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December 14, 2020

VIA CM/ECF

The Honorable Elizabeth A. Wolford
United States District Judge for the Western District of New York
Kenneth B. Keating Federal Building
100 State Street
Rochester, NY 14614

Re: *Hassoun v. Searls*, No. 19-cv-370 (W.D.N.Y.)
Respondent's Positions on Implementing the Courts of Appeals' Decisions

Dear Judge Wolford:

In accordance with the Court's December 7, 2020 order (Dkt. 293) ("Minute Order"), Respondent respectfully submits his positions on the next steps that this Court should take following remands from the courts of appeals.

First, the Court requested Respondent's "positions on the required procedural steps for this Court in carrying out the D.C. Circuit's instruction to 'consider [Respondent's] request for vacatur as a motion for relief from an order pursuant to Federal Rule of Civil Procedure 60(b).'" Minute Order (alteration in original); *see Hassoun v. Searls*, No. 20-5191 (D.C. Cir.); *Hassoun v. Searls*, No. 20-2056 (2d Cir.).

Respondent respectfully submits that because the parties have fully briefed the issues at the D.C. Circuit, no further briefing or argument is warranted. The Court should proceed to issue an order on vacatur based on those same briefs. Those briefs, which include Respondent's notice of supplemental authority filed in that court, are attached for the Court's convenience. Exs. A-D.

Further briefing would not aid the Court. While the key vacatur case here, *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), and its progeny focus on vacatur in appellate courts, their "rationale also governs [a] district court's decision whether to vacate its own judgment pursuant to Fed. R. Civ. P. 60(b)." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1129 n.20 (10th Cir. 2010); *accord Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 121 (4th Cir. 2000) (holding that the "considerations that are relevant to appellate vacatur for mootness are also relevant to, and likewise largely determinative of, a district court's vacatur decision for mootness under Rule 60(b)(6), even if those considerations do not necessarily exhaust the permissible factors that may be considered by a district court in deciding a vacatur motion"). Although Rule 60(b) contains various potentially applicable provisions—including, for example, a provision for vacatur of judgments and orders which are "no longer equitable" to apply prospectively and a "catchall provision" that permits relief upon demonstration of

"extraordinary circumstances," Fed. R. Civ. P. 60(b)—these standards are channeled into the *Munsingwear* analysis. *See generally id., cited in U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 29 (1994); Order & Mandate (Dkt. 288). The legal standards are thus essentially the same. *Redeemer Comm. of Highland Credit Strategies Funds v. Highland Capital Mgmt., L.P.*, 253 F. Supp. 3d 722, 724 (S.D.N.Y. 2017) ("Although these [*Munsingwear* vacatur] rationales are set forth in appellate decisions, they apply fully to district court decisions as well."); *Alfa Int'l Seafood, Inc. v. Ross*, 320 F. Supp. 3d 184, 187 (D.D.C. 2018) (similar); *Nilssen v. Motorola, Inc.*, No. 93-cv-6333, 2002 WL 31369410, at *2 (N.D. Ill. Oct. 21, 2002) (noting that "the *U.S. Bancorp* standard [applies] to a district court as well as the appellate courts," because, *inter alia*, "there are no considerations that would be relevant to the inquiry beyond those identified in *U.S. Bancorp*."); *Jewish War Veterans of the United States of Am., Inc. v. Mattis*, 266 F. Supp. 3d 248, 251-54 (D.D.C. 2017) (apparently considering a Rule 60(b) vacatur motion exclusively under the *Munsingwear* standards without reference to Rule 60(b) standards outside the purview of *Munsingwear* and its progeny); *see also Valero Terrestrial Corp.*, 211 F.3d at 119 n.3 (noting that the "institutional differences" between district courts and appellate courts "do not provide reason to conclude that the standards governing appellate and district-court vacatur are or should be different"). There is no need for additional, duplicative briefing here. Indeed, other district courts have handled vacatur remands without further briefing, *see, e.g.*, *3M Co. v. Boulter*, 290 F.R.D. 5, 8 (D.D.C. 2013) ("[T]his Court will consider the [appellate] motion to vacate its prior order as if it were a motion made to this Court pursuant to Federal Rule of Civil Procedure 60(b) . . . ."); *Miller v. Bank of Am., N.A.*, No. 01-cv-1651, 2005 WL 1902945 (D.D.C. July 13, 2005) (Dkts. 71, 72), *aff'd sub nom., In re Miller*, 222 F. App'x 1 (D.C. Cir. 2007), or have at most required a joint status report including the parties' proposal on a briefing schedule, without explicitly reasoning why further briefing was required, *Alfa Int'l Seafood*, 320 F. Supp. 3d at 187.

The parties had a full opportunity to brief the vacatur standard at the D.C. Circuit, and both parties thoroughly did so. In the D.C. Circuit, Respondent had up to 7,800 words to press his case for vacatur, and Petitioner had 5,200 words to oppose. *See* Fed. R. App. P. 27(d)(2)(A), (C). Nor have relevant facts changed since the D.C. Circuit issued its remand order. Although the Second Circuit did issue a decision in the companion appeal between the time the parties completed D.C. Circuit vacatur briefing and when the D.C. Circuit issued its remand order, *Hassoun v. Searls*, 976 F.3d 121 (2d Cir. 2020), Respondent addressed that decision's impact on vacatur in the D.C. Circuit via a Notice of Supplemental Authority prior to the D.C. Circuit issuing its decision. Ex. D; *cf.* Fed. R. App. P. 28(j) (response to a notice of supplemental authority "must be made promptly"). Petitioner declined to file a response. Thus, the parties have already had an opportunity to brief the import of that decision.[1] More generally, unlike the D.C. Circuit at the time of briefing, this Court is thoroughly familiar with this case, and needs no explanation of the claims at issue or the procedural history. *See also* Tr. of June 12, 2020 Hr'g 72:20-21 (Dkt. 218) (the Court suggesting opening and closing statements would be unnecessary because "I think it's fair to state that I'm familiar with the facts and circumstances" of the case).

Accordingly, the Court should adjudicate, and grant, Respondent's request for vacatur based on the attached briefing filed in the D.C. Circuit. If this Court disagrees, Respondent respectfully requests that the Court still consider the existing briefing—consistent with the D.C.

[1] The Second Circuit declined to rehear that decision by the panel or rehear it en banc. *Hassoun v. Searls*, No. 20-2056 (2d Cir. Nov. 25, 2020) (C.A. Dkt. 140).

Circuit's order to "consider [Respondent's] request for vacatur as a motion for relief from an order pursuant to Federal Rule of Civil Procedure 60(b)"—and that any additional briefs be limited to developments since the D.C. Circuit issued its decision on October 13, 2020. If the Court desires additional briefing, Respondent requests that he be given 14-21 days to file his brief from the time the Court sets the briefing schedule (depending on when the briefing schedule is set and considering the federal holidays in December and January), with Petitioner's opposition brief due the same amount of days thereafter and Respondent's reply brief due 14 days after that. Respondent does not think that oral argument is necessary, but if one is held, would appear to present argument.

Second, the Court requested Respondent's position on the "appropriate" and "additional steps" for the Court to take "in view of the Second Circuit's order" to "dismiss [Petitioner's] challenge to his detention under 8 C.F.R. § 241.14(d) as moot." Minute Order (alteration in original). Respondent agrees that the Court should issue an order dismissing Petitioner's habeas petition as moot to the extent it challenges his detention under § 241.14(d). The Court should also issue an amended judgment to reflect that judgment is not entered in Petitioner's favor on his challenge to detention under § 241.14(d). *See* Judgment (Dkt. 264). And the Court should vacate all "the district court's decisions related to 8 C.F.R. § 241.14(d)" by reflecting as much on the docket by minute entry. *See* Judgment & Mandate (Dkt. 292). Otherwise, Respondent sees no other steps the Court must take to implement the Second Circuit's dismissal and vacatur order.

Thank you for your consideration of Respondent's positions.

Respectfully submitted,

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