

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

Jesus M. RODRIGUEZ-DELGADO,

Petitioner,

v.

**Kristi NOEM, Secretary,
Department of Homeland Security, et al.**

Respondents.

**PETITIONER'S REPLY to
RESPONDENTS' MOTION for RECONSIDERATION of the
COURT'S ORDER STAYING REMOVAL**

COMES NOW JESUS M. RODRIGUEZ-DELGADO, hereinafter "Petitioner," in the above captioned case, by and through undersigned, and submits his Reply to Respondent's 6/17/2025 Motion for Reconsideration [ECF No. 6] of the Court's 6/13/2025 Order Staying Removal. ECF No. 4.

1. Respondents seeks "[r]econsideration" [ECF No. 6] of this Court's 6/13/2025 *sua sponte* Order [ECF # 4], essentially, ordering Respondents to, 1) stay Petitioner's "[r]emoval" to allow Respondent's an opportunity to respond to Petitioner's petition, 2) provide Petitioner "with reasonable access to his attorneys," and, 3) enjoining Respondent's from deporting or removing Petitioner until further order of the Court."
2. While Respondents motion to reconsider references Petitioner's petition as a "Writ of Habeas Corpus Under Title 28 U.S.C. § 2241 and Title 28 U.S.C. § 1983 (the Bivens Act), and Other Relief", it fails to address whether this Court has jurisdiction over the "[o]ther [r]elief", which Petitioner additionally (or alternatively) seeks in his petition.

Standard of Review Rule 59(e)

3. The Federal Rules of Civil Procedure do not specify the grounds available for motions for reconsideration of non-final orders ¹, and resolution of such motions is within the Court's discretion. *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993). ²

4. The Eleventh Circuit Court of Appeals reviews the denial of, both, a Rule 59(e) motion to alter or amend judgment and a Rule 60 motion for relief from a judgment or order for an "abuse of discretion." See *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1313 (11th Cir. 2023); and *Willard v. Fairfield S. Co.*, 472 F.3d 817, 821 (11th Cir. 2006).

5. Respondents' 6/17/2025 motion to reconsider [ECF # 6] was filed within ten days of the entry of this Court's 6/13/2025 order. As such, Respondents' motion to reconsider is treated as a motion to alter or amend under Rule 59(e); the decision to grant or deny committed to the district court's sound discretion. See *Berry, Willard, and Chapman v. AI Transport*, 229 F.3d 1012, 1023-24 (11th Cir. 2000).

6. A Rule 59(e) motion must be based on "newly-discovered evidence or manifest errors of law or fact". *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (*per curiam*) (quotation marks omitted); *PBT Real Est., LLC v. Town of Palm Beach*, 988 F.3d 1274, 1287 (11th Cir. 2021); *Z.K. Marine v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992); *Vila v. Padron*, 2005 WL 6104075, at *1 (S.D. Fla. Mar. 31, 2005) (Altonaga, J.) ("Such problems rarely arise and the

¹ See Fed. R. Civ. P. 54(b) (providing merely that nonfinal orders "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities").

² There is no provision for "motion for 'reconsideration' in the Federal Rules of Civil Procedure." See *Bass v. United States Dep't of Agriculture*, 211 F.3d 959, 962 (5th Cir. 2000). Rather, if filed within ten days of the district court's judgment, such a motion is construed as filed pursuant to Rule 59(e). See *id.*

motion to reconsider should be equally rare.”); see also 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995).

7. In their motion to reconsider, Respondents fail to address the facts alleged in Petitioner’s petition at paragraphs 13-17, relating to the manner in which Petitioner’s proceedings were terminated, he was placed in DHS custody and thereafter transferred for placement in expedited removal proceedings.

8. Of concern is the misrepresentation in Respondents motion to reconsider that “[o]n May 30, 2025, Petitioner was detained by ICE at Krome Service Processing Center (“Krome”) in Miami, Florida. ECF # 6, ¶ 1. Petitioner, in fact, was detained at the U.S. Immigration Court in Miami, Florida, see ECF # 1, ¶¶ 13 and 17, following ICE-OPLA and ICE-ERO’s ruse to detain Petitioner for the purpose of placing him in expedited removal proceedings, for which the DHS unlawfully detained Petitioner and continues to do so.

Regarding Petitioner’s Habeas Corpus Claim, Title 28 U.S.C. § 2241

9. This Court’s 6/13/2025 order does not order Respondents to release Petitioner nor return him to this district.

10. Respondents’ motion to reconsider and supporting affidavit, however, reveals ICE’s outstanding ability to transfer habeas corpus petitioners to other jurisdictions, even outside the country. *E.g.*, *Noem v. Abrego*, 604 U.S. ____ (2025).

11. Upon knowledge and belief, were this Court to transfer the habeas corpus aspect of Petitioner’s omnibus petition to the district where Petitioner is currently detained ICE Enforcement and Removal Operations (ICE-ERO) employees will simply transfer Petitioner to another district, until it is able to unlawfully secure Petitioner’s removal under the expedited removal proceedings.

12. Alarmingly, Respondents fail to address whether 8 U.S.C. § 1225, INA § 235, expedited removal proceedings are applicable to the Petitioner or even if it has done so.

13. Of course, application of the expedited removal process would result in the primary cause of Petitioner becoming unlawfully detained; ICE's termination of Petitioner's removal proceedings under 8 U.S.C. § 1229a, INA § 240, and detention for placement in expedited removal proceedings was ICE-ERO and ICE-OPLA's plan to apply the Trump Administration's new rule; addressed herein.

14. Had ICE-ERO (South Florida) or ICE Office of the Principal Legal Advisor (OPLA) done their job and considered the Department of Homeland Security's Notice: *Designating Aliens for Expedited Removal*, they would have found that the fact that Petitioner was paroled into the U.S. and that he had been in the U.S. beyond two (2) years would categorically exclude Petitioner from the scope of the Trump Administration Rule.³

15. Here, the conspiracy to uproot Defendant from this district and place him in DHS custody for the purpose of placing him in Expedited Removal Proceedings under 8 U.S.C. § 1225, INA § 235, was hatched in this District by ICE Office of the Principal Legal Advisor employees in Miami, Florida, known and unknown, and ICE Enforcement and Removal Operations (ICE-ERO) employees, known and unknown, but, however, discharging their duties under color of law within the jurisdiction of this Court.

³ **Ex. L** – See 90 Fed. Reg. 8139 (January 24, 2025). The rule is being challenged in *Indeed*, the administration's interpretation of expanded expedited removal in the is currently being challenged in two lawsuits, *Make the Road New York v. Noem*, 25-cv-00190 (D.D.C. filed Jan. 22, 2025) (challenging DHS's designation of expanded expedited removal throughout the country to certain noncitizens present for fewer than two years), and *CHIRLA v. Noem*, 25-cv-00872 (D.D.C.) (challenging the application of expedited removal to noncitizens who were paroled into the country through ports of entry).

16. The foregoing is no conjecture on Petitioner's behalf because the pattern and practice of placing noncitizens in expedite removal proceedings to effectuate their removal, in violation of the Due Process Clause (5th and 14th amendment) is well documented. A recent Washington Post article provided,

Homeland Security Secretary Kristi L. Noem "is reversing Biden's catch and release policy that allowed millions of unvetted illegal aliens to be let loose on American streets," department spokeswoman Tricia McLaughlin said. "ICE is now following the law and placing these illegal aliens in expedited removal, as they always should have been. ... Historically, expedited removals have been more commonly used at the border, but the Trump administration is expanding their use throughout the nation's interior. The president made a similar attempt in 2019 during his first term but was stopped by a federal judge." ⁴

17. Undersigned submits *In re Hall*, 988 F.3d 376 (7th Cir. 2021), to posture that in some instances a petition for writ of habeas corpus may be considered where it was originally filed, despite the transfer of the petitioner to another prison in central Florida.

18. *In re Hall*, the U.S. Court of Appeals for the Seventh Circuit held that a district court retains jurisdiction when a habeas petitioner moves to a prison outside the court's district and that a petition for a writ of mandamus in the court of appeals for the original district court is the proper remedy to correct an erroneous transfer of a habeas petition.

19. While at a federal prison in the Southern District of Indiana ("SD Ind."), Kevin Hall filed a habeas petition under 28 U.S.C. § 2241. As that petition was pending in the court, *Hall* was moved to a federal prison in Florida.

⁴ **Ex. M** – *News Article*: The Washington Post, Arelis R. HERNANDEZ, Maria SACCHETTI, Immigrant arrests at courthouses signal new tactic in Trump's deportation push (May 23, 2025) available <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/> accessed 6/19/2025.

20. The original court then transferred his § 2241 case to the U.S. District Court for the Middle District of Florida (“MD Fla.”), saying that it lost jurisdiction to hear the case once *Hall* was transferred because his custodian was now in Florida. Hall then filed a petition for a writ of mandamus in the Seventh Circuit, requesting an order to the SD Ind. to rescind its transfer order and take the case back. The Court agreed and explained its rationale.

21. Where this District Court to transfer the habeas corpus aspect of Petitioner’s petition to another jurisdiction ⁵, this District Court continues to have jurisdiction to address DHS-ICE’s application of the Trump Administration’s new rule to the Petitioner under the Administrative Procedures Act, Federal Question, and Mandamus. DE 1, pgs. 2 and 9. ⁶

22. The Court may also grant declaratory and injunctive relief pursuant to 5 U.S.C. §§ 705-06, 28 U.S.C. § 1651, 28 U.S.C. §§ 2201–02, 28 U.S.C. § 2241, and its equitable powers under the All Writs Act.

23. Respondents must be held accountable for their unlawful placement of Petitioner in custody for the purpose of applying expedited removal proceedings to the Petitioner.

24. The statutory provisions asserted by Petitioner provide this District Court the jurisdiction to address the unlawful conduct DHS employees are committing by attempting to physically

⁵ Were this Honorable District Court to ultimately determine that the *habeas corpus aspect* of Petitioner’s petition be transferred to the jurisdiction where Petitioner is detained, Petitioner, without conceding this point, would defer to this Honorable Court’s transfer.

⁶ Petitioner, through undersigned, is clarifying that he is seeking relief under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), not title 42 U.S.C. § 1983, with which a Bivens action is sought against state actors. In *Butz v. Economou*, 438 U.S. 478 (1978), the Supreme Court clarified that federal officials who violate the rights of individuals can evade civil liability through the qualified immunity defense. This is significant because Section 1983 only applies to state officials, and there is no statute allowing for analogous suits against federal officials. Instead, civil liability for constitutional violations by federal officials arises under the Supreme Court’s decision in *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Undersigned is current seeking supplementation of this petition with Petitioner’s sworn declaration and other evidence.

remove Petitioner from the U.S. before his application for adjustment of status (Form I-485) is adjudicated, which could also result in USCIS deeming Petitioner's application for adjustment of status abandoned. 8 C.F.R. § 245.2(a)(4).

25. However, based on his having been paroled at one point—and even if the Trump Administration attempted to revoke or terminate an already expired parole—and the fact that Petitioner has been in the U.S. more than one year, renders Petitioner statutorily eligible to seek adjustment of status under § 1 of the Cuban Refugee Adjustment Act of Nov. 2, 1966, Pub. L. 89-732; which Respondents wish to unlawfully eradicate.

Summary

26. Respondents' silence as to the applicability of § 235 expedited removal proceedings is a tacit admission Respondent is illegally detained.

27. It was DHS' bad faith insistence to terminate removal proceedings which resulted in Petitioner's good faith reliance resulting in his unlawfully being taken into custody at the Miami, FL U.S. Immigration Court, for the purpose of placing him in § 235 expedited removal proceedings.

28. "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

29. It is, therefore, crucial that this District Court find that the other provisions under which the Petitioner submitted his omnibus petition provide this Court with the authority to declare under Title 28 U.S.C. § 2201 that Petitioner's detention is unlawful and that if the DHS wishes to remove Petitioner, it must do so under in INA § 240 removal proceedings, not in § 235 expedited removal proceedings.

30. Moreover, a declaration from this District Court that Petitioner is entitled to adjudication of his form I-485 pending with USCIS in Middle District of Florida in the absence of any derogatory information that would render Petitioner ineligible for adjustment of status under § 1 of the CAA in conjunction with § 245(a). Every day that passes, Petitioner is unlawfully detained for which Petitioner is entitled to civil monetary relief under Bivens. Transfer of the habeas corpus petition would only serve to extend Petitioner's unlawful detention.

31. For the foregoing reasons, Petitioner implores this District Court to declare it has jurisdiction under the All Writs Act (including supplementary jurisdiction offered by the Mandamus Act as well as the other statutory provision Petitioner submits in his 6/12/2025 *omnibus* petition (ECF # 1)) to address Respondents' unlawful actions against Petitioner occurring in the Southern and Middle ⁷ District of Florida.

32. Denial of Respondents' motion to reconsider in no manner causes Respondents prejudice.

33. Respondents have not identified nor demonstrated any factual or legal basis in this court's 6/13/2025 interlocutory order granting injunctive relief for the sole purpose of maintaining the *status quo*.

34. As such, Respondents' motion to reconsider is wholly lacking in merit, and, thereby, warrants this Court's denial of Respondent's motion to reconsider.

Respectfully Submitted,

/s/STEVEN A. GOLDSTEIN

STEVEN A. GOLDSTEIN

Counsel for Petitioner

⁷ As of the time of filing this Reply to DHS' motion to reconsider, Petitioner's I-485 continues pending at USCIS, Fort Myers. See USCIS Online Case Status for I-485 # MSC-25-903-43273. Petitioner's Employment Authorization Document remains approved *entitling* Petitioner to work and reside in the U.S. See USCIS Online Case Status for I-765 # MSC-25-903-43274. Available at <https://egov.uscis.gov/>. See 8 C.F.R. § 274a.12(c)(9).

CERTIFICATE OF SERVICE

I, STEVEN A. GOLDSTEIN, HEREBY CERTIFY that I have electronically filed the **PETITIONER'S REPLY to RESPONDENTS' MOTION to RECONSIDER and EXHIBITS** with the Clerk of this U.S. District Court via the CM/ECF system resulting in counsel for the U.S. Government being served with same via transmission of Notices of Electronic Filing generated by this U.S. District Court's CM/ECF system, and, via e-mail this **20th day of June, 2025**,

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