District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FERDINAND KIPKORIR KIBOR, Petitioner, v. JULIO HERNANDEZ[1], *et al.*, Respondents.	Case No. 2:26-cv-00390-JLR MOTION TO ALTER OR AMEND JUDGMENT Noted for Consideration: March 30, 2026

I. INTRODUCTION

Pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, Federal Respondents hereby respectfully move this Court to alter or amend its February 26, 2026 Judgment (Dkt. No. 12), as implemented by its Order of the same date (Dkt. No. 11). The Court's Order denies the Petition for Habeas Corpus without prejudice, concluding that the Petitioner failed to show that his post-removal order detention has become unlawfully indefinite. However, the Order requires Respondents to provide advance notice to Petitioner and his counsel of any action to move or

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Julio Hernandez for Laura Hermosillo.

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

transfer Petitioner from the Western District of Washington or to remove him from the United States.

Respectfully, this was manifest error. Petitioner did not establish that Respondents have violated, or imminently will violate, some provision of statutory or constitutional law. Accordingly, he was not entitled to any judicial remedy.

II. BACKGROUND

This action was filed by Petitioner, a citizen and native of Kenya, who is subject to an order of removal that became administratively final on January 5, 2026. His Petition sought immediate release from detention, contending that his detention was unconstitutionally indefinite. The Court, observing that Petitioner's post-removal order period only commenced on January 5, 2026, concluded that his habeas corpus petition was premature and thus denied the Petition without prejudice. Order, at 5-6.

The Court also denied Petitioner's request to hold the case in abeyance for purposes of preventing Respondents from transferring him out of the Western District of Washington, noting that the Petitioner failed to cite authority in support of his request. Order, at 5. Nevertheless, the Court granted Petitioner a remedy. It ordered Respondents to provide Petitioner and his counsel at least 48 hours' notice before any action to remove or transfer the Petitioner from this District. *Id.*

III. LEGAL STANDARDS

A motion to alter or amend the judgment is timely if filed within twenty-eight days of the entry of judgment. Fed. R. Civ. P. 59(e). The district court "has considerable discretion when considering a motion to amend a judgment." *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (citing Fed. R. Civ. P. 59(e)). Although Rule 59(e) itself does not state the grounds on which relief may be granted, the Court of Appeals has established that altering or amending the judgment is proper where "the district court: (1) is presented with newly

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Circuit City Stores. v. Mantor*, 417 F.3d 1060, 1064 (9th Cir. 2005) (*citing Sch. Dist. No. 1J, v. Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)).

IV. ARGUMENT

Respectfully, this Court committed manifest error by granting the Petitioner any relief based on his Petition, which this Court denied. The relief that this Court granted is in effect a permanent injunction that enjoins Respondents from taking any action to move or transfer Petitioner from the Western District of Washington or to remove him from the United States unless and until the Petitioner and his counsel are provided with 48 hours' advance notice (or 72 hours' notice if the period extends into a weekend, holiday, or date the court is closed) of such action. Order, at 6.

Without a finding of unlawful conduct, the practical effect of this injunction is twofold. First, this Court did not find that the Government's discretionary authority to determine the placement or transfer of Petitioner would be unconstitutional. To wit, even if Petitioner were transferred to another facility, he would retain the ability to file a new habeas petition in that jurisdiction. *See Gandarillas-Zambrana v. Bd. of Immigr. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995) ("The INS necessarily has the authority to determine the location of detention of an alien in deportation proceedings, INA § 242(c), 8 U.S.C. § 1252(c), and therefore, to transfer aliens from one detention center to another."). Thus, the Order impinges on the Government's discretionary authority to set operational priorities without any cause to do so.

Second, Petitioner is subject to a final order of removal and is within the 90-day removal period. Congress has directed the Secretary of Homeland Security to remove noncitizens during

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

the removal period. 8 U.S.C. § 1231(a)(1).[2] However, the Court's notice requirement encroaches on the Secretary's discretionary determination of when to execute a removal order even though no unlawful conduct has been found by this Court.

"Under general equity principles, an injunction issues only if there is a showing that the defendant has violated, or imminently will violate, some provision of statutory or common law, and that there is a cognizable danger of recurrent violation." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 766, n.3 (1994) (internal quotations omitted); *see also Nw. Austin Mun. Util. Dist. No One v. Holder*, 557 U.S. 193, 225 (2009) (Thomas, J., concurring in part and dissenting in part) ("There can be no remedy without a wrong.").

Here, the Court reached no conclusion that Respondents were either violating, or about to violate Petitioner's legal rights. Accordingly, under the authorities cited above, it was manifest error for the Court to grant him what is essentially a permanent injunction against Respondents.[3]

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that the Court grant this Motion to Alter or Amend the Judgment and eliminate the Order's requirement that the Government provide Petitioner and his counsel advance notice of any action to move or transfer Petitioner from the Western District of Washington or to remove him from the United States.

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[2] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining aliens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of Homeland Security. *See also* 6 U.S.C. § 251.

[3] Respondents recognize that the Court issued an order at the outset of the case requiring Respondents to provide such notice while the case was pending. However, that order was in substance relief *pendente lite* to preserve the status quo pending an adjudication of the Petitioner's claims. However, once judgment was entered, that preliminary order dissolved *ipso facto* when the final judgment was entered. *See U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1093 (9th Cir. 2010).

UNITED STATES ATTORNEY
1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

DATED this 9th day of March, 2026.

Respectfully submitted,

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 1,059 words, in compliance with the Local Civil Rules.