

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Case No. 2:26-cv-00002-KCD-DNF

**ROBERTO FRANCISCO FRANCO
RODRIGUEZ,**

Petitioner,

v.

KELIE WALKER, et al.

Respondents.

**PETITIONER'S MOTION FOR RELIEF FROM FINAL JUDGMENT
PURSUANT TO RULE 60(b)**

Petitioner, by and through undersigned counsel, respectfully moves this Court for relief from the Final Judgment dismissing the Petition for Writ of Habeas Corpus under 28 U.S.C. §2241 as moot. [ECF No. 10]. Relief is warranted under Federal Rule of Civil Procedure 60(b) because the judgment was entered based on inadvertently incorrect information, namely, that Petitioner had been removed from the United States, when in fact Petitioner remains present in the United States at an ICE facility, as shown by Respondents' own detainee locator website. See Exh. "A," ICE Detainee Locator Page dated January 31, 2026.

A Rule 60(b) motion may not raise a new claim for relief and may not attack a court's prior resolution of a claim on the merits. *See Pease v. United States*, No. 16-17103, 2019 WL 1568407, at * I (11th Cir. Apr. 11, 2019). The application of Rule 60(b) in a habeas context has been succinctly summarized:

Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. Rule 60(b)(6), the particular provision under which petitioner brought his

motion, permits reopening when the movant shows "any ... reason justifying relief from the operation of the judgment" other than the more specific circumstances set out in Rules 60(b)(1)-(5).

See Gonzalez v. Crosby, 545 U.S. 524, 528-29 (2005).

In their response to the Petition for Writ of Habeas Corpus, Respondents indicated that Petitioner had been removed from the United States on January 26, 2026. [ECF No. 9] at p. 2. But, although Petitioner was transported to Texas, Mexican authorities apparently refused to accept Petitioner. ICE's own website indicates that he is still at the Port Isabel Detention Center in Texas as of the date of this motion. See Exh. "A." Undersigned counsel has had indirect contact with Petitioner through a third party that confirms that he is still detained in Texas. The Court dismissed the petition solely on mootness grounds arising from Petitioner's alleged removal. Because Petitioner remains in the United States and continues to suffer the legal consequences challenged in the §2241 petition, the case presents a live controversy. Allowing the judgment to stand would deny Petitioner habeas review based on incorrect information. Rule 60(b) exists to ensure that judgments are not insulated from correction when fundamental factual errors undermine their validity. Reopening this matter will restore the parties to the position they occupied before dismissal and permit adjudication on the merits.

WHEREFORE, Petitioner respectfully requests that the Court:

1. Grant this Motion pursuant to Federal Rule of Civil Procedure 60;
2. Vacate the Final Judgment dismissing the § 2241 petition as moot;
3. Reopen and reinstate the Petition for Writ of Habeas Corpus; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: January 31, 2026

s/ Felix A. Montanez

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LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), the undersigned hereby certifies that counsel for the Petitioner conferred with counsel for the Respondents on January 29, 2026. Counsel for the Respondents represents that "Respondents take no position regarding the motion pending further information, although Respondents currently understand that Petitioner failed to comply with removal efforts." Petitioner disputes that there has been any material failure to comply. Upon information, knowledge, and belief, Mexican authorities themselves refused to accept him.

Respectfully submitted,

Dated: January 31, 2026

s/ Felix A. Montanez

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