

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MONTANO-HERNANDEZ, ARIANA,

A#



Petitioner,

v.

Mary de Anda-Ybarra Acting/Director of
El Paso Field Office, U.S. Immigration and
Customs Enforcement; Warden, El Paso
Processing Service Center; Kristi Noem
Secretary of the U.S. Department of Homeland
Security; and Pamela Bondi, Attorney General
of the United States, in their official capacities,

Respondents.

Case No. 3:26-cv-00435-LS

PETITIONER'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT

Petitioner, through counsel, respectfully moves under Federal Rule of Civil Procedure 59(e) to alter or amend the Judgment entered on April 2, 2026, denying the Petition for Writ of Habeas Corpus. A Rule 59(e) motion must be filed no later than 28 days after entry of judgment.

Reconsideration is warranted because the Court's ruling rests on a manifest error of law. The Court concluded that Petitioner's Fifth Amendment due process claim is foreclosed, at this juncture, by *Demore v. Kim*, 538 U.S. 510, 531 (2003), because detention during removal proceedings is "a constitutionally permissible part of that process." But *Demore* did not hold that every detention decision during removal proceedings is automatically constitutional, nor did it

address the materially different question presented here: whether the Government may re-detain a noncitizen previously released from custody without constitutionally adequate limits, justification, or process, consistent with the Fifth Amendment. *Demore* addressed detention under 8 U.S.C. § 1226(c) and repeatedly described that detention as occurring for the “limited period of Petitioner’s removal proceedings.”

Petitioner does not dispute that § 1225(b) authorizes mandatory detention as a statutory matter. Section 1225(b) uses mandatory language, and *Jennings v. Rodriguez* held that § 1225(b)(1) and (b)(2) require detention through completion of the applicable proceedings. But *Jennings* expressly did not decide the constitutional question; instead, it remanded for consideration of the detainees’ constitutional arguments in the first instance.

The Fifth Circuit in *Buenrostro-Mendez* also did not reach the due process question, confining its analysis and holding to statutory interpretation. See generally *Buenrostro-Mendez*, 2026 WL 323330, at *1–10.

The error in the Court’s judgment is therefore not its recognition of statutory detention authority, but its treatment of that authority and *Demore* as dispositive of Petitioner’s as-applied Fifth Amendment challenge.

For those reasons, and those set out below, the Judgment should be altered or amended.

I. Background

On April 2, 2026 this Court entered Judgment denying Petitioner’s habeas petition. In relevant part, the Court ruled that Petitioner’s Fifth Amendment Due Process claim was precluded, at this

uncture, by *Demore v. Kim*, because detention during removal proceedings is constitutionally permissible. See [ECF No. 7 at 2-3].

Petitioner's due process claim, however, is narrower than the Court's ruling suggests. Petitioner does not contend that immigration detention is always unconstitutional. Rather, Petitioner contends that the Fifth Amendment still imposes limits on the Government's exercise of civil detention power, particularly where the Government has already released a person and later re-detains him without meaningful notice, without adequate process, without a material change in circumstances, and without any constitutionally sufficient limiting principle.

Here, Petitioner was previously released from custody and later re-detained. There are no new criminal charges; no violation of release conditions; no notice; no hearing; no explanation; no changed circumstances; continued compliance with prior conditions; etc. The Court's order did not analyze whether those facts distinguish this case from *Demore's* limited holding or otherwise implicate an as-applied due process violation.

II. Legal Standard

Rule 59(e) permits a party to move to alter or amend a judgment no later than 28 days after its entry. In the Fifth Circuit, Rule 59(e) serves the narrow purpose of correcting a manifest error of law or fact or presenting newly discovered evidence. It is not a vehicle for rehashing arguments, but it is proper when the judgment rests on an incorrect legal premise.

Petitioner seeks only that relief here. This motion does not raise a new claim. It asks the Court to correct the legal overbreadth of its ruling that *Demore* categorically forecloses Petitioner's due process challenge.

III. Argument

A. The Court committed a manifest error of law by treating *Demore* as if it resolved Petitioner's materially different due process claim.

The Court relied on *Demore* for the broad proposition that detention during removal proceedings is constitutionally permissible. That proposition, standing alone, is not enough to resolve Petitioner's claim.

Demore involved detention under § 1226(c) and emphasized that the detention at issue was for the limited period of removal proceedings. The Supreme Court described the detention there as typically lasting "roughly a month and a half" in most cases and about five months in the minority of appealed cases, and it upheld detention in that specific posture.

Petitioner's case presents a different question: whether the Government may, consistent with the Fifth Amendment, re-detain a previously released noncitizen under § 1225(b) without constitutionally adequate justification, process, or limits. *Demore* did not address re-detention after release. It did not hold that all exercises of immigration detention authority are immune from due process scrutiny. And it did not erase the distinction between detention that is constitutionally permissible in principle and detention that is constitutionally valid as applied in a particular case.

The Court's order effectively collapsed those two propositions into one. That was legal error.

B. Section 1225(b) provides statutory detention authority, but *Jennings* and *Buenrostro* did not hold that such detention is constitutionally unreviewable.

Petitioner acknowledges that § 1225(b) uses mandatory language. The statute states that certain noncitizens “shall be detained” pending further proceedings, including where an applicant for admission is not clearly and beyond a doubt entitled to be admitted. And *Jennings* held that §§ 1225(b)(1) and (b)(2) mandate detention through the completion of applicable proceedings, rejecting a contrary statutory construction that would have imposed periodic bond hearings.

But *Jennings* did not resolve the constitutional question. To the contrary, the Supreme Court stated that the court of appeals should consider the merits of the respondents' constitutional arguments in the first instance, and the Court expressly declined to reach those arguments itself.

Buenrostro also did not address constitutional challenges. Even the Government's counsel stated it bluntly during oral argument: “We have one issue before the Court now: the statutory question. . . . There's not, in other words, a due process claim here.” Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), available at https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3.

That distinction is central here. Petitioner is not asking this Court to rewrite § 1225(b) or to imply a statutory bond-hearing requirement. Petitioner is asking the Court to recognize that even where Congress has authorized detention in mandatory terms, the Fifth Amendment still

prohibits arbitrary deprivations of liberty. *Jennings* and *Buenrostro* do not foreclose that argument. It leaves it open.

C. The Due Process Clause imposes constitutional limits on civil immigration detention, including detention that becomes arbitrary in application.

The Supreme Court has repeatedly recognized that physical liberty lies at the core of due process. In *Zadvydas v. Davis*, the Court explained that “[f]reedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause,” and that government detention violates due process absent adequate criminal process or a special justification that outweighs the individual liberty interest.

That principle applies here. Even if detention under § 1225(b) is mandatory as a matter of statutory text, due process still requires that the Government’s exercise of detention power not become arbitrary. A regime in which the Government may release a person from custody and later re-detain him without meaningful notice, without explanation, without new circumstances, and without any practical opportunity to challenge the deprivation raises a serious constitutional problem distinct from the question addressed in *Demore*.

Petitioner’s claim is therefore not foreclosed by the mere existence of statutory detention authority. It requires a focused constitutional inquiry into whether this re-detention, in these circumstances, comports with the Fifth Amendment.

D. The Court’s order did not analyze the constitutional significance of re-detention after release.

The Court's order stated that detention during removal proceedings is constitutionally permissible. But it did not address the features of Petitioner's case that make the detention decision constitutionally distinct:

- A. Petitioner had already been released from custody;
- B. Petitioner was later re-detained;
- C. There were no new criminal charges, no alleged violations, no changed circumstances, no advance notice, no hearing, no explanation and no new evidence of danger or flight risk; and
- D. Petitioner's challenge is directed to the arbitrary and unsupported reimposition of physical restraint, not to detention in the abstract.

Those facts matter. Once the Government has made a release decision and the noncitizen has remained at liberty in compliance with that decision, a later re-detention without meaningful justification or process raises a due process question that *Demore* did not answer. The Court's failure to engage that distinction is a manifest legal error warranting Rule 59(e) relief.

E. This motion does not raise a new issue; it asks the Court to apply the correct legal framework to the due process claim already presented.

Petitioner does not seek to introduce a new claim through Rule 59(e). The habeas petition already asserted that Petitioner's detention violated the Fifth Amendment. This motion merely clarifies that the Court's legal premise was too broad: *Demore* does not categorically defeat an as-applied challenge to re-detention under § 1225(b), and *Jennings* expressly left the constitutional issue unresolved.

Because the Judgment rests on a legal misunderstanding of the scope of those decisions, amendment is appropriate.

IV. Prayer

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Grant this Rule 59(e) Motion;
2. Alter or amend its Judgment denying Petitioner's Writ of Habeas Corpus;
3. Reconsider Petitioner's Fifth Amendment due process claim under the correct legal framework; and
4. Grant such other and further relief to which Petitioner may be justly entitled.

Respectfully submitted,

Respectfully submitted,

/S/ John Dutton

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Reply Brief and all attachments using the CM/ECF system.

/S/ John Dutton, Attorney for Petitioner

Executed on April 8, 2026