v. Hyde, et. al*, No. 1:26-cv-00065-JJM-PAS, Doc. No. 7 at 16 (D.R.I. Feb. 9, 2026).

The pattern of fundamentally unfair and predetermined bond decisions in response to Courts’ grants of habeas corpus petitions underscores why it has been critically necessary for this and other Courts to order that, in any such bond proceeding, the burden must be placed on the government to prove, by clear and convincing evidence, that a petitioner is either a flight risk or a danger to the community, and not on the petitioner to prove a negative. ECF No. 11 at 4-5; ECF No. 16; *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1183-87; *Salazar v. Dedos*, 14 806 F. Supp. 3d 1231, 2025 U.S. Dist. LEXIS 183335, at \*14-15 (D.N.M. Sept. 17, 2025). Other Courts have concluded that this pattern shows that no bond hearing before an IJ would comport with due process, as “immigration judges who provide neutral adjudications have been removed, and bond is systematically denied after a pro forma hearing with a predetermined outcome.” *Ochoa v. Mason*, No 2:26-cv-00130, Doc. 20 at 4 n. 4 (S.D.W.V. Feb. 26, 2026).

If the Court grants Respondents’ Motion to Reconsider and vacates the portion of its prior orders placing the burden in a future bond hearing on the government, Respondents may feel free to re-detain Petitioner in the future and subject him to one of these unfair and predetermined bond proceedings, rather than the lawful one that this Court has found he would be entitled to. Petitioner opposed Respondents’ initial Motion to Vacate and filed his Motion to Modify, which the Court granted, “to ensure that the circumstances that necessitated this habeas corpus proceeding are not repeated at a later date.” ECF No. 14 and 15. Respondents’ continued efforts, through their Motion to Reconsider, to be relieved of the obligations imposed on them by this

Court's prior orders, suggest they are trying to keep the path open for themselves to do exactly that: repeat Petitioner's unlawful detention, and force him to repeat the entire habeas petition process. To protect Petitioner's statutory and constitutional rights, it is vital that the requirements in this Court's prior orders remain in place.

### CONCLUSION

WHEREFORE, for the reasons discussed above, Petitioner Luis Gonzalez Tomatzin respectfully requests that this Court deny Respondents' Motion to Reconsider.

Dated: 03/18/2026

Respectfully Submitted,  
/s/Scott Brian Petiya  
SCOTT BRIAN PETIYA  
Colorado Bar No. 48359  
Monclova Law PC  
1745 S Federal Blvd  
Denver, CO 80219  
303-974-5049 (telephone)  
scott@monclovalaw.com  
Attorney for the Petitioner

### CERTIFICATE OF SERVICE

I certify that on March 18, 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 recipients

by e-mail:

erika.kelley@usdoj.gov

/s/ Scott Brian Petiya  
SCOTT BRIAN PETIYA