IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DUONG THUC NGUYEN,

Petitioner,

v. Case No. 26-3008-JWL

C. CARTER, Warden, FCI-Leavenworth,
TODD LYONS, Acting Director, ICE; and
PAM BONDI, Attorney General,

Respondents.

NOTICE OF BOND HEARING AND
MOTION TO ALTER OR AMEND JUDGMENT

This matter is before the Court on Petitioner's habeas petition, filed under 28 U.S.C. § 2241, challenging his detention under 8 U.S.C. § 1226(c) pending the conclusion of his removal proceedings. ECF 1. On February 25, 2026, this Court issued a Memorandum and Order granting in part the petition, ordering Respondents to provide Petitioner a bond hearing on or before March 13, 2026, and ordering Respondents to notify the Court that the bond hearing had been conducted. ECF 1 at 1, 8. On March 4, 2026, Petitioner became subject to a final administrative order of removal. Exhibit-1, BIA Decision at 1-2 (pp. 3-4 of PDF). On March 11, 2026, Petitioner received a bond hearing. Exhibit-2, IJ Bond Decision at 2. The Immigration Judge ("IJ") held a bond hearing on the same terms as if Petitioner were detained under § 1226(a), as instructed by this Court. ECF 1 at 7. The IJ denied bond, concluding that Petitioner failed to prove he is not a danger to the community. Ex.-2, IJ Bond Decision at 3-5. Notwithstanding the IJ's order denying bond under § 1226(a), Respondents believe Petitioner is now detained under 8 U.S.C. § 1231(a)(1), given the final order of removal entered on March 4, 2026. The original petition, which challenged

Petitioner's detention under § 1226(c), is therefore moot. Respondents respectfully request that the Court grant this motion to alter or amend judgment and dismiss the petition as moot.

Factual and Procedural Background

Petitioner is a criminal alien who, from May 2024 to March 4, 2026, was held in mandatory immigration detention under 8 U.S.C. § 1226(c) pending the conclusion of his removal proceedings. Exhibit-3, Wheeler Decl. ¶ 26. In November 2024, an IJ found that Petitioner was removable from the United States. Exhibit-4, IJ Decision at 1-2. Petitioner filed an Application for Cancellation of Removal for Certain Permanent Resident (cancellation of removal) with the Immigration Court, Ex.-4, IJ Decision at 2, and the IJ granted that application on February 12, 2025, Ex.-4, IJ Decision at 7. The Department of Homeland Security ("DHS") filed an appeal of that decision to the Board of Immigration Appeals ("BIA"). *See* Ex.-1, BIA Decision at 1 (p. 3 of PDF). On March 4, 2026, the BIA sustained DHS's appeal and ordered Petitioner removed from the United States to Vietnam. Ex.-1, BIA Decision at 1-2 (pp. 3-4 of PDF). Petitioner then filed a petition for review with the United States Court of Appeals for the Seventh Circuit. *See Nguyen v. Bondi*, No. 26-1451 (7th Cir.).

Petitioner filed his pro se petition on January 14, 2026. ECF 1. Ultimately, Petitioner's "sole claim" was "that his detention pursuant to 8 U.S.C. § 1226(c) without a bond hearing violate[d] due process." ECF 6 at 2. On January 15, 2026, this Court ordered Respondents to show cause why the petition should not be granted. ECF 3. Respondents responded that the Constitution generally "does not impose a limitation does not impose a limitation on mandatory detention under § 1226(c), which by definition extends only as long as it takes for a petitioner's removal proceedings to conclude." ECF 4 at 9; *see generally id.* at 8-12. On February 25, 2026, this Court rejected Respondents' argument and, applying a six-factor balancing test, "conclude[d] that due

process requires that petitioner be granted a bond hearing." ECF 6 at 7. This Court "grant[ed] the petition to that extent" and ordered Respondents "to ensure that petitioner receives a bond hearing – on the same terms as if petitioner were detained under Section 1226(a) – on or before **March 13, 2026**, and to provide notice to this Court once that hearing has been conducted." *Id.* at 7.

On March 11, 2026, Petitioner received a bond hearing. The IJ evaluated Petitioner's criminal history, which includes seven theft convictions since 2022. Ex.-2, IJ Bond Decision at 3. The IJ also noted that, at his individual hearing on February 12, 2025, Petitioner admitted to a history of illegal drug use and confessed to committing retail theft to fund his drug addiction. *Id.* at 4-5. The IJ ultimately concluded that Petitioner failed to meet his burden to establish that he is not a danger to the community. *Id.* at 5.

Legal Argument

I. Legal Standards

A. Fed. R. Civ. P. 59(e)

Fed. R. Civ. P. 59(e) allows a party to seek to alter or amend a judgment "no later than 28 days after entry of the judgment." "Rule 59 provides the mechanism by which a court can (1) set aside a verdict and order a new trial; or (2) reconsider a prior entry of judgment." *Jones v. Colvin*, No. 14-1311-JWL, 2015 WL 5883910, at *1 (D. Kan. Oct. 8, 2015) (quoting practice commentary overview to Fed. R. Civ. P. 59). Subsection (e) of Rule 59 provides the avenue for relief when there has not been a trial. *Id.*

Grounds that warrant altering or amending a judgment under Fed. R. Civ. P. 59(e) "include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice." *Servants of Paraclete v. Does*, 204

F.3d 1005, 1012 (10th Cir. 2000). Such a motion "is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing." *Id.*

B. Mootness

"Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010); *see also id.* ("We have no subject-matter jurisdiction if a case is moot."). Under Article III of the Constitution, Federal Courts may only adjudicate live controversies. *See* U.S. Const. Art. III, § 2, cl. 1. The requirement of a live case or controversy "exists at all stages of federal judicial proceedings"; meaning, it is "not enough that the dispute was alive when the suit was filed; the parties must continue to have a personal stake in the outcome." *Ind v. Colo. Dep't of Corr.*, 801 F.3d 1209, 1213 (10th Cir. 2015); *accord Jordan v. Sosa*, 654 F.3d 1012, 1023 (10th Cir. 2011) (recognizing the "mootness doctrine" provides that once the "controversy ceases to exist, the federal court must dismiss the action for want of jurisdiction"). When a party's legally cognizable interest in an action is extinguished by circumstances that change while a case is pending, the case is moot. *Green v. Haskell Cnty. Bd. of Comm'rs*, 568 F.3d 784, 794 (10th Cir. 2009); *see also Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (recognizing a case becomes moot if an event occurs that "makes it impossible for the court to grant any effectual relief whatever to a prevailing party") (quotation omitted). When a matter is moot, the Court lacks subject-matter jurisdiction. *Rio Grande Silvery Minnow*, 601 F.3d at 1109.

II. The Court should vacate its February 25, 2026 Order and Judgment and dismiss the petition as moot.

New events that occurred after the Court's February 25, 2026 Order and Judgment have mooted this case. The BIA sustained DHS's appeal challenging the IJ's grant of cancellation of

removal and ordered Petitioner's removal from the United States to Vietnam. Because the IJ had already made a finding that Petitioner was removable, Ex.-4, IJ Decision at 1-2, the BIA was authorized to enter a final order of removal. *Sosa-Valenzuela v. Gonzales*, 483 F.3d 1140, 1145 (10th Cir. 2006); *Guevara v. Gonzales*, 472 F.3d 972, 973 (7th Cir. 2007). It is therefore appropriate to vacate and set aside the judgment. *See Beltran v. Holder*, No. 13-CV-03067-WJM, 2014 WL 321369, at *1-3 (D. Colo. Jan. 29, 2014) (granting motion to amend judgment under similar circumstances); *cf. Wyoming v. U.S. Dep't of Agric.*, 414 F.3d 1207, 1213 (10th Cir. 2005) ("When a case becomes moot pending appeal, the general practice is to vacate the judgment below and remand with directions to dismiss.").

When the BIA sustained DHS's appeal and entered a final order of removal, it shifted the basis for Petitioner's detention. There are two basic categories of civil detention of aliens: pre-final-order-of-removal detention, governed by 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226, and post-final-order-of-removal detention, governed by 8 U.S.C. § 1231. More specifically, § 1226(c) requires that criminal aliens like Petitioner "shall" be detained pending a decision on whether he is to be removed from the United States. 8 U.S.C. § 1226(c); *see id.* § 1226(a). Section 1231, by contrast, applies after entry of a final order of removal. *Id.* § 1231(a)(1)(A)-(B), 2; *Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021). The beginning of the removal period therefore "marks the end of the Government's detention authority under § 1226(c)," and the beginning of its detention authority under § 1231. *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (citing *Demore v. Kim*, 538 U.S. 510, 529 (2003)).

Section 1231(a)(1)(B) sets forth when detention status shifts from pre-final-order-of-removal detention to post-final-order-of-removal detention. Section 1231(a)(1)(B) states:

(B) Beginning of period

The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

Because Petitioner is now being detained under § 1231(a), his challenge to his detention under § 1226(c) is moot. *See, e.g.*, *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) ("Any opinion" regarding an alien's challenge to his detention under § 1226(c) after entry of a final order of removal "would be purely advisory in nature" and therefore the alien's challenge "ha[d] become moot."); *Aguina-Arreola v. Holder*, No. 13-CV-02942-RM-KMT, 2014 WL 128559, at *2 (D. Colo. Jan. 10, 2014) ("On [the date the removal order became administratively final], the Attorney General's authority to detain Applicant shifted to 8 U.S.C. § 1231(a)(2), thereby rendering moot Applicant's claim challenging his detention under 8 U.S.C. § 1226.").

A similar situation arose in the District of Colorado, where the court vacated its prior grant of an application for writ of habeas corpus after the BIA dismissed the applicant's appeal of the IJ's removal order. *Beltran*, 2014 WL 321369, at *1-3. There, the applicant challenged his detention under 8 U.S.C. § 1226(c) and requested an individualized bond hearing under § 1226(a). *Id.* at 1. On January 16, 2014, the district court granted the applicant's request, ordering ICE to provide an individualized bond hearing within 14 days of the entry of the Order. *Id.* Final judgment was entered on January 23, 2014. *Id.* On January 27, 2014, the respondents filed a motion to amend judgment under Fed. R. Civ. P. 59(e), asking the court to vacate the judgment requiring an

individualized bond hearing and to dismiss the action as moot in light of the BIA's dismissal of the applicant's appeal of the IJ's removal order on January 15, 2014. *Id.* The court granted respondents' request. *Id.* at *2-3. In doing so, it recognized that the BIA's dismissal of the applicant's appeal mooted the claim of unlawful detention and that there was no remedy the court could issue concerning the legality of the applicant's past detention. *See id.*

This Court recently granted a similar motion in an analogous situation. *See* Order (Doc. 10), *Diaz-Cruz v. Noem*, No. 25-3162-JWL (D. Kan. Oct. 23, 2025). There, the petitioner was being detained post-removal-order under § 1231(a) and challenged his detention as unreasonably indefinite under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Diaz-Cruz v. Noem*, No. 25-3162-JWL, 2025 WL 2806780, at *1 (D. Kan. Oct. 2, 2025). This Court granted the petition, ordering the respondents to release the petitioner under an appropriate order of supervision and to provide notice to the Court once the release was effected. *Id.* at *3. But before the deadline for releasing the petitioner, he was removed from the United States. Order (Doc. 10), *Diaz-Cruz*, No. 25-3162-JWL. In turn, the respondents filed a motion to alter or amend judgment asking this Court to dismiss the petition as moot because the petitioner's removal from the United States mooted his challenge to his detention under § 1231(a). *See id.* And this Court granted the motion as unopposed. *Id.*

To be sure, if the Seventh Circuit were to stay Petitioner's removal, Petitioner would remain in custody under § 1226(c), *see* 8 U.S.C. § 1231(a)(1)(B)(ii), but that possibility is too speculative to warrant denying this motion. A claim for prospective relief, like Petitioner's request for a bond hearing, becomes moot when his "'continued susceptibility to injury' is no longer 'reasonably certain' or is based on 'speculation and conjecture.'" *Smith v. Becerra*, 44 F.4th 1238, 1247 (10th Cir. 2022) (quoting *Jordan v. Sosa*, 654 F.3d 1012, 1024 (10th Cir. 2011)). Petitioner

has not yet filed a motion to stay his removal, and even if he intends to file such a motion, whether the Seventh Circuit will grant the motion is entirely speculative.

Accordingly, based on the new evidence and events that have occurred since this Court's order granting the petition in part, Respondents respectfully request that the Court vacate the February 25, 2026 Memorandum and Order (ECF 6) and Judgment (ECF 7), and dismiss the petition as moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2026, (1) the foregoing Notice was electronically filed with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record; and (2) I caused a copy of the notice of electronic filing, along with a copy of the foregoing to be placed in the United States mail, postage prepaid, addressed to Petitioner:

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s/ Thomas E. Beall
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