UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARQUIMEDES FOORCHUE ALMONTER, Petitioner, v. KRISTI NOEM, in her Official Capacity, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, in her Official Capacity, Attorney General of the United States; CAMMILLA WAMSLEY, in her Official Capacity, Philadelphia Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; J.L. JAMISON, in his Official Capacity as Warden of Federal Department of Corrections Philadelphia; Respondents.	Case No. 2:26-cv-00974-MRP Judge: Hon. Mia Roberts Perez **REPLY TO MOTION TO RECONSIDER**

The government has asked this Court to Reconsider its February 21, 2026, Order releasing Petitioner from Custody. The government contends that it did not transfer Petitioner in violation of the Court's Preservation Order of February 17. *See Respondent's Memorandum at 3*. The government contends that its assertion that it did not transport Petitioner PRIOR to learning of this Court's Preservation Order absolves it from the other ways in which it failed to comply with the Preservation Order. The Court already addressed and rejected this argument in its Order of February 21:

> In any event, even accepting Respondents' account of when the transfer was initiated, Respondents have had ample time after entry of the Order—and, at the latest, after receiving notice that Petitioner had been moved out of the District—to return Petitioner and cure the ongoing violation, yet they have not done so. (Order at 3, fn 1)

The absence of a literal "the government must return Petitioner" does not nullify the plain meaning of the Preservation Order. Thus, there is no basis for the Court to reconsider its ruling given that the government has not adequately accounted for its failure to RETURN Petitioner in compliance with the Court's Preservation Order. Indeed, they have stated that they were not required to do so. Undersigned Counsel takes no position on whether the government ***knew or should have known*** about the Court's Preservation Order prior to the transfer of Petitioner outside of EDPA. This failure is perhaps more important than any (theoretical) underlying violation. It is sufficient that they did not remedy it once they became aware.

The Court also asks Petitioner to address whether there is an independent basis for habeas relief on the merits. We believe there is.

While immigration laws afford the government broad detention discretion under 8 U.S.C. § 1226(a), it is not unlimited. Here, the circumstances of Petitioner's detention violate Due Process on two bases. First, on the nature of detention itself. Second, the lack of availability for a bond hearing before a neutral judge in Immigration Court.

At the time of the random encounter of Petitioner, the government was aware that Petitioner entered on a valid visitor visa and has/d a pending I-130. What are the changed circumstances that led to his detention? None. Who or what was the cause of Petitioner's long-pending I-130 languishing at the time of his detention? The government itself. Wait times for I-130s, depending upon the category of Petitioner, can be many years. Petitioner is simply waiting for the government to adjudicate his I-130. Obviously he wishes the process were faster. But there is nothing he can do. The government is PREVENTING him from resolving immigration concerns. He was not ordered to leave the country pending adjudication of his I-130. Indeed, he might be deemed to have abandoned the basis and intention behind his I-130. Unless the backlog at USCIS is cleared, how can it be that someone who has done everything to adjust status can be arrested BECAUSE the government is moving at a glacial pace?

We ask this Court to consider as persuasive a recent decision in a case bearing some similarities. In a recent decision in another Court in EDPA, the Court ruled that a visa-overstay Petitioner with pending relief (affirmative asylum with USCIS) was detained in violation of Due Process. *See* Exhibits A and B. That Court's conclusion was similar to our position. Someone cannot be PUNISHED for complying with the laws and regulations, which–through no fault of the individual–do not allow for prompt adjudication. So it is with Petitioner. If someone petitioning properly and waiting in line is "rewarded" by being detained and/or deported, then the ability to apply for an I-130 from the United States is functionally extinct.

A second Due Process consideration, and an independent basis for Petitioner's Habeas grant, is that there are essentially no longer "neutral immigration judges" who conduct individualized bond hearings. Counsel attests to representing clients and observing others representing clients who, in 2026, no longer have a meaningful opportunity for obtaining bond

before the vast majority of Immigration Judges. Why? If you entered without inspection 40 years ago and have a USC spouse and USC children with a strong 42B application? Flight risk because once EWI, always untrustworthy. If you have a compelling asylum claim with substantiated evidence of horrific torture by the government of your home country? Flight risk because all asylum claims are speculative. If you have a well-documented CAT-based fear whose substantiation depends upon access to the Respondent? Denied because the IJ has anticipatorily decided that a new Asylum Cooperative Agreement will lead to pretermission. Counsel is willing to provide specific examples under seal to concretize the above examples.

The additional reason why bond hearings are no longer viable avenues for relief is that IJ's effectively compete with each other to see who can impose the highest bond. $30,000? $40,000? Counsel has experienced/witnessed this before multiple IJ's. Bonds, if granted, seem to be higher when the hearing is a result of a habeas-order bond hearing. It appears that IJ's are doing their best to (1) turn immigration bond hearings into stagecraft for debtors prisons, and (2) ensure their denial rates remain high enough not invite the ire of the government and end up as the next IJ replaced by a military attorney (with zero prior immigration law experience). For these reasons, we believe administrative exhaustion no longer carries the same meaning in the immigration context. In 2026, detention is akin to a deportation order.

Each of the Preservation Order violation(s) and the Due Process concern(s) are sufficient for the Court to deny the government's Motion to Reconsider. Accordingly, we request that the Court allow its original Order to stand.

Dated: April 6, 2026

Respectfully Submitted,

/s/ Eric Rosenfeld

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