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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

YUNIERKY BURGOS BONACHEA,

Petitioner,

v.

**KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; PAMELA BONDI, in her official
Capacity as Attorney General of the United
States; TODD M. LYONS, in his official
capacity As Acting Director and
Senior Official Performing the Duties of
the Director of U.S. Immigration and
Customs Enforcement; GARRETT J. RIPA,
in his official capacity as Field Officer
Director of the Miami Field Office
and Customs Enforcement; Enforcement
and Removal Operations; and KEVIN
GUTHRIE, in his official capacity as the
director of the Florida Division of Emergency
Management, director of Florida Soft-Side
South Facility, Alligator Alcatraz; WARDEN
of Alligator Alcatraz.**

Respondents.

Case No. 2:26-cv-00653-KCD-NPM

MOTION TO ALTER OR AMEND JUDGMENT AND/ OR FOR RECONSIDERATION
PURSUANT TO RULE 59

COMES NOW, Petitioner, YUNIERKY BURGOS BONACHEA, by and through undersigned counsel, Corona Law Firm P.A., hereby files this Motion to Alter or Amend Judgment

and/or For Reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to request that this Court amend its Order Denying Habeas [Doc. 17] entered on April 23, 2026, due to an intervening change in controlling law, specifically the decision from the Eleventh Circuit Court in *Fidencio Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No.25-14065 (11th Cir. May 6, 2026), and in support of this motion, Petitioner alleges as follows:

I. FACTS AND PROCEDURAL HISTORY

1. Petitioner is a citizen and native of Cuba. Petitioner fled Cuba because he did not agree with the politics in his country.
2. On August 6, 2022, Petitioner entered the United States by San Luis, Arizona and was detained by ICE officers.
3. Petitioner had never been to the United States prior to this arrest and had no criminal history in the United States.
4. On August 7, 2022, Petitioner received a Notice of Custody Determination. *See* Doc. 1, Pet. Exhibit A, Notice of Custody Determination dated August 7, 2022.
5. On August 8, 2022, Petitioner received an Order of Release of Recognizance. The Order of Release on Recognizance states that “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions. . .” *See* Doc. 1, Pet. Exhibit B Order of Release of Recognizance dated August 8, 2022.
6. The Order of Release on Recognizance has several conditions marked off such as the requirement to report for hearings or interviews.

7. After his release on the Order of Release on Recognizance, Petitioner promptly moved to Miami, Florida and applied for protection against persecution in Court.
8. Petitioner complied with all his conditions as stated on the Order.
9. Petitioner, with his counsel, appeared at his master calendar hearing on June 5, 2023 in the Miami Immigration Court.
10. At the conclusion of his master calendar hearing, Petitioner's individual hearing was set for August 21, 2025 to be heard in the Miami Immigration Court.
11. Petitioner attended his individual hearing and promptly filed an appeal with the BIA challenging the decision entered at the conclusion of that hearing. The appeal is currently pending.
12. Petitioner was granted work authorization based on his application for Asylum Withholding of Removal and protection under the Convention Against Torture which remains valid pending the appeal.
13. Petitioner was a passenger in a vehicle at the time of his arrest.
14. At the time Petitioner was detained, Petitioner had a valid work permit, he was not under criminal investigation, not in a suspicious area, nor partaking in suspicious activity.
15. Petitioner has no criminal record in the United States, has complied with all requirements placed on him by ICE, and has not been arrested nor charged for any criminal offense since his release on over three years ago.
16. On March 6, 2026, Petitioner filed the instant Petition requesting immediate release based on Due process violations, violation of the equal protection clause, the Suspension Clause, the *Accardi* Doctrine and APA violations.

17. On April 23, 2026, the Court entered an Order denying Petitioner's Habeas. [Doc. 17].
18. The Court determined that Bonachea meets the definition of an applicant for admission as an alien who arrives in the United States (whether or not at a designated port of entry[]). [Doc. 17, p. 4].
19. As part of the denial, the Court determined that "while Bonachea may have physically spent time in the interior of the United States after his release, the law places him exactly where he started-at the border, subject to §1225." [Doc. 17, p. 5].
20. Additionally, the Court noted that Petitioner "has never been admitted and was found by an examining officer to be 'not clearly and beyond a reasonable doubt entitled to be admitted.'" [Doc. 17, p. 7].
21. Further the Petitioner's count for violation of the Fifth Amendment failed since it was determined that it is not available for aliens held under §1225. [Doc. 17, p. 8].
22. On May 6, 2026, the Eleventh Circuit issued the decision in *Fidencio Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No.25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). Since the Decision was issued, Federal Respondents have acknowledged in other Habeas proceedings that the Eleventh Circuit's decision issued in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) controls cases similar to Petitioner's in this case. *See Yosmanny Torres-Pomares v. Secretary Markwayne Mullin, et al*, Case No. 2:26-cv-1240-KCD-NPM [Doc. 9].
23. As such, for the reasons that follow, the Order denying Petition for Habeas should be vacated, altered, or amended given the Eleventh Circuit Decision in *Hernandez Alvarez*.

II. STANDARD OF REVIEW

A motion to alter or amend a judgment may be filed pursuant to Rule 59(e). *Grimaldi Deep Sea S.p.A. v. SSA Atl., LLC*, No. 3:25-cv-615-MMH-MCR, 2026 U.S. Dist. LEXIS 72216, at *3 (M.D. Fla. Apr. 1, 2026). Under Rule 59(e) of the Federal Rules of Civil Procedure, a court may alter or amend a judgment upon motion made within 28 days after entry of judgment. Courts typically consider several factors in ruling on a motion to alter or amend a judgment, including whether amendment is “need[ed] to correct a clear error or prevent manifest injustice.” *Firestone v. Firestone*, 76 F. 3d 1205, (D.C. Cir. 1996) (per curiam). This Court has previously interpreted those parameters to include “(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *Lamar Advertising of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 489 (M.D. Fla. 1999).

III. LEGAL ARGUMENT

A published opinion “is the law in this circuit unless and until it is reversed, overruled, vacated or otherwise modified by the Supreme Court of The United States or by the [Eleventh] Circuit sitting in banc.” See *Martin v. Singletary*, 965 F. 2d 944, 945 n.1 (11th Cir. 1992) (noting that a stay of the mandate does not affect the duty of the courts in this circuit to apply now the precedent established by the published opinion as binding authority). In the Eleventh Circuit’s decision, the Court addresses the government’s theory that the term “seeking admission” is itself a term of art that subsumes all “applicants for admission.” *Id.* at *29. The court noted that “applicant for admission” is described separate and apart from the phrase “seeking admission” further indicates that the two are not coterminous. *Id.* at *30. Further, the Court in *Hernandez Alvarez*, held that “[t]he text of [8 U.S.C.] § 1225(b)(2)(A) is clear that mandatory detention applies to only a narrower category of applicants for admission: those seeking lawful entry into

the United States . . . [not] to others present aliens not seeking admission.” *Hernandez Alvarez*, No. 25-14065, 2026 WL 1243395 at *13. In short, “§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior.” *Id.* at *14.

Following the Eleventh Circuit’s decision in *Hernandez Alvarez*, Bonachea is entitled to an individualized bond hearing under 8 U.S.C. § 1226 (a). The Order denying Habeas relief was entered on April 23, 2026. [Doc. 17]. The Eleventh Circuit decision was entered after the Order denying Habeas, May 6, 2026. This Eleventh Circuit decision runs in contrast with the reasoning supporting denial of Petitioner’s Habeas. There was no genuine dispute that Petitioner entered the United States in August 2022. [Doc. 17, p. 1]. However, in the Order denying the Petition for Habeas, the decision (1) focuses merely on Bonachea’s initial entry and not the entry he is challenging, and (2) is silent as to those who are “seeking admission” verses “applicants for admission.” [Doc. 17]. However, ultimately, it appears that both “applicants for admission” and those “seeking admission” refer to the same group of aliens. [Doc. 17, p. 4-7]. As such, Petitioner was described as one who is seeking admission within the statutory framework and is subject to mandatory detention pursuant to §1225(b)(2). [Doc. 17, p. 4]. However, since the Eleventh Circuit recently determined that those unlawfully present within the United States who are subsequently detained, are detained under §1226 instead of §1225. *Hernandez Alvarez* at *14. Detention under 1226 entitles Petitioner to a bond hearing at minimum.

Further, Petitioner is in need of judicial intervention since *Matter of Yajure Hurtado* has not been vacated. Immigration law is no stranger to the circumstances of vacated decisions living beyond their vacatur in a given circuit. For example, in *Matter of Jasso Arangure*, 27 I&N Dec. 178 (BIA 2017), found that the Department of Homeland Security is not precluded by res judicata from initiating a separate proceeding to remove an alien under a different aggravated felony

ground. *Matter of Jasso Arangure*, 27 I&N Dec. 178 (BIA 2017). The alien appealed the BIA's decision in the Sixth Circuit and was successful in vacating the BIA's order. *Jasso-Arangure v. Whitaker*, No. 18-3076 (6th Cir. 2018) (vacating and remanding the BIA's decision determining that claim preclusion does apply in an immigration context but could not make the determination in this case). Despite the Sixth Circuit's decision, *Matter of Jasso Arangure* is still used today. There is not guarantee that Petitioner will receive a bond hearing in front of the immigration judge without an Order altering or amending the judgment despite the Eleventh Circuit decision in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*. As such, the Order denying Petitioner's Petition for Habeas should be amended and/or altered to reflect the recent decision.

The Eleventh Circuit decision also changes the outcome on Petitioner's due process claims. Pursuant to the Eleventh Circuit, Petitioner is entitled to a bond hearing at a minimum and at this time, Petitioner has yet to receive one. In the Order denying Habeas, it was determined that he has no claim for due process as being an alien held under § 1225 [Doc 17, p. 8]. In *Hernandez Alvarez*, the Court found that "the language that Congress has chosen to use does not grant to the Executive unfettered authority to detain, without the possibility of bond, every unadmitted alien present in the country." *Id.* at *61. As such, since the Order incorrectly states that §1225 applies to Petitioner and that §1225 supports his lawful detention, the Order denying habeas should be amended. Further, since there has been a change in the law within this Circuit that was not available at the time the Order denying habeas was rendered, and due to the Motion being filed within the 28 days after entry of judgment, Petitioner merits a favorable grant of the instant motion to amend or alter the Order denying Habeas.

IV. CONCLUSION

For the reasons mentioned above and in his Petition for *Habeas*, Petitioner respectfully requests that this Court amend or alter the Order denying his Petition entered on April 23, 2026, enter an Order granting his Petition, Order Petitioner's immediate release based on the terms of the original Order of Release on Recognizance or, in the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that Petitioner is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

CERTIFICATE OF SERVICE

I hereby certify that on May 20th, 2026, I filed the foregoing Motion to Alter or Amend Judgment and/or for Reconsideration pursuant to Rule 59(e) electronically through the CM/ECF system which caused all parties or counsel to be served electronically means as more fully reflected on the Notice of Electronic filing.

Dated this 20th day of May, 2026.

/s/Carolina Corona
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LOCAL RULE 3.01(g) CERTIFICATE

I hereby certify that an effort to confer the instant motion with opposing party was made but understandably opposing counsel has expressed that they will file a response in reference to the relief in this motion, acknowledge that *Hernandez Alvarez* is binding on this issue, and preserve their rights to appeal.

Dated this 20th day of May, 2026.

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