

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ARWYN HEILRAYNE, <i>et al.</i> ,	§	
Plaintiffs,	§	
	§	
v.	§	
	§	No. 1:25-cv-00640-DAE
KEVIN ELTIFE & JIM DAVIS,	§	
Defendants.	§	
	§	
	§	

ORDER

Before the Court is Defendants Jim Davis and Kevin Eltife’s (“Defendants”) Motion for Reconsideration. (Dkt. # 66.) The Court finds this matter suitable for disposition without a hearing. After careful consideration of the parties’ briefs and the relevant law, the Court **DENIES** Defendant’s Motion to Reconsider (Dkt. # 66) for the reasons below.

BACKGROUND

As detailed in the Court’s Order on Defendants’ Motion to Dismiss, this case involves an April 24, 2024 protest at the University of Texas at Austin (“UT”) concerning the United States’ involvement in ongoing violence in Gaza. (Dkt. # 42 at ¶ 47–48.) The four Plaintiffs are students or recent graduates of UT Austin who attended the protest and were subsequently arrested at or near the protest areas. (*Id.* at ¶¶ 90, 95, 103, 110.) Plaintiffs initially brought their suit

against UT; the UT System Board of Regents and its Members; Texas State Governor, Greg Abbott; UT Interim President, Jim Davis; Former UT President, Jay Hartzell; several UT Police Department (“UPTD”) officers; and Department of Public Safety (“DPS”) Trooper Christopher Wray. (Dkt. # 42 at 5–8.) Their Amended Complaint alleged four causes of action against various defendants, including (1) violations of First Amendment rights of free speech and association; (2) First Amendment retaliation claims; (3) Fourth Amendment unlawful seizure/false arrest; and (4) Title VI violations. (Dkt. # 42 at 46–68.) The alleged constitutional violations were brought pursuant to 42 U.S.C. § 1983. (Id.) Defendants later moved to dismiss Plaintiffs’ Amended Complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkt. # 48.)

On January 27, 2026, this Court issued an Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint, leaving only two defendants remaining: Jim Davis and Kevin Eltife. (Dkt. # 62.) The only claims surviving the motion to dismiss stage were Plaintiffs’ First Amendment retaliation claims against those defendants in their official capacities. (Id. at 39.) On February 18, 2026, Defendants Jim Davis and Kevin Eltife filed the instant Motion for Reconsideration of this Court’s Order pursuant to Rule 54(b). (Dkt. # 66.) Five days later, on February 23, 2026, remaining Defendants filed an

interlocutory appeal of that Order to the United States Court of Appeals for the Fifth Circuit.

LEGAL STANDARD

“[T]he Federal Rules of Civil Procedure do not recognize a general motion for reconsideration.” St. Paul Mercury Ins. Co. v. Fair Grounds Corp., 123 F.3d 336, 339 (5th Cir. 1997). Such a motion, however, may be considered under Rule 54(b), which permits courts to revise “any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . before the entry of judgment.” Fed. R. Civ. P. 54(b); see Tool Dev., Inc. v. Nat’l Semiconductor Corp., 881 F.Supp.2d 745, 748 (E.D. Tex. 2012) (holding that under Rule 54(b), a court retains the power to revise an interlocutory order before entry of a final judgment). “Rule 54(b) authorizes a district court to reconsider and reverse its prior rulings on any interlocutory order ‘for any reason it deems sufficient.’” U.S. v. Renda, 709 F.3d 472, 479 (5th Cir. 2013) (quoting Saqui v. Pride Cent. Am., LLC, 595 F.3d 206, 210–11 (5th Cir. 2010)). “[T]he denial of a Rule 12(b)(6) motion to dismiss . . . is interlocutory in nature” and the reconsideration of such an order is thus governed by Rule 54(b). Morin v. Caire, 77 F.3d 116, 119 (5th Cir. 1996).

“Although the precise standard for evaluating a motion to reconsider under Rule 54(b) is unclear, whether to grant such a motion rests within the

discretion of the [C]ourt.” Bernard v. Grefer, Case No. 14-887, 2015 WL 3485761, at *5 (E.D. La. June 2, 2015). Given this uncertainty, some courts in the Fifth Circuit evaluate Rule 54(b) motions “under the same standards that govern Rule 59(e) motions.” Namer v. Scottsdale Ins. Co., 314 F.R.D. 392, 393 (E.D. La. 2016) (collecting cases); but see UMG Recordings, Inc. v. Grande Commc’ns Networks, LLC, Case No. AU:17-ca-365-LY, 2018 WL 4501535, at *2 (W.D. Tex. Sept. 20, 2018).

“A Rule 59(e) motion calls into question the correctness of a judgment.” Templet v. Hydrochem, Inc., 367 F.3d 473, 478 (5th Cir. 2004). “Under Rule 59(e), amending a judgment is appropriate (1) where there has been an intervening change in the controlling law; (2) where the movant presents newly discovered evidence that was previously unavailable; or (3) to correct a manifest error of law or fact.” Demahy v. Schwarz Pharma, Inc., 702 F.3d 177, 182 (5th Cir. 2012). Rule 59(e), however, is “not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before entry of judgment.” Templet, 367 F.3d at 478. The Court must balance two competing interests in ruling on a motion to reconsider: “(1) the need to bring litigation to an end; and (2) the need to render just decisions on the basis of all the facts.” Id. at 479. Reconsideration of a previous order is “an extraordinary remedy that should be used sparingly.” Id. at 478–79.

However, when analyzing a motion to reconsider under Rule 54(b), “[t]he power to reconsider or modify interlocutory rulings is committed to the discretion of the district court, and that discretion is not cabined by the heightened standards for reconsideration governing final orders.” Austin v. Kroger Texas, L.P., 864 F.3d 326, 337 (5th Cir. 2017) (quoting Saint Annes Dev. Co. v. Travich, 443 Fed. App’x 829, 831–32 (4th Cir. 2011)) (citation modified).

DISCUSSION

Defendants appealed this Court’s Omnibus Order to the United States Court of Appeals for the Fifth Circuit after filing the instant Motion for Reconsideration under Rule 54(b), but before this Court ruled on it. Federal Rule of Appellate Procedure 4(a)(4)(B)(i) provides that “[i]f a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.” Id.

Although a district court retains jurisdiction to consider motions pursuant to Rule 59 or Rule 60 filed before a notice of appeal, a motion to reconsider brought under Rule 54(b) is not one of the motions listed in Rule 4(a)(4)(A). In the absence of one of the 4(a)(4)(A) motions, the Court is bound by the default rule: the “filing of a notice of appeal confers jurisdiction on the court of

appeals and divests the district court of control over those aspects of the case involved in the appeal.” Marrese v. Am. Academy of Orthopaedic Surgeons, 470 U.S. 373, 379 (1985). Accordingly, the Court finds that it lacks jurisdiction to reconsider its Order on Defendants’ Motion to Dismiss. See In re TK Boat Rentals, No. 17-1545, 2018 WL 2017580, at *1 n.6 (E.D. La. May 1, 2018) (“The Court notes that plaintiffs moved for reconsideration under Rule 54(b) rather than under Rule 52, Rule 59, or Rule 60. Thus, plaintiffs’ motion for reconsideration does not render their notice of appeal ineffective under Federal Rule of Appellate Procedure 4(a)(4)(B)(i).” (internal citations omitted)); see also Shepherd v. Int’l Paper Co., 372 F.3d 326, 329 n.2 (5th Cir. 2004) (finding that a district court did not have jurisdiction to grant a motion for reconsideration following a notice of appeal where “plaintiffs properly concede that they did not file any Rule 4(a)(4)(A) motion that would trigger Rule 4(a)(4)(B)(i)”).

CONCLUSION

For the reasons above, Defendants’ Motion for Reconsideration is **DENIED** for lack of jurisdiction. (Dkt. # 66.)

IT IS SO ORDERED.

DATED: Austin, Texas, July 6, 2026



 David Alan Ezra
 Senior United States District Judge