UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA, on behalf of himself and others similarly situated, Petitioner-Plaintiff, v. ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al., Respondents-Defendants.	Case No. 25-12664-PBS

PETITIONER-PLAINTIFF'S OPPOSITION TO
MOTION TO ALTER OR AMEND THE FINAL JUDGMENT

The government has been violating these class members' rights since last summer. The results have been catastrophic. People who should have been released are being confined in jail, where they are separated from their homes, their families, their livelihoods, and their liberty.

The government has had ample—indeed, overwhelming—notice that its conduct was illegal. The government's manufactured "re-interpretation" of the immigration detention statutes was contrary to decades of established law and practice. It flew in the face of the Supreme Court's construction of the law. *See Jennings v. Rodriguez*, 583 U.S. 281, 287-89 (2018) (stating 8 U.S.C. § 1225(b)(2) applies at "borders and ports of entry," and § 1226 applies "inside the United States") (Alito, J.). Hundreds of federal judges specifically *told* the government that it was breaking the law. *See Barco Mercado v. Francis*, No. 25-6582, 2025 WL 3295903, at *4, 13 (S.D.N.Y. Nov. 26, 2025) (government's new position rejected in 350 cases decided by over 160 federal judges sitting in about 50 different courts); Kyle Cheney, "More than 220 judges have now rejected the

Trump admin's mass detention policy," Politico (Nov. 28, 2025), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861.

This Court has now unequivocally declared the rights of these class members: They are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and they are eligible for bond hearings under § 1226(a). *See* Dec. 19, 2025 Mem & Order (D.E. 112) at 26-27. The Court also ordered reasonable notice requirements, including written notice to class members currently in detention, written notice to newly arrested class members when they are processed, and telephone access within one hour after notice to allow for contact with counsel, including with class counsel at a designated telephone number. *See id.* at 28-31. All parties requested that the Court's final order be entered as a partial final judgment. *See* Pl. SJ Mot. (D.E. 90) at 1; Def. Opp. & Cross Mot. (D.E. 95) at 27 (Government: "[I]f the Court were to enter relief for either Petitioner or the class on Count One, Respondents agree that the judgment should be entered as a partial final judgment under Rule 54(b)."). The Court granted the parties' request, and final judgment on these issues has entered. *See* Partial Final Judgment (D.E. 113).

The government has manifestly failed to make the showing necessary to alter, amend, or modify that final judgment. The government relies on Rules 59(e) and 60(b)(1) & (6). But a motion under Rule 59(e) "must either establish a clear error of law or point to newly discovered evidence of sufficient consequence to make a difference." *See Ing v. Tufts University*, 81 F.4th 77, 85 (1st Cir. 2023) (internal quotation marks omitted). The government does not argue any error of law, and evidence of the government's own operations cannot possibly be "newly discovered" from the government's point of view. Rule 59(e) cannot apply.

In the alternative, the government relies on Rule 60(b)(1) and (6), but those rules are similarly inapposite. "[R]elief under Rule 60(b) is extraordinary in nature," and the party seeking

such relief "must establish, at the very least, 'that his motion is timely; that exceptional circumstances exist, favoring extraordinary relief; that if the judgment is set aside, [the party] has the right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will accrue to the opposing parties should the motion be granted.'" *See Rivera-Velazquez v. Hartford Steam Boiler Inspection and Ins. Co.*, 750 F.3d 1, 3-4 (1st Cir. 2014) (quoting *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19 (1st Cir. 2002)). Rule 60(b)(1) applies in cases of "mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(6) applies for "any reason not encompassed within the previous five clauses," *see id.* at 4, subject to important limitations: First, Rule 60(b)(6) "'may not be used as a vehicle for circumventing clauses (1) through (5),'" and therefore does not apply when a party's "asserted basis for relief falls squarely within" those subsections. *See id*. (quoting *Cotto v. United States*, 993 F.2d 274, 278 (1st Cir. 1993). And, second, Rule 60(b)(6) requires "extraordinary circumstances." *See Kemp v. United States*, 596 U.S. 528, 533 (2022). Here, the government never explains exactly what part of Rule 60(b) supposedly applies or why, except for passing references to Rule 60(b)(6). Mem. (D.E. 117) at 4, 6. But none of the circumstances articulated by the government could qualify as "extraordinary" such that relief under Rule 60(b)(6) could be justified. *See BLOM Bank SAL v. Honickman*, 605 U.S. 204, 211-12 (2025) (holding Rule 60(b)(6) "is available only in narrow circumstances, requires "extraordinary circumstances," and generally requires that the movant be "faultless[]").

Factually, as well, the government has failed to show any reason to disturb the judgment, particularly where delaying notice would prejudice the class members.

First, the government attacks the "telephone access requirement" in Paragraph 6 of the Court's judgment, specifically the requirement that telephone access be provided "within one hour after the noncitizen receives the notice." However, the government offers no support for this

argument other than a hypothetical situation at an unspecified detention facility in which eight detainees are trying to use two telephones. *See* Wesling Decl. ¶5. A hypothetical cannot possibly show "extraordinary circumstances" under Rule 60(b)(6). *See BLOM Bank*, 605 U.S. at 211-12.

Beyond that, the hypothetical is factually inapposite. Most people receiving the notice over time will be new arrestees. The notice will be served upon new arrestees during processing, which generally occurs at ICE's Burlington facility where there are ample telephones. *See* Decl. of Kerry E. Doyle ("Doyle Decl.") ¶13-14. There is no reason to extend the time limit for phone access for new arrestees.

Similarly, for class members currently in detention, the government has not offered any actual evidence of how many detainees are in the various facilities, or how many phones they have access to. The government cannot establish "extraordinary" factual circumstances without establishing any facts. *See BLOM Bank*, 605 U.S. at 211-12. And even if there were facts suggesting some extension of the one-hour time-limit is justified for current detainees (there are not), the government has surely not established that the time should be extended all the way to *24 hours*, as opposed to 90 minutes, two hours, or the like. Indeed, even under the government's own hypothetical, the last detainee would receive access to the telephone 61 minutes after receiving the notice. *See* Wesling Decl. ¶5 (six detainees making 20 minute phone calls on two phones would be done in 60 minutes, leaving last two detainees to start at minute 61).

The government cannot possibly justify "extraordinary" relief on this vacant record. *See BLOM Bank*, 605 U.S. at 211-12. And that is particularly true where delays in telephone access would be highly prejudicial to the detainees. It is crucial that new arrestees have immediate phone access. Among other reasons, as part of their processing, new arrestees generally receive a Notice of Custody Determination form, which requires them to check a box stating whether or not they

request a bond hearing. *See* Doyle Decl. ¶11 & Ex. A. It is therefore essential that new class members in processing have the ability to consult with counsel as quickly as possible, including so that class counsel or another attorney can inform them of the class judgment and their right to check the box that requests a bond hearing, if they so choose.

Similarly, current detainees should have rapid access to class counsel or another attorney to help them understand the notice and evaluate its potential impact on their rights and their immigration cases. The government has, in many cases, been violating their rights for months on end. These class members are likely currently making important strategic decisions under the misimpression that they will not have access to bond if they pursue relief in their immigration case.

Second, the government is asking to modify Paragraph 3 of the judgment, specifically to delay individual notice to class members currently in detention by almost a full month. *See* Mot. at 5. The government states that it must review "1,691 cases to determine whether and how to serve individual notice," particularly with respect to detainees that the government "transferred out-of-state." Mem. at 5-6.[1]

As an initial matter, the burden argument raised by the government is not a basis to modify the judgment because it could have been, and was, raised at summary judgment. The class specifically moved for individual notice within seven days after judgment. *See* Proposed Order (D.E. 90-1). The government opposed based on the burden, among other things. *See* Opp. (D.E. 95) at 27 (arguing against "burdensome notice [and] class-member identification"); Sur-Reply (D.E. 105) at 8 ("[P]roviding individualized notice would impose additional burdens on ICE

[1] The government states that it must review cases back to October 30, 2025, D.E. 117 at 5, which was the day of the class certification order, D.E. 81. Class counsel are unclear as to why the government is not looking back to September 22, 2025, the day the putative class filed the Class Action Complaint, D.E. 10. Class counsel reserve all rights and may bring this issue to the Court's attention if the parties cannot resolve it.

officers and other ICE employees."). If the government wished to submit additional evidence or argument to support that argument, it had every opportunity to do so in the ordinary course. A Rule 59(e) or 60(b) motion is not a vehicle for the government to re-open issues it litigated prior to the judgment. *See, e.g.*, *BLOM Bank*, 605 U.S. at 211-12; *Aybar v. Crispin-Reyes*, 118 F.3d 10, 16 (1st Cir. 1997) (Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to introduce new evidence or advance arguments that could and should have been presented to the district court prior to judgment"). That is particularly true where it appears the government simply made a strategic choice not to submit evidence with its summary judgment papers that it had already violated the rights of potentially over 1,000 class members, who it was intentionally spreading throughout the country without any mechanism in place to identify them, track their detention location, or timely remedy the harm.[2]

Accordingly, the government can hardly be said to be "faultless[]" in this arena, *see BLOM Bank*, 605 U.S. at 211-12, as this purported problem is entirely of the government's own making. The Court certified this class on October 30. *See* Oct. 30, 2025 Order (D.E. 81). By that time, the Court had already rejected the government's misinterpretation of the relevant statutes when it granted the individual preliminary injunction. *See* Oct. 3, 2025 Order (D.E. 54). The Court informed the parties on November 3 that its construction of the statute for the class would likely be consistent with that individual order. *See* Nov. 3, 3035 Tr. at 4. The government at that time

[2] The government also makes an apparent strategic choice in its recent declarations not to articulate whether it has used the time since judgment entered to begin reviewing these cases, whether personnel at ERO Boston have actually been assigned to this task, and how much progress, if any, it has made. *See generally* Wesling Decl. (D.E. 118). Surely if the government has failed to begin the process, or is simply choosing to assign its personnel to other tasks, that would cut against the presence of "extraordinary circumstances." Alternatively, if the government has made good progress towards completion, that would also cut against the need for any extension of time. Either way, the government cannot meet its burden by remaining silent on these questions.

knew the class definition, to which it has never sought more than minor refinements. *See, e.g.*, Sur-reply (D.E. 105) at 9 (seeking clarification regarding certain noncitizens released on humanitarian parole). Class counsel repeatedly informed the government that the class was seeking identification and notice. *See* Class Cert. Mot. (D.E. 31) (Sept. 25, 2025); SJ Mot. (D.E. 90) (Nov. 7, 2025). The government had more-than-sufficient time to anticipate and find a solution to this supposed difficulty during the pendency of the litigation. It simply didn't.

And in all events, there is nothing "extraordinary" in the government's complaint that it has created too much bureaucracy by engaging in a months-long campaign of illegal detention. To the extent there is any shortage of resources to conduct identification (and the government has not provided any evidence that there is), the government can allocate additional resources to get the job done.

Lastly, if the Court is considering any extension of the individual notice deadline, four weeks of additional time is not justified by evidence and would be highly prejudicial to the class members who will not be notified of their right to a bond hearing even as their removal proceedings progress. As noted above, such class members may make strategic decisions based on an incorrect assumption that bond is not available. The prolonged delay in notice would also prejudice the class members by affording the government far too much time to transfer detainees who may be eligible for a bond hearing away from their counsel, families, witnesses, evidence, and other resources. Although the Court should not extend the deadline at all, if it contemplates any extension, such extension should be no more than one week.

Respectfully submitted,

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Counsel for Petitioner

Dated: December 31, 2025

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on counsel for all parties through the Court's CM/ECF system.

Date: December 31, 2025

/s/ Christopher E. Hart
Christopher E. Hart

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JOSE ARNULFO GUERRERO ORELLANA, on behalf of himself and others similarly situated, Petitioner-Plaintiff, v. ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al., Respondents-Defendants.	Case No. 25-12664-PBS

DECLARATION OF KERRY DOYLE

I, KERRY E. DOYLE, hereby declare and state:

1. The facts set forth in this declaration are based on my personal knowledge, unless otherwise indicated.
2. I am currently a Partner with Green and Spiegel, LLC, an immigration firm based in Philadelphia, Pennsylvania. I am the head of their Boston, Massachusetts office. I graduated *cum laude* from American University, Washington College of Law with a J.D. and The George Washington University with a B.A. in Political Science. I am a member of the Commonwealth of Massachusetts Bar, the Supreme Court Bar, and the bars of several Federal Courts of Appeals and U.S. District Courts.
3. I served as Principal Legal Advisor (PLA) or General Counsel, for Immigration Customs Enforcement (ICE) from September 2021 through September 2024. In that role, I oversaw the more than 1,500 attorneys and staff who work for the Office of the Principal Legal

Advisor (OPLA) across the country. As PLA, I was responsible for establishing the direction and priorities of our office in alignment with the Office of General Counsel (OGC), ICE, and Department of Security (DHS) leadership. During that time, I also served on detail as Acting Deputy General Counsel, Office of General Counsel (OGC), DHS from February 2024 through May 2024 and in September 2024. I left OPLA and worked as Deputy General Counsel in OGC from October 2024 through December 2024. I was appointed as an Immigration Judge and served in that position from mid-December 2024 through mid-February 2025.

4. In private practice, I have represented many hundreds, if not thousands, of noncitizens in removal proceedings. As a nonprofit and then private practitioner, I represented noncitizens in Massachusetts from November 1989 through September 2021. During that time, a high percentage of my clients were people arrested by ICE in Massachusetts and other New England states, and the substantial majority of my cases were litigated in Immigration Courts located in Massachusetts.

5. I am a recognized expert in complex immigration issues, including immigration court removal proceedings and federal litigation. I have been a frequent speaker at immigration conferences and national lawyer trainings, including previously recurring trainings co-hosted by the Boston Immigration Court (part of the Executive Office for Immigration Review (EOIR)) and the New England Chapter of the American Immigration Lawyers Association, with a specific focus on training pro-bono attorneys volunteering to represent noncitizens in immigration bond hearings. I have been recognized as an expert witness on immigration law topics before both state and federal courts. In light of my expertise, while in private practice, I was selected by the Immigration Court to represent detained

individuals who have been deemed incompetent through the National Qualified Representative Program. In the past, I worked closely with the Massachusetts Immigrant and Refugee Advocacy Coalition and the Massachusetts Law Reform Institute providing technical assistance and public testimony on various immigration-related policy issues before the state legislature and the Boston City Council. More recently, I have testified before the Federal Law Enforcement subcommittee of the Government Oversight Committee in the U.S. House of Representatives.

6. I am providing this declaration in my personal capacity. The opinions herein should not be construed to represent the position of DHS or any components therein, the Department of Justice, or Green and Spiegel, LLC. Moreover, while the views I express herein are generally based on my over twenty-five years of immigration law practice, including extensive experience in both private practice and government service, no part of this declaration includes, references, reflects, draws upon, confirms, or denies privileged, confidential, deliberative, sensitive, or classified information.

7. People arrested by ICE for civil immigration purposes inside the United States are typically processed by ICE almost immediately after arrest. Processing does not generally occur in the field, but rather occurs after a person has been transported to an ICE field office or other immigration facility following their arrest. Processing can occur immediately upon arrest or within a few hours afterwards, depending on the number of people arrested and the availability of ICE personnel at the processing center.

8. Processing is roughly the equivalent of the booking process when a person is arrested by state or local police. During processing, an ICE officer will interview the arrestee to gather personal information, including identifying information. The ICE officer will also collect

biometric information (including fingerprints and photograph), which is also submitted to federal databases for identification purposes. The ICE officer will also check the person's identity against various federal databases to gather additional information, including prior immigration interactions, existing orders of removal, and state and federal criminal history.

9. During processing, the ICE officer will document the information collected, including typically by filling out a "Record of Deportable/Inadmissible Alien," also known as a Form I-213. A Form I-213 is roughly equivalent to an arrest report, and it includes, among other things, the arrestee's identifying information, address, photograph, and record of unique body features (*e.g.*, scars or tattoos). The I-213 also typically contains a narrative of the arrest process, including the basis for the arrest. The I-213 will also typically document the ICE officer's assessment of the arrestee's alienage (*i.e.*, information indicating the person is not a citizen of the United States), their manner of entry into the United States (*e.g.*, whether ICE believes the person was admitted or paroled), their history of interactions with the immigration authorities, their medical status, and any criminal history at the federal or state level. The I-213 also typically documents the ICE officer's intended disposition of the matter, which for most domestic ICE arrests will be issuance of a Notice to Appear.

10. The Notice to Appear ("NTA" or Form I-831) is the charging document filed in Immigration Court to commence removal proceedings. The NTA is also typically prepared and served on the noncitizen by the ICE officer during processing. The NTA alleges whether the person is "an arriving alien," "an alien present in the United States who has not been admitted or paroled," or a person "admitted to the United States." The NTA will

also specify the particular charges of removability, including whether ICE alleges the person is present without having been admitted or paroled.

11. During processing, the ICE officer will also typically prepare a Notice of Custody Determination (Form I-286) for noncitizens arrested inside the United States. The Notice of Custody Determination documents the ICE officer's decision to either detain the arrestee or release the arrestee on a bond or conditions, pursuant to 8 C.F.R. § 236.1(c)(8). The Notice of Custody Determination also contains a section where the arrestee acknowledges receipt of the Notice and is asked to choose between two options: "I do request an immigration judge review of this custody determination" or "I do not request an immigration judge review of this custody determination." Immigration Judge reviews of custody determinations are typically referred to as bond hearings. In my experience, the Form I-286 can be confusing for arrestees, including because they likely do not have an understanding of how the immigration system operates, because they may not have an understanding of their rights, and because the form is typically presented to arrestees only in English (it may in some cases be read out loud to them in an alternate language). A true and accurate copy of an anonymized Form I-286 is attached hereto as Exhibit A.

12. The procedures described above are typical for processing civil immigration arrests inside the United States, although there are occasional variations. For example, in cases where ICE pursues Expedited Removal, processing would generally involve issuing an Expedited Removal Order rather than an NTA.

13. When ICE arrests a person in New England, the arrestee is usually processed at ICE's Boston Field Office, located in Burlington, Massachusetts (the "Burlington Field Office"). The Boston Field Office's Area of Responsibility includes Massachusetts, New

Hampshire, Maine, Vermont, Rhode Island, and Connecticut. Arrestees are sometimes processed at other locations (*e.g.*, local immigration offices in Connecticut, northern Vermont and Maine). However, in my experience, the substantial majority of people arrested by ICE in New England are processed at the Burlington Field Office.

14. As an attorney in private practice, I have personally observed the exterior and interior of most areas within the Boston Field Office in Burlington. The Boston Field Office is a large office-style building in a commercial office park located next to the Burlington Mall. The interior of the Boston Field Office contains a variety of office workstations and small meeting rooms for ICE personnel, including offices, cubicles, and desks. In general, these workstations appear to be equipped with standard office equipment, including a computer and a telephone. Another area to the back of the building contains communal holding cell facilities for arrestees. It is my understanding that arrestees are not typically processed in the holding cell area but rather are individually processed by ICE personnel at the office workstations because officers need access to computers for the preparation of all necessary forms.

15. To my understanding, most people arrested by ICE are carrying a personal cell phone. ICE personnel generally take custody of personal cell phones, along with other personal property, at the time of arrest or during subsequent processing. Consequently, the arrestee's personal cell phone would typically be at the same location as the arrestee at the time of processing and under the control of ICE personnel.

16. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kerry E. Doyle
Kerry E. Doyle
Declarant

EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY

NOTICE OF CUSTODY DETERMINATION

Alien's Name: [redacted]

A-File Number: [redacted]

Date: [redacted]

Event ID: [redacted]

Subject ID: [redacted]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- ☐ Detained by the Department of Homeland Security.
- ☒ Released (check all that apply):
  - ☒ Under bond in the amount of $ 3,000
  - ☐ On your own recognizance.
  - ☐ Under other conditions. [Additional document(s) will be provided.]

[redacted]
Name and Signature of Authorized Officer

[redacted]
Date and Time of Custody Determination

SDDO
Title

ICE ERO Boston Field Office 1000 District Avenue Burlington, MA US 01803
Office Location/Address

You may request a review of this custody determination by an immigration judge.

- ☒ I acknowledge receipt of this notification, and
  - ☐ I **do** request an immigration judge review of this custody determination.
  - ☒ I **do not** request an immigration judge review of this custody determination.

[redacted]
Signature of Alien

[redacted]
Date

The contents of this notice were read to [redacted] (Name of Alien) in the _____ (Name of Language) language.

[redacted]
Name and Signature of Officer

Name or Number of Interpreter (if applicable)

[redacted]
Title