

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

A.N.P.S., a minor, by and through Next	)	
Friend of Kin, N.C.S.E.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 25 C 14778
	)	
ANGIE SALAZAR, in her official capacity	)	Judge Rowland
as Acting Director of the Office of Refugee	)	
Resettlement (ORR), <i>et al.</i> ,	)	
	)	
Respondents.	)	

REPLY IN SUPPORT OF MOTION FOR VACATUR UNDER RULE 60(b)

Respondents, by their attorney, Andrew S. Boutros, United States Attorney for the Northern District of Illinois, respectfully submit this reply in support of their motion to vacate this court's opinion and order of December 22, 2025, Dkt. 35 ("Gov't Br."), along with the corresponding judgment, pursuant to Federal Rule of Civil Procedure 60(b). *See* Dkt. 35 (motion), Dkt. 20 (opinion and order), Dkt. 25 (judgment).

Petitioner's response in opposition concedes the point that matters most: "some of the Court's reasoning was based on this mistake of fact" and "the Court's desire to vacate those portions of the opinion is appropriate." Dkt. 37 ("Petitioner's Opposition" or "Pet'r Opp'n") at 2. What remains, then, are petitioner's three arguments about scope and vehicle: that respondents have purportedly accused counsel of fraud, that the mistake of identity did not infect the court's due process analysis, and that *Bell v. Eastman Kodak Co.*, 214 F.3d 798 (7th Cir. 2000), forecloses Rule 60(b) relief. None of those arguments withstands scrutiny. And on respondents' independent ground for vacatur—that this case is now moot and the opinion should be vacated under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), Petitioner's Opposition says nothing at all.¹

¹ Petitioner's Opposition also does not dispute that this case became moot when A.N.P.S. turned 18 years old. Nor could it: at that moment, he ceased to be an unaccompanied alien child

I. The Conceded Mistake of Fact Warrants Vacatur under Rule 60(b)(1).

Petitioner’s Opposition devotes the bulk of its efforts toward litigating fault—insisting that the redactions in the Verification of Release originated with the Office of Refugee Resettlement’s 2023 records production and that neither petitioner nor his counsel therefore “misrepresented” anything. Pet’r Opp’n at 2–3. But fault is beside the point. Rule 60(b)(1) authorizes relief from a judgment for “mistake,” and the Supreme Court has held that this term even “includes a judge’s errors of law,” where intentionality is never in question. *Kemp v. United States*, 596 U.S. 528, 534 (2022). It has never been doubted that the rule reaches errors of *fact* as well. *See id.* at 533–34 (“mistake” in Rule 60(b)(1) carries its ordinary meaning, including any “misconception” or “misunderstanding”). A judgment resting on a factual premise that all parties now agree was erroneous. Indeed, the court said it plainly: “What is *clear* . . . is that N.C.S.E. was Petitioner’s *sponsor* as approved by [the Office of Refugee Resettlement (“ORR”)] at the time of his arrest.” Dkt. 20 at 8 (former emphasis added). That was clear to the court at the time, but it was not true, and it is therefore paradigmatic of a “mistake” under Rule 60(b)(1). The court therefore need not find fraud, misrepresentation, or misconduct by anyone in order to grant respondents’ motion.

In any event, petitioner’s indignation at a “false accusation” of fraud, Pet’r Opp’n at 2, responds to an accusation respondents never made. Respondents’ motion was explicit that the judgment rested on a “misrepresentation (intentional or not).” Gov’t Br. at 4. That caveat matters because Rule 60(b)(3) “applies to both intentional and unintentional misrepresentations.” *Lonsdorf v. Seefeldt*, 47 F.3d 893, 897 (7th Cir. 1995). Whatever the provenance of the redactions, the verified petition pleaded—in back-to-back sentences—that “Petitioner was released from ORR

(“UAC”) as a matter of law. *See* 6 U.S.C. § 279(g)(2)(B). Nor does Petitioner’s Opposition dispute that respondents’ time to appeal under Federal Rule of Appellate Procedure 4(a)(1)(B) began running when this court denied their Rule 59(e) motion. *See* Gov’t Br. at 1 n.1.

custody to *his cousin*” and that petitioner’s mother later transferred custody “to *his cousin, N.C.S.E.*” Dkt. 1 (“Pet.”) at ¶ 18 (emphases added). It was that parallel construction, together with the redacted exhibit, from which this court drew its erroneous finding *throughout* the opinion and order. *See* Dkt. 20 at 2, 8, 14. And unlike counsel, petitioner and N.C.S.E. *always* knew the truth: that ORR released A.N.P.S. to O.A.M.P. in December 2022, and that N.C.S.E. never applied to ORR to be a sponsor for A.N.P.S., was never vetted by ORR to be such a sponsor, and was never approved by ORR as a sponsor. Respondents do not ask this court to assign blame. They ask it to correct the record’s consequences.

II. The Mistake of Fact Was the Central Premise Behind the Court’s Due Process Analysis and Its Remedy.

Petitioner’s Opposition next argues that this court’s due process holding required only that petitioner had previously been released to “a sponsor,” such that swapping “N.C.S.E.” for “a sponsor” in Section III of that opinion should leave the opinion intact. Pet’r Opp’n at 4–5. The opinion itself says otherwise. At each step of this court’s balancing analysis, the court relied on the specific (and erroneous) premise that ORR had previously vetted and approved *N.C.S.E.*: the court stated that the risk of erroneous deprivation was “severe” because “Respondents previously determined that it was appropriate to release Petitioner to N.C.S.E.,” and that the government’s interest was “slight insofar as it previously determined that Petitioner could be safely released to N.C.S.E. and ha[s] provided no reason to think he could not be safely restored to N.C.S.E.’s custody.” Dkt. 20 at 12. And this court’s rejection of respondents’ exhaustion argument rested on the exact same premise: “N.C.S.E. already sought *and received* the administrative relief that Respondents now want her to seek[.]” *Id.* at 13 (emphasis in original). So did this court’s rejection of respondents’ statutory argument: “Respondents *already identified* N.C.S.E. as a suitable sponsor for Petitioner[.]” *Id.* at 14. None of that was true.

The remedy makes the point even more starkly. In *Saravia*—the sole case this court identified as analogous—the district court never ordered outright release. It instead ordered a hearing. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1205–06 (N.D. Cal. 2017). This court declined to follow that more prudent course and instead simply ordered that A.N.P.S. be released to N.C.S.E. within 48 hours precisely because, in its view, nothing “challenge[d] ORR’s previous findings regarding . . . N.C.S.E.’s suitability to maintain custody over him.” Dkt. 20 at 17. There were no such findings to challenge. The court thus ordered the release of a minor from federal custody to someone whom ORR had never vetted, which is the very outcome the Trafficking Victims Protection Reauthorization Act’s suitability requirements exist to prevent. *See* 8 U.S.C. § 1232(c)(3)(A).

Petitioner’s proposed word swap fails on its own terms for another reason. Section III’s holding was that re-detention violated due process absent “a change in circumstances.” Dkt. 20 at 17. With the record corrected, there *was* a change in circumstances: the placement ORR actually vetted and approved (that is, the one with O.A.M.P. in 2022) dissolved within months of petitioner’s release. *See* Pet. ¶ 18; Dkt. 27 (Respondents’ Exhibit 3). The factual foundation for the “no changed circumstances” holding, no less than the remedy, depended on the “misconception” that petitioner was living with the same person to whom ORR released him. *Kemp*, 596 U.S. at 534. A misconception that pervades the court’s due process analysis, its exhaustion ruling, its statutory ruling, and its ordered remedy cannot be excised with the cut-and-paste that petitioner now proposes.

III. *Bell v. Eastman Kodak* Poses No Obstacle to Vacatur Because This Case Is Moot, and Petitioner’s Silence on *Munsingwear* Relief Concedes Respondents’ Independent Ground for Vacatur.

Finally, Petitioner’s Opposition argues that Rule 60(b) relief is unavailable here because respondents’ arguments “can be appealed.” Pet’r Opp’n at 5–6. But the central case petitioner

relies on for this argument (*Bell v. Eastman Kodak*) holds that the ground for Rule 60(b) relief must be one “that could not, in the circumstances, have been presented in a direct appeal.” 214 F.3d at 801. That problem describes exactly where this case is right now. It is undisputed that A.N.P.S. has turned 18 and that this case was moot when this court entered its judgment. Gov’t Br. at 4. A direct appeal therefore cannot yield merits review of the December 22 opinion, which would include the erroneous factual premise riddled throughout that order. Rather, the most an appeal could possibly yield would be an order from the Seventh Circuit vacating the opinion as moot under *Munsingwear*. See *Chi. Headline Club v. Noem*, 168 F.4th 1033, 1039–40 (7th Cir. 2026). District courts possess the same power under Rule 60(b) to vacate their own opinions and judgments when a case becomes moot, see *Bashkin v. Keisler*, No. 06 C 2518, 2008 WL 4866352, at *3–4 (N.D. Ill. June 13, 2008), and exercising that power here spares the parties and the court of appeals a proceeding whose outcome is foreordained (that is, a moot appeal).

Notably, respondents’ motion squarely presented this *Munsingwear* ground. Gov’t Br. at 4. Yet Petitioner’s Opposition does not even mention it, much less rebut it. “Failure to respond to an argument . . . results in waiver.” *Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010). The equities of *Munsingwear* vacatur are satisfied in any event: mootness in this case arose from the happenstance of petitioner’s birthday, not from any voluntary act of respondents, who diligently preserved their rights at every step—through a timely Rule 59(e) motion, and through this timely Rule 60(b) motion filed while their appeal window remains open. See *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023).

Petitioner’s closing accusation that respondents simply “seek vacatur so as to eliminate the precedent,” Pet’r Opp’n at 6, proves respondents’ point rather than refuting it. A district court opinion binds no one as precedent, but it does not follow that an opinion resting on a conceded mistake of fact, now insulated from appellate review by mootness, should remain on the books to

be cited as persuasive authority as if that opinion was not based on a mistake of fact. Preventing exactly that result (here, a judgment left unreviewable “through happenstance”) is what *Munsingwear* vacatur is meant to accomplish. 340 U.S. at 39–40. It is therefore the proper course in this case.

Conclusion

Based on the foregoing, as well as those stated in respondents’ motion, the court should vacate its opinion and order of December 22, 2025, as well as the corresponding judgment, in their entirety.

Respectfully submitted,

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