IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

HEIDY GRICELDA QUIROZ VARELA, *Petitioner*, v. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Respondents.*	No. EP-26-CV-2186-KC

Federal Respondents' Opposed Motion to Amend, Alter, or Vacate Judgment

Federal[1] Respondents move this Court pursuant to Federal Rules of Civil Procedure 52 and 59 to alter the Order granting the habeas petition on September 2, 2026 (ECF No. 5). On the same date as the Court's order granting the petition, Petitioner was issued a final order of removal.[2] Exh. A. Now, Petitioner is subject to mandatory detention under 8 U.S.C. § 1231. Thus, the Court should alter the judgment to deny Petitioner's habeas petition.

Background

Petitioner, a native and citizen of Honduras, entered the United States without inspection on or about December 1, 2022. ECF No. 4-1. On July 21, 2026, Petitioner was encountered at the Midland County Detention Center in Midland, Texas, following her arrest for Driving While Intoxicated. Exh. B. She was transferred to ICE custody the following day. *Id.* On September 2, 2026, Petitioner was ordered removed to Honduras.[3] Exh. A. She waived appeal, making the

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1 The Department of Justice represents only federal employees in this action.

2 Respondents did not receive this ruling until after the Court issued its Order at ECF No. 5.

3 Petitioner's attorney in immigration court also orally moved to withdraw from Petitioner's case and the motion was granted.

removal order administratively final. On the same day, the Court issued its order granting the petition (ECF No. 5).

Legal Standard

No later than 28 days after the entry of judgment, a party may move the court to amend its findings or make additional findings. Fed. R. Civ. P. 52(b). Rule 52(b) provides that "the court may amend its findings—or make additional findings—and may amend the judgment accordingly." The purpose of Rule 52(b) is "to correct manifest errors of law or, in some limited situations, to present newly discovered evidence." *Fontenot v. Mesa Petrol. Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986) (cleaned up). "Rulings on Rule 52(b) motions are committed to the sound discretion of the district court." *High v. City of Wylie, Tex.*, 4:18-CV-364, 2020 WL 3972743, at *2 (E.D. Tex. July 14, 2020).

Likewise, Rule 59(e) provides that a "motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment." Fed. R. Civ. P. 59(e); *see also Yoffe v. Keller Indus., Inc.*, 582 F.2d 982, 984, n.1 (5th Cir. 1978) (equivalence of a Rule 52(b) and a Rule 59(e) motion). "Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004).

A party may not use a Rule 59(e) motion "to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008). Instead, Rule 59(e) serves the narrow purpose of amending a judgment when there is a change in controlling law, where the movant presents new evidence, or to correct a manifest error of law or fact. *Schiller v. Physicians Res. Grp. Inc.*, 342 F.3d 563, 567 (5th Cir. 2003). "Manifest error is one that is plain and indisputable, and that amounts to a complete disregard of the controlling law or an obvious mistake or departure from

the truth." *Berezowsky v. Ojeda*, 652 F. App'x 249, 251 (5th Cir. 2016). The court has discretion in granting or denying the motion. *Hale v. Townley*, 45 F.3d 914, 921 (5th Cir. 1995).

Argument

I. Petitioner's Detention is Mandatory under 8 U.S.C. § 1231(a)

Petitioner's detention is lawful under 8 U.S.C. § 1231(a). The authority to detain aliens after the entry of a final order of removal is set forth in 8 U.S.C. § 1231(a). That statute affords ICE a 90-day mandatory detention period within which to remove the alien from the United States following the entry of the final order. 8 U.S.C. § 1231(a)(2). The 90-day removal period begins on the latest of three dates: the date (1) the order becomes "administratively final," (2) a court issues a final order in a stay of removal, or (3) the alien is released from non-immigration custody. 8 U.S.C. § 1231(a)(1)(B).

Not all removals can be accomplished in 90 days, and certain aliens may be detained beyond the 90-day removal period. *See Zadvydas*, 533 U.S. at 701. Under § 1231, the removal period can be extended in at least three circumstances. *See Glushchenko v. U.S. Dep't of Homeland Sec.*, 566 F.Supp.3d 693, 703 (W.D. Tex. 2021). Extension is warranted, for example, if the alien presents a flight risk or other risk to the community. *Id.*; *see also* 8 U.S.C. § 1231(a)(1)(C); (a)(6). An alien may be held in confinement until there is "no significant likelihood of removal in a reasonably foreseeable future." *Zadvydas*, at 533 U.S. at 680.

a. ICE Has Afforded Petitioner Due Process.

To establish a procedural due process violation, Petitioner must show that she was deprived of liberty without adequate safeguards. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit has not provided guidance to lower courts, post-*Arteaga-Martinez*, on the appropriate standard for reviewing a procedural due process claim alleged by an alien detained under § 1231, but the Fourth Circuit, post-*Arteaga-*

Martinez, used the *Zadvydas* framework to analyze a post-order-custody alien's due process claims. *See Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 10–14 (W.D. Tex. Aug. 12, 2025) (discussing *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) and *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024)). To the extent this Court finds that any additional analysis is required beyond the constitutional analysis outlined in *Jennings* and *Thuraissigiam*, *supra*, this Court may look to *Zadvydas* to review the procedural claim at issue here. *Id.*

Additionally, the Fifth Circuit finds no procedural due process violation where the constitutional *minima* of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). Even if the Court were to find a procedural due process violation here, the remedy is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

Petitioner has received the maximum process afforded by Congress under the statutes, to include a credible fear reviews by USCIS and placement in "withholding only" proceedings before an immigration judge. *See supra*. Such process included notice and an opportunity to be heard, and the opportunity for judicial review of the agency decision. This process addresses constitutional concerns that were identified in *Zadvydas*, allowing the alien notice and opportunity to be heard regarding continued detention pending removal. Petitioner's procedural due process claim, like her substantive one, should be denied.

II. The Court Lacks Jurisdiction to Review Post-Order Detention

This Court lacks jurisdiction to grant the Petition and order a bond hearing or release of Petitioner when ICE is authorized to detain Petitioner pending removal. Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. §1252(g). That bar applies "notwithstanding any other provision of law, including [the habeas statute.]" *Id.* This provision strips jurisdiction to adjudicate Petitioner's claims challenging detention pending removal.

Here, Petitioner is now being held while ICE attempts removal. Those challenges fall squarely within Section 1252(g)'s bar on judicial review of "any cause or claim . . . arising from the decision or action . . . execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). A contrary holding as to Petitioner's statutory and constitutional claims would enable circumvention of Section 1252(g)'s jurisdictional bar. Section 1252(g)'s prohibition applies regardless of whether noncitizen styles the challenge as being a violation of due process, equal protection, the Administrative Procedure Act, or some other federal law. *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (recognizing that aliens may not "make an end-run around the terms of [§1252(g)] by simply characterizing their complaint"). "If a plaintiff is, at bottom, challenging [an action covered by §1252(g)], then regardless of how she technically pleads her claim, it's a challenge to [such action]. And district courts lack jurisdiction over such claims." *Duarte v. Mayorkas*, 27 F.4th 1044, 1063 (5th Cir. 2022) (Willett, J, concurring in part and dissenting in part). That is the case here. The Court therefore should deny the Petition.

Conclusion

Petitioner's detention is mandatory under 8 U.S.C. § 1231(a)(5) and is considered lawful. Respondents respectfully request the Order and Final Judgment previously entered by this Court (ECF No. 5) be altered or vacated.[4]

Respectfully submitted,

Justin R. Simmons
United States Attorney

/s/ Kenneth Cole Miller
Kenneth "Cole" Miller
Special Assistant United States Attorney
Florida Bar No. 1048511
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7308 (phone)
(210) 384-7312 (fax)
Kenneth.Miller5@usdoj.gov

Attorneys for Federal Respondents

Certificate of Conference

The undersigned arranged a conference call with Petitioner (*pro se*) who is detained at the El Paso Service Processing Center. Deportation Officer Anais Gomez served as a witness. Petitioner indicated that she was opposed to Respondents' Motion.

/s/ Kenneth Cole Miller
Kenneth "Cole" Miller
Special Assistant United States Attorney

[4] Respondents will comply with the Court-mandated release of Petitioner pending a ruling on this Motion or a stay of the Court's prior orders.

Certificate of Service

I certify that on September 3, 2026, I mailed a copy of Federal Respondents' Motion to Amend, Alter, or Vacate Judgment Petitioner (*pro se*) at the following address:

Heidy Gricelda Quiroz Varela
A[redacted]
El Paso Service Processing Center
8915 Montana Ave.
El Paso, TX 79925
Pro se

/s/ Kenneth Cole Miller
Kenneth "Cole" Miller
Special Assistant United States Attorney

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Order

The Court has considered Federal Respondents' Opposed Motion to Amend, Alter, or Vacate Judgment and finds it to be meritorious. The motion is accordingly **GRANTED**.

The Court's prior order granting Petition for Writ of Habeas Corpus is hereby vacated.

IT IS SO ORDERED.

Signed and entered this _____ day of _____, 2026.

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The Honorable Kathleen Cardone
United States District Judge