

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ARREY EYONG ENEKE,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Civil Action No. 3:26-CV-133-K-BN

RESPONDENTS' MOTION TO ALTER OR AMEND THE JUDGMENT

Respondents file this motion under Rule 59(e) and respectfully ask this Court to alter or amend its judgment in this matter, so that instead of partially granting habeas relief, all relief is denied to Petitioner. As discussed below, this outcome is warranted in light of new intervening authority from the Fifth Circuit.

I. Background

This case is “one of many habeas petitions that challenge ICE’s mandatory detention authority while removal proceedings are pending.” (Doc. 11 at 2.) Specifically, the issue in this case is whether Petitioner—who admittedly entered the country “without inspection or admission by an immigration officer,” (Doc. 3 at 5)—is subject to mandatory detention under 8 U.S.C. § 1225 pending the completion of removal proceedings, or instead is properly considered detained under 8 U.S.C. § 1226 such that a bond hearing would generally be available in immigration court.

As this Court noted in its memorandum opinion and order that partially granted

habeas corpus in favor of Petitioner (to require that Respondents either provide a bond hearing to Petitioner or release her), there has been a split of caselaw within this district on whether aliens in Petitioner's position are properly considered detained under § 1225 or § 1226. (Doc. 11 at 5.) And as of the time of the Court's decision, the "Fifth Circuit ha[d] not ruled on this issue," but had "recently heard oral arguments in the appeal of a similar case from the Southern District of Texas. *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.)." (Doc. 11 at 5.)

The Fifth Circuit has now issued its decision in *Buenrostro-Mendez*, which holds that "the government's position is correct" on the issue of whether aliens who are present in the United States without having been lawfully admitted are subject to mandatory detention under § 1225—they are. *See Buenrostro-Mendez v. Bondi*, ___ F. 4th ___, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The Fifth Circuit also noted that aliens subject to § 1225 "are being given due process during removal proceedings," and rejected the idea that *Zadvydas v. Davis*, 533 U.S. 678 (2001)—in which the Supreme Court indicated that the Due Process Clause would likely be violated if an alien was subjected to "indefinite detention" after being ordered removed—would be applicable. *Buenrostro-Mendez*, 2026 WL 3223330, at *9. In light of *Buenrostro-Mendez*, Respondents now seek Rule 59 relief against the judgment in this case.

II. Argument and Authorities

This motion is being filed within 28 days of the Court's judgment, and therefore implicates Rule 59(e). *See Demahy v. Schwarz Pharma, Inc.*, 702 F.3d 177, 182 n.2 (5th Cir. 2012). Respondents recognize that Rule 59(e) "is an extraordinary remedy that

should be used sparingly.” *Johnson v. Director, TDCJ-CID*, No. 3:24-CV-2863-K, 2025 WL 1031380, at (N.D. Tex. Apr. 7, 2025) (quoting *Rollins v. Home Depot USA*, 8 F.4th 393, 396 (5th Cir. 2021)). However, as this Court has explained, “[t]he Fifth Circuit has . . . noted that Rule 59(e) allows a party to alter or amend a judgment when there has been an intervening change in the controlling law.” *Id.* (internal quotation marks, brackets, and citation omitted).

That is exactly the situation here. The Fifth Circuit’s recent decision in *Buenrostro-Mendez* is an intervening change in the law. As this Court noted in its memorandum opinion and order, the Fifth Circuit had not previously ruled on the issue raised by the numerous habeas petitions filed by detainees in Petitioner’s petition (i.e., those present in the United States without lawful admission). (Doc. 11 at 5.) But the Fifth Circuit has now spoken, and its decision in *Buenrostro-Mendez* makes clear that the judgment in this case should be altered or amended to deny all relief to Petitioner. In particular, the Fifth Circuit has now held that § 1225’s mandatory detention provision does apply to aliens, like Petitioner, who are present in the United States without having been lawfully admitted. *See Buenrostro-Mendez*, 2026 WL 323330, at *4–*10. Additionally, the Fifth Circuit rejected the suggestion that *Zadvydas* (a case in which the Supreme Court suggested that indefinite suspension of an alien with an order of removal could violate the Due Process Clause clause) has any application to “aliens who are being detained and are being given due process during removal proceedings.” *Id.* at *9.

Buenrostro-Mendez undermines the basis for this Court’s judgment in this case. First, the Court’s conclusion that the mandatory detention of an alien in Petitioner’s

position without a bond hearing violates the statute (Doc. 11 at 4–5) has been repudiated by *Buenrostro-Mendez*. Indeed, this Court’s memorandum and opinion and order favorably cited the two underlying district court decisions that were consolidated upon appeal in *Buenrostro* (*Buenrostro-Mendez* itself along with a separate case known as *Covarrubias*), but these decisions have now been reversed.

Second, although this Court also found that the Due Process Clause requires a bond hearing for aliens like Petitioner, (Doc. 11 at 5–6), the Fifth Circuit stated that such aliens are “being given due process during removal proceedings.” *Buenrostro-Mendez*, 2026 WL 323330, at *9. In fact, Petitioner’s due process argument in this case relied on *Zadvydas*, (see Doc. 3, ¶¶ 32, 35), but the Fifth Circuit found that “*Zadvydas* . . . has no direct application to aliens” like Petitioner who are in removal proceedings. Moreover, the Supreme Court has held that “[d]etention during removal proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

III. Conclusion

The Court should grant this motion and alter or amend its judgment in this action to deny all relief to Petitioner.

Respectfully submitted,

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Certificate of Service

On February 7, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Omar J. Famada
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