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Hon. Elizabeth C. Coombe, U.S. District Judge
Federal Building and U.S. Courthouse
P.O. Box 7336
Syracuse NY 13261-7336

Via CM/ECF

Re: 9:26-cv-01227-ECC-PJE Ordonez Luna et al v. Ball et al (Petition for Writ of Habeas Corpus)

August 14, 2026,

Dear Hon. Elizabeth C. Coombe:

Petitioner Pineda does not rely on newly discovered evidence, nor is newly discovered evidence a prerequisite to the relief sought. Rule 59(e) separately authorizes amendment of a judgment where necessary to correct clear error or prevent manifest injustice, and reconsideration is appropriate where the Court has overlooked controlling decisions or material matters that might reasonably be expected to alter the result. *Metzler Investment GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 142 (2d Cir. 2020); *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). The pertinent question is therefore not whether Pineda has identified new evidence, but whether the limited relief he now requests presents a genuinely new theory or instead asks the Court to address a legal issue already encompassed within the due-process claim and the parties' prior submissions.

The latter is the case here. Petitioners expressly placed burden allocation at issue, arguing that due process requires the Government to prove by clear and convincing evidence that continued detention is justified by danger or flight risk. Dkt. No. 7 at 4-5. The Court expressly recognized that argument in its Decision. Dkt. No. 13 at 5. Respondents, for their part, placed post-arrest review squarely at issue. They argued that § 1226(a) is "subject to post-arrest review procedures," that prompt post-deprivation review before an immigration judge supplies constitutionally sufficient process, and that, if habeas relief were warranted, "the appropriate remedy would be an individualized custody determination under § 1226(a), rather than immediate release." Dkt. No. 8 at 3-4. Thus, although Petitioners did not previously frame the requested post-arrest remedy in precisely the form presented here, its constituent legal questions—whether the Government bears the burden of justifying detention and whether a

prompt neutral custody hearing is the appropriate alternative to immediate release—were already before the Court.

Petitioner Pineda recognizes that a motion under Rule 59(e) is not an opportunity to introduce a genuinely new theory that could have been raised before judgment. See *Banister v. Davis*, 590 U.S. 504, 508 (2020); *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012). That limitation does not bar this motion. Pineda asserts no new constitutional claim, no new factual basis for relief, and no challenge to the Court's finding that ICE made an individualized threshold decision to arrest him. He instead accepts that determination and requests a narrower remedy under the same due-process claim: a prompt post-arrest hearing employing the burden of proof Petitioners had already placed at issue. That request follows directly from the Court's rejection of Petitioners' preferred pre-arrest timing and from Respondents' own position that post-arrest custody review, rather than immediate release, is the appropriate procedural safeguard.

The distinction is particularly important because the Decision's analysis as to Pineda resolved whether ICE had made an individualized threshold determination before taking him into custody, but did not separately decide whether the procedures available after arrest adequately protect against erroneous *continued* detention when the detainee, rather than the Government, bears the burden of proof. The authorities relied upon by the Court make that distinction consequential. Limited reconsideration therefore does not ask the Court to revisit the factual question it already decided. It asks the Court to address the remaining procedural question presented by the same due-process claim and by the post-arrest-review framework that Respondents themselves invoked.

Nor does Petitioners' original request for immediate release preclude the narrower conditional relief now sought. Respondents themselves proposed an individualized custody determination as the alternative remedy if habeas relief were warranted, Dkt. No. 8 at 4, and the Petition requested such additional relief as the Court deemed necessary and appropriate. See Dkt. No. 1 at 9. More fundamentally, 28 U.S.C. § 2243 directs a habeas court to "dispose of the matter as law and justice require." A conditional writ requiring constitutionally sufficient process therefore narrows the remedy originally requested; it does not enlarge the claim presented for decision.

Respectfully submitted,

/s/ Matthew Borowski

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