

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 25-CV-23792-BLOOM/ELFENBEIN

PIERRE REGINALD BOULOS,

Petitioner,

v.

DIRECTOR, U.S. DHS ICE ERO MIAMI
FIELD OFFICE, *et al.*,

Respondents.

**PETITIONER’S REPLY IN SUPPORT OF MOTION TO RECONSIDER COURT’S
ORDER ON EXPEDITED MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioner Pierre Reginald Boulos (“Dr. Boulos”) respectfully submits this reply in support of his Motion for Reconsideration of the Court’s Order Denying Dr. Boulos’ Expedited Motion for Temporary Restraining Order and Preliminary Injunction (“TRO Order”). Dkt. No. 44. In support thereof, Dr. Boulos states as follows:

INTRODUCTION

The instant Motion for Reconsideration is limited and only requests that this Court (1) reconsider and revise its finding that the regulation under which Dr. Boulos has been mandatorily detained, 8 C.F.R. § 1003.19(h)(2)(i)(C), is not ultra vires; and (2) set a bond hearing or, alternatively, issue an order directing an immigration judge (“IJ”) to do so. Dkt. No. 44 at 1. The challenged regulation strips IJs of bond jurisdiction for certain categories of detainees (including Dr. Boulos), thereby requiring his mandatory detention without an individualized bond hearing. Although Dr. Boulos has long argued that this regulation is ultra vires, Respondents have *never*

addressed this issue on the merits, and their Opposition to the Motion for Reconsideration is no exception. The Court’s ruling on the narrow, but incredibly significant, ultra vires issue constitutes a clear error that has resulted in a manifest injustice: Dr. Boulos’ continued unlawful detention without a bond hearing.

Contrary to Respondents’ claims, the instant Motion does not “simply rehash arguments which were already considered and rejected by the Court.” Dkt. No. 47 at 4 (citation modified). Rather, as the Motion discusses, reconsideration is warranted because the Court made a clearly erroneous decision “outside the adversarial issues presented to the Court by the parties.” *Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1293–94 (S.D. Fla. 2012) (quoting *Compania de Elaborados de Café v. Cardinal Cap. Mgmt., Inc.*, 401 F. Supp. 2d 1270, 1283 (S.D. Fla. 2003)). The Court did so by singularly relying on a flawed, unpublished, out-of-circuit ruling as the sole basis for its decision that the regulation at issue is not ultra vires. *See* Dkt. No. 37 at 19–20 (citing *Barajas Farias v. Garland*, 2024 WL 6070211, at *2 (D. Minn. Dec. 4, 2024)). Dr. Boulos did not have an opportunity to address *Barajas Farias*’ misconceived reasoning until filing the instant Motion, as neither party mentioned this case in their respective briefing; in fact, Respondents have *never* made a single argument in this action regarding Dr. Boulos’ ultra vires claim. At the same time, the Motion highlights a growing chorus of courts within the Eleventh Circuit that have readily adopted Dr. Boulos’ interpretation of the statutory scheme underlying his mandatory detention since the Court denied the TRO Motion—further supporting his ultra vires claim. Accordingly, reconsideration of the ultra vires issue is warranted.

ARGUMENT

I. **Reconsideration is an appropriate vehicle to respond to new reasoning introduced by the Court that constitutes clear error and manifest injustice.**

Dr. Boulos has moved for reconsideration of the TRO Order solely to correct the clear error apparent in the Court's denial of his ultra vires claim. Outside of reacquainting the Court with the salient facts and issues, the Motion for Reconsideration (1) asserts that the single, out-of-circuit decision cited for the first time in the Court's TRO Order to deny Dr. Boulos' ultra vires claim is based on erroneous reasoning; and (2) discusses how recent decisions issued by courts within the Eleventh Circuit *after* the TRO Order support Dr. Boulos' interpretation of the statutory framework that gave rise to his mandatory detention.

Accordingly, the Reconsideration Motion does not—as Respondents erroneously suggest—“rehash” arguments “already considered and rejected by the Court.” Dkt. No. 47 at 4. Nor could it. The Court's TRO Order cited a single, unbriefed decision rendered by the District of Minnesota to find that the regulation that Respondents invoked to mandatorily detain Dr. Boulos without a bond hearing did not exceed the Executive Branch's statutory authority. *See* Dkt. No. 37 at 19–20 (citing *Barajas Farias*, 2024 WL 6070211, at *2). Neither party mentioned this case in their respective briefing—in fact, Respondents have *never* addressed Dr. Boulos' ultra vires argument at any time in this action—and, thus, Dr. Boulos did not have an opportunity to address this case's misconceived reasoning until filing the instant Motion. This is not to say that district courts cannot rely on unbriefed opinions to render a decision, but rather that such analysis warrants reconsideration if the Court's reliance on an unbriefed opinion constitutes clear error. Here, the Court has “made a decision outside the adversarial issues presented to the Court by the parties,” and thus, reconsideration is an appropriate vehicle to rectify any clear error inherent in that decision

and to prevent any resulting manifest injustice. *Campero USA Corp.*, 916 F. Supp. 2d at 1293–94 (quoting *Compania de Elaborados de Café*, 401 F. Supp. 2d at 1283).

Moreover, since the Court entered the TRO Order, courts within the Eleventh Circuit have issued opinions that support Dr. Boulos’ interpretation of the statutory framework underlying his mandatory detention. As discussed in the Motion for Reconsideration and herein, these recent authorities demonstrate that the Court’s rejection of the statutory interpretation in Dr. Boulos’ TRO Motion constitutes clear error. These were not authorities “available at the time of the first decision,” *Compania de Elaborados de Café*, 401 F. Supp. 2d at 1283 (quoting *Compagnoni v. United States*, 1997 WL 416482, at *2 (S.D. Fla. May 13, 1997)), but rather new decisions clarifying that the underlying statutes do not allow for Respondents to promulgate regulations that exceed their statutory authority conferred by Congress. Reconsideration is therefore an appropriate vehicle for Dr. Boulos to raise these issues before the Court.

II. The Court’s reliance on the District of Minnesota’s opinion *Barajas Farias v. Garland* is misplaced and constitutes clear error.

As discussed, the Court’s TRO Order relied on the District of Minnesota’s reasoning in *Barajas Farias* to argue that the Attorney General’s promulgation of the regulation, 8 C.F.R. § 1003.19(h)(2)(i)(C), under which Dr. Boulos has been mandatorily detained was a proper exercise of her statutory authority. *See* Dkt No. 37 at 19 (quoting *Barajas Farias*, 2024 WL 6070211, at *2). In the instant Motion, Dr. Boulos asserts that the District of Minnesota improperly relied on the Supreme Court’s decision in *Lopez v. Davis*, 531 U.S. 230 (2001), to argue that this regulation did not exceed statutory authority. *Lopez* interpreted a *materially different* statute and, unlike here, a harmonious regulatory scheme. Dkt. No. 44 at 4. In *Lopez*, the underlying statute allowed for a sentence reduction for nonviolent offenders upon the completion of a substance abuse treatment program, while the corresponding regulation promulgated by the Bureau of Prisons categorically

denied a sentence reduction to offenders convicted of firearms-related felonies. Based on the foregoing, the Supreme Court held that this regulation was consistent with (and authorized by) the underlying statute.

Not so here. The Court cannot avail itself of *Lopez v. Davis*, as the District of Minnesota erroneously did in *Barajas Farias*, to argue that the regulation promulgated to mandatorily detain certain purported noncitizens without a bond hearing comports with the underlying statute. As discussed, 8 U.S.C. § 1226(a) authorizes the provision of an individualized custody determination for purported noncitizens detained under the Immigration and Nationality Act, while § 1226(c) enumerates a list of offenses for which detention is mandatory. The statute in *Lopez* failed to define which offenses Congress deemed nonviolent, thus allowing the Bureau of Prisons to ‘fill the gap’ with a regulation excluding firearms-related offenses. However, the statute at issue here and in *Barajas Farias* actually defines the offenses for which detention is mandatory, such that Respondents cannot then supplement that with a regulation claiming a different, unenumerated offense warrants mandatory detention. Unlike in *Lopez*, this regulation, which raises myriad separation of powers issues, transforms the executive into a legislator and draws outside the bounds set by Congress.

Accordingly, the Court committed clear error by relying on a single, out-of-circuit decision (*Barajas Farias*)—which itself relied on an inapposite case interpreting a materially different statute and regulatory scheme—to determine that the subject regulation is not ultra vires and deny Dr. Boulos’ TRO Motion.

III. Recent decisions by courts within the Eleventh Circuit, issued *after* the Court's TRO Order, support Dr. Boulos' interpretation of the statutory framework and warrants an *ultra vires* finding.

The Motion for Reconsideration also refers to numerous decisions by courts within the Eleventh Circuit, issued *after* the Court's TRO Order, that support Dr. Boulos' interpretation of the statutory framework underlying the *ultra vires* regulation at issue. These authorities reinforce a foundational point: under 8 U.S.C. § 1226(a), Congress established the 'default rule' authorizing the provision of an individualized custody determination (including, but not limited to, release from detention) for purported noncitizens detained under the Immigration and Nationality Act. Concurrently, 8 U.S.C. § 1226(c) enumerates narrow exceptions where detention is mandatory. Since the outset of this habeas action, Dr. Boulos has argued that Respondents have improperly construed § 1226(a) to permit the Executive Branch to create categorical exclusions from bond eligibility beyond what § 1226(c) already enumerates. Such an interpretation not only renders § 1226(c) superfluous, but it also confers upon the Executive Branch limitless detention authority, allowing Respondents to impose mandatory detention by regulation where Congress declined to do so by statute. The regulation at issue, 8 C.F.R. § 1003.19(h)(2)(i)(C), does this by stripping IJs of bond jurisdiction for certain categories of purported noncitizens (including Dr. Boulos), thereby eliminating the individualized bond hearing that Congress otherwise guaranteed in § 1226(a) and requiring mandatory detention for these individuals. The Court found otherwise, claiming that the regulation promulgated to mandatorily detain certain purported noncitizens (including Dr. Boulos) whose alleged offenses are not enumerated in § 1226(c) "appears entirely consistent with the delegation of authority to the Attorney General effected by § 1226(a)." Dkt. No. 37 at 19 (quoting *Barajas Farias*, 2024 WL 6070211, at *2).

Beyond the Court's misplaced reliance on *Barajas Farias*, recent decisions highlight the Court's error. The Motion cites numerous decisions within the Eleventh Circuit issued after the Court's TRO Order holding or articulating that noncitizens detained under §1226(a) are entitled to an "individualized bond hearing." Dkt. No. 44 at 3 (citing cases); *see also Nguyen v. Parra*, 2025 WL 3451649, at *4 (S.D. Fla. Dec. 1, 2025); *Hernandez Giron v. Noem*, 2026 WL 60351, at *3 (M.D. Fla. Jan. 8, 2026); *Padilla Orellana v. Warden*, 2026 WL 35277, at *1 (M.D. Fla. Jan. 8, 2026). Since Congress conferred the discretion to release noncitizens detained under § 1226(a) and enumerated exceptions in § 1226(c), the Executive Branch cannot read its own categorical exceptions from bond eligibility into the statute.

Given that the Court's denial of Dr. Boulos' ultra vires claim constitutes clear error and has resulted in the manifest injustice of his continued unlawful detention, this Court should exercise its discretion to reconsider and revise its ultra vires finding—clearing the way for Dr. Boulos to have a bond hearing as 8 U.S.C. § 1226(a) intended.

IV. Absent this Court's intervention, Dr. Boulos will likely continue to suffer irreparable harm as a result of his detention.

Finally, Respondents have failed to articulate any meaningful opposition to the likelihood that Dr. Boulos has suffered and will continue to suffer irreparable harm. Dr. Boulos continues to be deprived of his liberty, spending well over 200 days in detention as of the date of this filing at the ICE Krome North Service Processing Center. Am. Pet. ¶¶ 4–5. All the while, as the Court has already acknowledged, he “appears to be facing a serious medical condition [wet macular degeneration] affecting his vision,” Dkt. No. 37 at 20 n.24 (internal citations omitted), that has gone untreated for unacceptable amounts of time and could lead to blindness. Emails attached to the instant Motion show that Dr. Boulos was deprived of critical ocular injections for nearly 15 weeks while in Krome custody for no discernible reason, *see* Dkt. No. 44-1, illustrating the severe

challenges that he faces in getting adequate treatment. Although he finally received shots in January and February, thanks to the tireless advocacy of his family and counsel, this did not make up for lost time; Dr. Boulos now requires injections even more frequently to prevent the disease from progressing further and causing blindness. This *never* should have happened. And while Respondents now claim—for the first time in their Opposition—to have medical records that show otherwise, they do not say how and have never shared those medical records with the Court, Dr. Boulos, or the undersigned counsel.

CONCLUSION

Based on the foregoing, Dr. Boulos respectfully requests that the Court grant the Motion for Reconsideration; find that the regulation under which he has been mandatorily detained is ultra vires; and set a bond hearing or, alternatively, issue an order directing an IJ to do the same.

Dated: February 17, 2026

Respectfully Submitted,

/s/ Barbara R. Llanes

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