

United States District Court
Western District of Texas
El Paso Division

Faustino Pablo Pablo
Petitioner,

v.

Todd M. Lyons, *et al*,
Respondents.

No. 3:25-CV-00566-DCG

Federal¹ Respondents' Opposed Motion to Reconsider and Amend the Court's Judgment

Federal Respondents respectfully move this Court to Amend the Judgement in this case to remove the requirement that directs Respondents to return Petitioner to the United States no later than December 12, 2025. ECF No. 15 at 1, 8; Fed. R. Civ. P. §§ 59(e); 60(b)(6).

I. Relevant Facts

Petitioner is a citizen of Guatemala who was ordered by an immigration judge removed from the United States and granted Withholding of Removal under the Convention Against Torture. ECF No. 1-1 at 19; 8 C.F.R. § 1208.16; ECF No. 10-1 at 2. On November 15, 2013, Petitioner was released from ICE custody on an order of supervision under 8 U.S.C. § 1231. *See* ECF No. 1 at 8; ECF No. 10-1 at 2. On November 5, 2025, Enforcement and Removal Operations (ERO) San Diego detained Petitioner to effectuate the order of removal. ECF No. 10-1 at 3. On November 17, 2025, ERO San Diego transferred Petitioner to the Camp East Montana Detention Center Facility (CEM) in El Paso, Texas, for staging of removal to Guatemala. *Id.* On November 20, 2025, ERO El Paso transported Petitioner to the El Paso Airport to board a charter flight to

¹ The named warden in this action is not a federal employee. The Department of Justice does not represent him in this action.

Guatemala. *Id.* On November 20, 2025, ERO mistakenly removed Petitioner to Guatemala. ECF No. 10-1 at 3. On November 20, 2025, Petitioner filed his emergency motion for preliminary injunction or temporary restraining order asking the Court to enter a temporary restraining order requiring Respondents to facilitate his return to the United States in less than 20 days. ECF No. 5 at 6.

Initially, ERO San Diego provided, through declaration, Petitioner's tentative return date to the United States as December 4, 2025. ECF No. 10-1 at 3. On December 4, 2025, Respondents informed the Court Petitioner was not returned to the United States. ECF No. 14. On December 5, 2025, the Court granted Petitioner's motion for a temporary restraining order in part and directed Respondents to return Petitioner to the United States no later than December 12, 2025, at 11:59 pm MST. ECF No. 15. The Court ordered Respondents to provide daily updates confirming what steps have been taken to return Petitioner to the United States. *Id.* at 8. Respondents have provided daily updates. ECF Nos. 17 and 18.

II. Argument

Respondents respectfully move this Court to amend its judgment and remove a specific date deadline to return Petitioner to the United States. Respondents are not seeking the Court amend and remove the requirement to provide daily updates of steps taken to facilitate Petitioners return. *See* ECF No. 15 at 8.

Rule 59(e) relief is appropriate when: the movant has clearly established a need to correct a manifest error of law or fact. Fed. R. Civ. P. 59(e); *Schiller v. Physicians Res. Grp.*, 342 F.3d 563, 567 (5th Cir. 2003). A Rule 59(e) motion is, "recognized as a one-time effort to bring alleged errors in a just-issued decision to a ... court's attention, before taking a single appeal." *Banister v. Davis*, 590 U.S. 504, 521 (2020).

Rule 60(b) enumerates reasons for providing relief “from a final judgment, order or proceeding,” including ... (6) any other reason that justifies relief. Fed. R. Civ. P 60(b)(6). Rule 60(b)(6) is “meant to encompass circumstances not covered by Rule 60(b)’s other enumerated provisions. *Hess v. Cockrell*, 281 F.3d 212, 216 (5th Cir. 2002).

The Supreme Court, in *Noem v. Abrego Garcia*, reviewed a similar District Court ordered deadline to return an alien to the United States. *See Noem v. Abrego Garcia*, 604 U.S. ----, 145 S.Ct. 1017 (2025). In *Abrego Garcia*, the United States District Court for the District of Maryland entered an order directing the Government to “facilitate and effectuate the return of [Abrego Garcia] to the United States no later than 11:59 pm on Monday, April 7.” 145 S.Ct. 1017, 1018. On April 7, the United States filed an application to vacate the District Court’s Order in which the Chief Justice entered an administrative stay and referred the application to the Supreme Court. *Id.*

The Supreme Court granted in part and denied in part the United States’ application to vacate the District Court’s Order. *Id.* Recognizing by virtue of the administrative stay, the deadline set by the District Court to return Abrego Garcia to the United States had elapsed, the Supreme Court effectively granted the United States’ emergency application in part and the deadline is no longer effective. *Noem v. Abrego Garcia*, 145 S.Ct. at 1018. The Supreme Court determined the United States was properly required to facilitate Abrego Garcia’s release from custody in El Salvador, however, the Supreme Court remanded the case to the District Court to clarify its directive considering the deference owed to the Executive Branch in the conduct of foreign affairs. *Id.* The Supreme Court directed the United States to be prepared to share what it can concerning the steps it has taken and the prospect of further steps. *Id.* Of note, the Supreme Court did not reinstate a deadline for the United States to return Abrego Garcia. *Noem v. Abrego Garcia*, 145 S.Ct. at 1018.

Imposing a deadline to return Petitioner to the United States impedes in the Executive Branch's ability to conduct foreign affairs with Guatemala, importantly to take a Petitioner, who is in a foreign country, out of a foreign country. This is especially the case when Guatemala requires valid travel documents to depart Guatemala and Petitioner does not have said document. ECF No. 17-1 at 2. Because the Respondents cannot comply with the Court's deadline unless Guatemala issues Petitioner a passport, the injunction makes this Court the arbiter of "relations with [a] foreign power[]" itself. *Trump v. Hawaii*, 585 U.S. 667, 702 (2018). Ordering a specific deadline to return Petitioner is a manifest error of law and this requirement should be removed. *See* Fed. R. Civ. P. 59(e); 60(b)(6).

Additionally, ICE attempted to schedule Petitioner for an interview with the Guatemalan Migration Institute on December 9, 2025, to obtain a passport, and informed Petitioner's counsel of the appointment. Petitioner's counsel said she did not want her client to obtain a passport and demanded Respondents return her client without one. ECF No. 18-1. When the ICE Officer explained that the government of Guatemala requires travelers present valid passports, counsel for Petitioner used an expletive towards the ICE Officer and hung up. ECF No. 18-1. Although Petitioner's counsel informed ICE a day later that Petitioner would assist his return in filling the application, counsel's initial refusal to cooperate with obtaining a passport delayed Respondents' efforts to return Petitioner. This conduct was also contrary to the Court's order which ordered Petitioner to "facilitate the implementation of this Order by all means available." ECF No. 15. This further supports Respondent's request that the Court reconsider and remove the December 12, 2025, deadline to return Petitioner to the United States. *See* ECF No. 18-1 at 3.

Finally, the Court, in his Order, stated it is not clear whether Respondents have changed their position on the Court's jurisdiction to return Petitioner. ECF No. 15 at 5. Respondents have

agreed to return Petitioner to the United States but still maintain that Petitioner is not their custody, and habeas proceedings under § 2241 are the improper vehicle to order Petitioner's return. *See* ECF Nos. 6, 9.

At the December 3, 2025, status conference, Petitioner's counsel argued Petitioner is in his hotel room, and not in ICE custody, but remains in Respondents 'control' because Respondents have a plane that travels to Guatemala multiple times a week. Respondents continue to dispute that Petitioner, after he was removed, remains in their custody or control.

Respondents acknowledge that physical custody is not dispositive of the analysis, as "the use of habeas corpus has not been restricted to situations in which the applicant is in actual, physical custody." *Jones v. Conningham*, 371 U.S. 236, 239 (1963). However, Petitioner has not identified how Respondents exercise any 'control' over Petitioner post-removal. Petitioner is in control of where he stays, his daily activities, financing his expenses, and even whether he assists ICE in applying for a Guatemalan passport. *See* ECF No. 18-1. Surely, if Petitioner was in Respondents' control, as Petitioner wants the Court to believe, then Respondents could obtain Petitioner's simple assistance in applying for a passport. Petitioner's counsel initial objections to Petitioner applying for the passport belie the argument Petitioner is in Respondents' control.

This case is factually distinguishable from the Supreme Court's *Abrego Garcia* Opinion. 145 S.Ct. 1017, as to the issue of custody or control and the underlying claims. Mr. Abrego Garcia was detained in the Center for Terrorism Confinement (CECOT) in El Salvador, and Petitioner here, has selected and is self-funding a hotel, of his choosing, to temporarily reside. *See Noem v. Abrego Garcia*, 145 S.Ct. 1017, 1018. Respondents continue to maintain their position that habeas proceedings under § 2241 are the improper vehicle to order Petitioner's return to the United States

as the only claim in the underlying habeas petition was the government's custody and control of the Petitioner when he was in the United States.

III. Conclusion

Respondents respectfully request this Court reconsider and amend its Order and remove the December 12, 2025, deadline to return Petitioner.

Respectfully submitted,

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Certificate of Conference

On December 10, 2025, I conferred with Petitioner's counsel via e-mail. Petitioner's counsel opposes Respondents' motion.

/s/ Anne Marie Cordova
Anne Marie Cordova
Assistant United States Attorney

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Order

The Court has considered Respondents' Opposed Motion to Reconsider and Amend the Judgement and finds it to be meritorious. The motion is accordingly **GRANTED**.

The Court amends his Order to remove the requirement that directs Respondents to return Petitioner no later than 11:59pm MST on December 12, 2025.

IT IS SO ORDERED.

Signed and entered this _____ day of _____, 2025.

David C. Guaderrama
Senior United States District Judge