UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA,

Petitioner-Plaintiff,

v.

ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al.;

Respondents-Defendants.

Civil Action No. 1:25-cv-12664-PBS

MEMORANDUM IN SUPPORT OF RESPONDENTS-DEFENDANTS' MOTION FOR RECONSIDERATION OF THE SEPTEMBER 22 ORDER'S TRANSFER-NOTICE REQUIREMENT

0

I. INTRODUCTION

Respondents-Defendants (Defendants) move, under Federal Rules of Civil Procedure 59(e) and 60(b)(1), (2), (6) for reconsideration of the Court's Order dated September 22, 2026 (ECF 212, "Order"). That Order, in relevant part, requires Defendants to provide notice of all intended transfers out of the First Circuit of class members who request a bond hearing at least 72 hours before transfer is initiated. ECF 212 at 2. Defendants are seeking reconsideration and vacatur of the transfer-notice requirement because the requirement is a form of injunctive relief that is clearly barred by 8 U.S.C. § 1252(f)(1), and because Petitioner has not met his burden to show that he is entitled to an injunction as further relief based on a declaratory judgment under 28 U.S.C. § 2202. Reconsideration of these issues and of the transfer-notice requirement is warranted under both Rules 59 and 60 because the parties were given only two days to brief the impact of potential transfer restrictions—and because Defendants were not provided with notice of the particular transfer-notice relief that the Court would ultimately grant. Under these circumstances, Defendants had insufficient time and notice to present their arguments and were unable to offer the Court evidence and specific objections concerning the operational impact of the transfer-notice relief.

II. PROCEDURAL BACKGROUND

On December 19, 2025, this Court issued a declaratory judgment finding that members of the certified class were detained under 8 U.S.C. § 1226(a) and were entitled to a bond hearing and to notice of the Court's judgment. *See* ECF 112 at 26-27; ECF 113; *see also* 8 C.F.R. §§ 236.1(d), 1003.19 (regulations providing § 1226(a) detainees with procedures for a custody redetermination by an immigration judge).

On August 13, 2026, the U.S. Court of Appeals for the First Circuit affirmed the declaratory

judgment. *Guerrero Orellana v. Moniz*, 188 F.4th 1 (1st Cir. Aug. 13, 2026). As Defendants have previously explained, the First Circuit's decision is controlling law within the First Circuit that is binding on immigration judges. *See* ECF 203 (Joint Status Report (Sept. 11, 2026)), at 7 (citing *Matter of Garcia*, 28 I. & N. Dec. 693, 695 (BIA 2023)). The Second, Third, Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits have issued rulings similar to the First Circuit's decision, which are controlling law within those respective jurisdictions. *See Lopez Garcia v. Guadian,* --- F.4th ---, No. 25-7044, 2026 WL 2661092, at *12 (4th Cir. Sept. 10, 2026); *Buele Morocho v. Warden Philadelphia FDC*, 189 F.4th 287, 293 (3d Cir. 2026); *Barbosa da Cunha v. Freden*, 175 F.4th 61, 84 (2d Cir. 2026), *cert. granted sub nom. Rhoney v. Barbosa da Cunha*, No. 26-104, 2026 WL 2942994 (U.S. Oct. 1, 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 722 (6th Cir. 2026), *petition for cert. filed*, No. 25-1415 (U.S. June 22, 2026); *Cirrus Rojas v. Olson*, 183 F.4th 909, 914–15 (7th Cir. 2026); *Rodriguez Vazquez v. Bostock*, 183 F.4th 1160, 1164–65 (9th Cir. 2026); *Santillan Quiroz v. Mullin*, 180 F.4th 1226, 1250-51 (10th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258, 1262 (11th Cir. 2026). The U.S. Courts of Appeals for the Fifth and Eighth Circuits have held to the contrary, concluding that 8 U.S.C. § 1225(b)(2)(A) requires mandatory detention of individuals like Petitioner. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 503 (5th Cir. 2026), *petition for cert. filed*, No. 26-43 (U.S. July 2, 2026); *Avila v. Bondi*, 170 F.4th 1128, 1134 (8th Cir. 2026). The Supreme Court has granted certiorari from the Second Circuit's decision addressing this issue. *Rhoney*, 2026 WL 2942994.

This Court held a status conference on September 14, 2026 to discuss the ongoing notice requirements for the class and the positions of both parties with respect to how those requirements

should be altered in light of the First Circuit's decision in this matter. *See* ECF 204. At this conference, the Court for the first time raised concerns about the timeliness of class members' bond hearings and the potential that class members would be transferred out of the jurisdiction before such a hearing could be conducted. *See* ECF 209, Tr. of Status Conference (Sept. 14, 2026), at 5, 7-8. Particularly, the Court worried that if a class member was transferred outside of the First Circuit, they may not receive a bond hearing. *Id.* at 9.

The Court thus indicated an interest in issuing an injunction that would stop the government from transferring class members out of the jurisdiction until a bond hearing could be held and that would require bond hearings to be held within a set period of time. *Id.* at 5-6. The government explained that doing so would be in violation of 8 U.S.C. § 1252(f)(1) as a class-wide restraint on the operation of detention provisions. *Id.* at 8. In response, the Court requested briefing on a number of issues, including the timeliness of bond hearings and an explanation of why § 1252(f)(1) would prevent the Court from restraining transfers entirely or else from ordering bond hearings to be conducted within a certain time period. *Id.* at 34-35. The parties were given only two days to complete this simultaneous briefing. *Id.* at 36.

Both parties submitted timely briefs, and the Court, without further hearing, entered a new order on September 22. ECF 207, 208, 212. The Court, relying on 28 U.S.C. § 2202, ordered as follows:

> Defendants shall provide notice of the intended transfer outside of the First Circuit of any class member who requests a bond hearing to the class member, the class member's attorney (if known), and class counsel no fewer than 72 hours before the transfer is initiated.

ECF 212 at 2. The Order also included an amended form of class notice and a number of

requirements for serving and posting of notice that track prior orders. *See id.* at 2-4. Defendants here seek reconsideration of only the new transfer-notice requirement.

III. STANDARDS

Under Federal Rule of Civil Procedure 59(e),[1] a party may seek relief from judgment when the judgment evidences "a manifest error of law," *Biltcliffe v. CitiMortgage, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (quoting *Global Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 25 (1st Cir. 2007)), or where reconsideration is warranted based on "newly discovered or previously unavailable evidence," 11 C. Wright et al., *Federal Practice & Procedure* § 2810.1 (2d ed. 1995) (cited favorably in *Marie v. Allied Home Mortg. Corp.*, 402 F.3d 1, 7 n.2 (1st Cir. 2005)); *see also Biltcliffe*, 772 F.3d at 930. A manifest error of law is one that "is plain and indisputable, and that amounts to a complete disregard of the controlling law." *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 195 (1st Cir. 2004). Newly discovered or previously unavailable evidence cannot have been merely "overlooked." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006). Overall, Rule 59(e) "does not allow a party to introduce new evidence or advance arguments

[1] The underlying declaratory judgment is a final judgment. 28 U.S.C. § 2201(a); ECF 112 at 21–23 (certifying declaratory judgment as partial final judgment). Under 28 U.S.C. § 2202, a court may grant further relief as to this judgment, but doing so does not alter the finality of the judgment. *See GNB Battery Technologies v. Gould, Inc.*, 65 F.3d 615, 621 (7th Cir. 1995) (collecting cases from the 4th, 9th, 10th, and D.C. Circuits). An order pursuant to 28 U.S.C. § 2202 is thus further relief as to a final judgment rather than an interlocutory order, so a party may seek to alter it in accordance with Federal Rule of Procedure 59 or to receive relief from it pursuant to Federal Rule of Civil Procedure 60. But regardless of whether reconsideration is of an interlocutory or final order, very similar standards apply. *See Echavarria v. Roach*, No. 16-cv-11118-ADB, 2021 WL 4477433, at *2 (D. Mass. Sept. 30, 2021) (reconsideration of an interlocutory order is permitted in cases of "clear error of law" or based on newly-available evidence).

that could and should have been presented to the district court prior to the judgment." *Aybar v. Crispin-Reyes*, 118 F.3d 10, 16 (1st Cir. 1997). Although 59(e) relief is "granted sparingly," *id.*, the standard to decide whether an error is "manifest" is not as stringent as the "clearly erroneous" standard. *National Metal Finishing Co. v. BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 125 (1st Cir. 1990).

A court may also revisit its orders under Federal Rule of Civil Procedure 60(b), and Rule 60(b) motions are "committed to the court's sound discretion." *Davila-Alvarez v. Escuela de Medicina Universidad Cent. del Caribe*, 257 F.3d 58, 63 (1st Cir. 2001). Courts may grant relief from a judgment on a number of grounds, including when a "mistake" has been made, when "newly discovered evidence" is uncovered, or when there is "any . . . reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (2), (6). A "mistake" includes, among other errors, "a judge's errors of law." *Kemp v. United States*, 596 U.S. 528, 533-534 (2022). Although relief under Rule 60(b) is also "granted sparingly," *Maccarone v. Siemens Industry, Inc.*, 65 F.4th 640, 645 (1st Cir. 2026), that is largely because of "the importance of finality as applied to court judgments," *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Loc. No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 19 (1st Cir. 1992). Rule 60(b) allows federal courts to vacate judgments "whenever such action is appropriate to accomplish justice." *Bouret-Echevarría v. Caribbean Aviation Maint. Corp.*, 784 F.3d 37, 41 (1st Cir. 2015) (quoting *Teamsters*, 953 F.2d at 19).

IV. ARGUMENT

A. The Court's 72-Hour Transfer Notice Requirement Violates § 1252(f)(1) and Should Be Reconsidered.

The Court should reconsider its Order requiring the government to give notice 72 hours in advance of any transfer of class members because the requirement functions as an injunction in violation of the law and has led to injustice meriting relief. Defendants respectfully submit that the requirement thus constitutes manifest error, but at minimum the Court should reconsider this requirement in light of Defendants' objections and evidence specific to the notice relief the Court ultimately ordered, which Defendants did not previously have the opportunity to provide because there was no or insufficient notice. *See infra* § B.1.

As the government explained generally, § 1252(f)(1) bars class-wide injunctions that impede the enforcement or implementation of immigration detention provisions, including orders that restrain the timing of transfer of detainees. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). This conclusion rests on both First Circuit and Supreme Court precedent. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022); *Brito v. Garland*, 22 F.4th 240, 250 (1st Cir. 2021). The Order's restraint on transfers imposes affirmative requirements as well as restraints on the government's operation of at least two provisions covered by § 1252(f)(1) on a class-wide basis: the detention statute, § 1226(a), and the provision authorizing the Executive Branch to arrange for appropriate places of immigration detention, § 1231(g)(1). *See* ECF 207 at 6-9.[2] First, it imposes

[2] The stated aim of the injunction is to enforce requirements of § 1226(a) that Defendants have maintained throughout this litigation are not required as to class members, because the government's position was that applicants for admission are detained under § 1225(b)(2)(A).

an affirmative requirement on any such transfer by requiring the government to serve notice of transfer on the detainee and his counsel, as well as class counsel—a requirement not included in any of the covered detention provisions. It also imposes at minimum a 72-hour hold (or restraint) on transfer, which in some cases may mean that the government cannot transfer the detainee at all or must wait much longer than 72 hours. Petitioner has not pointed to any reasoned decision holding that such class-wide restraints and requirements are not precluded by § 1252(f)(1).[3]

Although the Court's order facially imposes only a "notice" requirement, this notice requirement operates as, at minimum, a temporary injunction of transfers for the reasons explained above. Section 1252(f)(1) covers not only orders expressly labeled injunctions but any order that "enjoin[s] or restrain[s]" the operation of covered detention and removal provisions. 8 U.S.C. § 1252(f)(1). The distinction between an injunction and other forms of relief is whether the remedy is "ultimately coercive." *Steffel v. Thompson*, 415 U.S. 452, 471 (1974). The transfer-notice requirement is evidently coercive because it imposes affirmative requirements under threat of contempt. For the government to comply with this Order, the relevant agency division—here, U.S.

Defendants point to § 1226(a), however, in acknowledgment that DHS is adhering to the First Circuit's decision regarding the governing detention statute within the First Circuit. But the First Circuit's decision does not alter the remedial limits of § 1252(f)(1), and a lower court order cannot affirmatively enforce the requirements of § 1226(a) on a class-wide basis.

[3] Petitioner points only to a non-binding District of Colorado decision restricting transfers of class members, which does not address § 1252(f)(1) and is currently being challenged on appeal. *See Mendoza Gutierrez v. Baltasar*, No. 25-cv-2720-RMR, 2025 WL 2962908, at *1 (D. Colo. Oct. 17, 2025); Notice of Appeal, ECF 68. Defendants are aware of a recent decision requiring class-wide notice of transfers in the *Rodriguez Vazquez* matter, *see Vazquez v. Hernandez*, --- F. Supp. 3d ---, 2026 WL 2963671 (W.D. Wash. Oct. 1, 2026), but respectfully disagree with that court's conclusion that a hold on transfers does not restrain transfers, as argued herein.

Immigration Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), for the Boston area of responsibility (ERO Boston)—must give at least 72 hours' notice to the detainee and his or her counsel, if any, as well as to class counsel, each time it determines that an immigration-enforcement arrestee who is also a member of the class will be detained outside of the limited bed space available in its field office. This means that effectively, the government cannot transfer any class members who "request[] a bond hearing" out of the jurisdiction for at least three days. In practice, the effect on the government has been even greater. To ensure the government's compliance with the 72-hour waiting period—and particularly the requirement to notify class counsel of the intended transfer—ERO generally must wait longer than 72 hours to conduct transfers, particularly if the notice is served on the detainee at the end of the week or the weekend. Declaration of Acting Deputy Field Office Director John Charpentier (Charpentier Decl.) ¶ 13. Further, because a class member who does not initially request a bond hearing may request one at some point after the process of transfer is initiated, the order effectively mandates that ERO Boston must provide notice of transfer and a 72-hour hold period even if the class member has not made any request for a bond hearing, in order to avoid inadvertent non-compliance with the 72-hour hold requirement. *Id.* ¶ 11. If ERO Boston were to transfer a class member to a detention facility that is under the jurisdiction of an immigration court outside the First Circuit without complying with these requirements, it could "set the stage for a finding of contempt." *Brito*, 22 F.4th at 251.

Due to its coercive effect on how the government conducts detention transfers, the Court's Order constitutes injunctive relief that restrains the operation of pre-removal-order detention under

§ 1226, which is plainly barred by § 1252(f)(1). Finding immigration bedspace is a necessary component of detention, whether such detention is discretionary or mandatory. The Order is also impermissible under § 1252(f)(1) to the extent it seeks to enforce requirements of § 1226(a). *See Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1047 (S.D. Cal. 2022) (concluding § 1252(f)(1) barred injunction with effect of compelling government to fulfill purported statutory inspection and processing duties under covered provisions). Further, § 1231(g)(1) specifically authorizes Defendants to arrange for appropriate places of detention—an authorization that is frustrated by orders that inhibit transfer on a class-wide basis. As such, the Court's Order disregards the controlling law, and the Court should reconsider it under Rule 59(e) or 60(b).

That the notice requirement imposes requirements and restraints on detention and transfers is evidenced by the ensuing operational burden. The Order establishes a burdensome time delay with respect to when transfers can be conducted and thus inhibits transfers. Finding appropriate bed space is time-sensitive at the time of intake of recent arrestees who are subject to pending or new removal proceedings. *See generally* Charpentier Decl. ¶¶ 7-10. As mentioned, the implementation of the 72-hour delay creates an even longer delay in practice. This delay prevents timely transfers outside of this Court's jurisdiction, which are often essential to ICE's enforcement and detention operations. Transfers enable the agency to avoid overcrowding and prolonged holding of detainees in facilities designed only for temporary holding and to find bed space appropriate for certain populations, like women or other detainees with special detention needs, which bed space may not be available in the Boston area of responsibility. Charpentier Decl. ¶¶ 12, 14–17. But space in transferee facilities outside the Boston area of responsibility cannot be

reserved indefinitely, meaning that it may be lost in the time it takes for the government to comply with the Order, leading to a substantial ongoing likelihood that the identified bed space will be lost before needed transfers can be made. *See id.* at ¶¶ 8, 10.

Petitioner may argue that the order does not directly restrain detention on a class-wide basis because it does not, in Petitioner's view, "potentially require release." *See* ECF 208 at 7. Yet restrictions on transfers, if kept in place, minimize available bedspace and could theoretically lead to the release of some detainees for reasons unrelated to whether continued detention is warranted under governing law. Regardless, however, Petitioner's view misunderstands how § 1252(f)(1) works. Section 1252(f)(1)'s focus is on whether an order enjoins or restrains the *"operation of"* covered detention and removal provisions. 8 U.S.C. § 1252(f)(1) (emphasis added). As the Supreme Court explained, the "operation of" phrase is best understood as "to refer to the Government's efforts to enforce or implement" the provisions. *Aleman Gonzalez*, 596 U.S. at 550. To violate § 1252(f)(1), an order need only "require officials to take actions that (in the Government's view) are not required by" the covered provisions or "to refrain from action that (again in the Government's view) are allowed by" the covered provisions. *Id.* at 551. Here, because the transfer-notice requirement "interfere[s] with the Government's efforts to operate" § 1226 and § 1231(g)(1) in its chosen manner, it is barred by § 1252(f)(1). *See id.*

Petitioner has also argued that § 1231(g)(1)—which authorizes the Department of Homeland Security (DHS) to "arrange for appropriate places of detention for aliens detained pending . . . a decision on removal"—does not in fact provide authority to conduct transfers of detainees. *See* ECF 208 at 7-8. This is incorrect, for reasons previously briefed. *See* ECF 207 at 7-

8. As several courts have held, the Executive's authority to "arrange for appropriate places of detention" necessarily contemplates the authority to transfer a detainee to a detention location different from the location of initial arrest or initial detention. *See id.* at 8 (citing *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999); *Gandarillas Zambrana v. Bd. of Immigr. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995); *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)). The First Circuit has not squarely addressed this issue. *See* ECF 207 at 8 & n.5 (discussing *Aguilar v. ICE*, 510 F.3d 1, 20 (1st Cir. 2007)). But were it otherwise, the authority to detain aliens pending removal proceedings and to arrange for places to house such detainees would be meaningless. And there is no doubt that a 72-hour hold on transfers frustrates and impedes the government's efforts to arrange for appropriate locations of detention. *See* Charpentier Decl. ¶¶ 10; *see also N.S. v. Dixon*, 141 F.4th 279, 289–90 (D.C. Cir. 2025) (finding that restraint on civil immigration arrests necessarily frustrated covered detention provisions and violated § 1252(f)(1)).[4]

B. The Court's Grant of Further Relief Without a Hearing or Adequate Opportunity for Briefing Should Be Reconsidered.

Relatedly, the Order's transfer-notice requirement, relying on the authority provided by 28 U.S.C. § 2202, should be reconsidered because the process the Court followed in issuing it did not

[4] Defendants have not challenged the Court's prior order imposing a brief transfer-hold requirement to facilitate provision of an amended class notice to particular detainees who were already detained in the Boston area of responsibility and were denied a bond hearing by an immigration judge *See* ECF 186. Defendants maintain that that prior order also violates § 1252(f)(1), but Defendants had, before the Court issued its order, voluntarily agreed with class counsel to a similar waiting period before transfer. Such a requirement was to accommodate service of class notice and theoretically applied to a small population of class members; it also did not present the same operational concerns as does the 72-plus hour hold does here.

comply with the statutory procedures, constituting an error of law meriting, at minimum, reconsideration of the Court's decision in light of the below objections and evidence that address the specific relief ordered by the Court and demonstrate why the transfer-notice requirement should not have been imposed.

1. Reasonable Notice Was Required Before Entering Section 2202 Relief.

The Court is empowered by 28 U.S.C. § 2202 to grant#"further necessary or proper relief based on a declaratory judgment . . . against any adverse party whose rights have been determined by a declaratory judgment." 28 U.S.C. § 2202. But to counterbalance this power, the provision requires "reasonable notice and hearing," 28 U.S.C. § 2202, so that the Court may determine facts relevant to appropriately granting such relief. *See Westport Ins. Corp. v. Bayer*, 284 F.3d 489, 499 (3d Cir. 2002); *Edward B. Marks Music Corp. v. Charles K. Harris Music Pub. Co.*, 255 F.2d 518, 522 (2d Cir. 1958). A summary grant of declaratory and injunctive relief has been found to constitute an abuse of discretion where the adverse party had no notice that such relief would be sought. *Diaz-Fonseca v. Puerto Rico*, 451 F.3d 13, 39 (1st Cir. 2006) (reversing "summary grant" of further declaratory and injunctive relief after trial).

Defendants were not provided sufficient opportunity to be heard as to the Court's notice injunction and restraint on the timing of transfers. It is true that § 2202 does not set out the specific process a court must follow to guarantee the opportunity to be heard. *See Alsayer v. omniX Labs, Inc.*, 2025 WL 3496276, at *2 (S.D.N.Y. Dec. 5, 2025). However, courts have found that an appropriate opportunity to be heard consists of substantial time and attention being paid to the question, such as when a separate motion was filed and separate hearings were held or when the

matter was briefed in numerous filings and also presented at oral argument. *See, e.g.*, *Kornfeld v. Kornfeld*, 341 F. App'x 394, 397-98 (10th Cir. 2009); *Best Buy Stores, L.P. v. Developers Diversified Realty Corp.*, 2010 U.S. Dist. LEXIS 117971, at *4-5 (D. Minn. Nov. 4, 2010).

Here, the government did not have the opportunity to provide information on the propriety and operational impact of transfers, including the impact that this waiting period would have on detention operations and on class members. This information is essential to understanding the impact of the Order's transfer-notice requirement and the need—or lack thereof—for such a requirement in the first place. The Court ignored the lack of evidence in the record as to these issues, relying solely on the facts that Defendants cannot commit not to transfer *any* class member who may request a bond hearing such that an immigration judge outside the First Circuit could hear that request; and that an immigration judge outside of the First Circuit would likely need to address both the declaratory judgment affirmed by the First Circuit as well as its own Circuit's controlling law before determining whether a bond hearing is warranted. Yet, as shown above and below, this is not the complete picture.

Defendants did not have sufficient time to address this evidentiary gap before the Court acted. Because the Court raised this issue sua sponte at a status conference without being presented with any motion, and ultimately issued different relief than that which was addressed at the status conference,[5] these issues were not fully briefed or discussed. Defendants were provided a mere

[5] At the status conference, the Court requested the parties brief whether the Court could require a bond hearing to be held within a certain period of time or prevent transfers. *See* ECF 209, Tr. of Status Conference (Sept. 14, 2026), at 34-35. But the Court's Order ultimately required notice to be given to class members' attorneys and to class counsel of any intended transfer of a

two days to brief related issues alongside other questions. The government explained at the Court's status conference that two days would be insufficient to adequately brief the issue, as more time was necessary to gather the necessary affidavits and other evidentiary support from the relevant client agencies. ECF 209, Tr. of Status Conference (Sept. 14, 2026), at 26. But the Court's response was a Hobson's choice: file a simultaneous brief with Petitioner within two days of the status conference, or the Court would likely act without any briefing from the government at all. *See* ECF 209, Tr. of Status Conference (Sept. 14, 2026), at 36 ("If you want to file it by Wednesday, fine. If you feel like you can't and you want to reply, fine. But, understand, . . . I would like to do something this week."). Petitioner was not required to file a motion to lay out the relief requested. This was not the type of notice and hearing contemplated by § 2202. In addition to departing from the procedures required by law, the government was unable to be heard regarding the logistical burdens the Order imposes. For these reasons, relief should be granted pursuant to Federal Rule 59(e), 60(b)(1), 60(b)(2), or 60(b)(6).

2. The Transfer-Notice Requirement Is Not Proper Relief.

As the newly-submitted evidence demonstrates, the transfer-notice requirement is not proper relief based on the Court's declaratory judgment under 28 U.S.C. § 2202. As an initial matter, the transfer-notice requirement cannot be "proper" because it is a class-wide injunction that violates § 1252(f)(1). *See supra* § A. But even assuming § 1252(f)(1) did not bar this relief, the transfer-notice requirement is likewise not "necessary or proper relief" under § 2202 because

---

class member who requested a bond hearing. ECF 212 at 2. As to this transfer-notice requirement, the government did not receive notice or opportunity to respond.

it is vastly more restrictive than necessary to address the Court's stated concerns and thus does not meet the standards for equitable relief.

Because the transfer-notice requirement is an injunction, *see supra* at 7-8, Petitioner and the class should have been required to satisfy the familiar four factor test before the Court granted such relief. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *see also Sullo & Bobbitt, PLLC v. Abbott*, 2012 WL 2796794, at *19 (N.D. Tex. July 10, 2012) (noting that if a plaintiff chooses to rely on a declaratory judgment as a predicate for injunctive relief, "they will then be required to establish the elements for a permanent injunction under the *eBay* test"); *Shoom, Inc. v. Elec. Imaging Sys. of Am., Inc.,* 2011 WL 4595212, at *1–2 (N.D. Cal. Oct. 4, 2011) (applying test to plaintiff seeking injunctive relief under § 2202); *Brown v. Stroud*, 2014 WL 1308342, at *16 (N.D. Cal. Mar. 31, 2014) (same), *report and recommendation adopted*, 2014 WL 12639917 (N.D. Cal. July 11, 2014). Under that test, a plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay*, 547 U.S. at 391. The third and fourth factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). An injunction must also be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Sindi v. El-Moslimany*, 896 F.3d 1, 31 (1st Cir. 2018).

Petitioner and the class cannot satisfy the first, third, and fourth of these requirements to obtain extraordinary equitable relief. *First*, Petitioner has not demonstrated that irreparable injury

with respect to class members' receipt of a bond hearing under § 1226(a)'s implementing regulations. Petitioner has still failed to show a prevalence of out-of-Circuit transfers of newly arrested class members who are actively seeking a bond hearing. Even assuming that a class member who has requested a bond hearing from the immigration court is transferred outside of the jurisdiction before receiving a bond hearing from the Massachusetts immigration courts, the class member's Form I-286 evidencing his custody determination is still filed with the Executive Office for Immigration Review (EOIR). *See* Charpentier Decl. ¶ 3. Section 1226(a)'s implementing regulations currently provide for a custody re-determination (or bond hearing) from an immigration judge. 8 C.F.R. §§ 236.1(d)(1), 1003.19. If transferred to a Circuit where the controlling Circuit law is contrary to the First Circuit's decision regarding the statutory basis for detention, the immigration courts' practice is to conduct an analysis regarding the law to apply in the class member's case—taking into consideration that the class member is subject to a declaratory judgment affirmed by the First Circuit. But assuming that class member is denied a substantive bond hearing by the immigration court in the transferee jurisdiction, that does not necessarily mean the class member will not receive a bond hearing. Such a class member can still seek a bond hearing by filing a habeas petition to individually enforce the Court's declaratory judgment through that individual habeas action.

Second, the balance of the hardships favors vacating the transfer-notice requirement, because its burden on detention operations far exceeds any perceived positive impact on class members' ability to obtain a bond hearing, and the public interest in immigration enforcement would be disserved. It is true that, for operational reasons, some class members may be transferred

to other jurisdictions where the governing law is different than in the First Circuit. Locating initial bed space—including bed space outside the Boston area of responsibility—is crucial to immigration detention operations.[6] However, Petitioner has overstated the impact of a potential transfer on the class members. Although the government recognizes the Court's concern with class members receiving a substantive bond hearing from an immigration judge if transferred to a Circuit where the governing Circuit law considers them mandatorily detained, Petitioner has not shown that the Court's order is necessary to address this concern. Class members are provided, upon arrest, with both a notice stating that they are detained under 8 U.S.C. § 1226(a), and this Court's current class notice. Class members also receive telephone access under the Court's notice orders. Thus, class members are advised of their rights under the declaratory judgment. Imposing a restriction on their transfer is not necessary for them to seek out counsel or to understand that the basis for their detention is § 1226(a) under this Court's and the First Circuit's ruling.

---

[6] As noted, these transfers are thus conducted for operational reasons in accordance with ICE's policies and procedures and not any bad-faith purpose. *See* Charpentier Decl. ¶ 6. Petitioner's prior filing suggested that transfers increased as a result of the First Circuit's ruling in this matter, citing to a declaration by "local observers" of an increase in ICE flights out of a local airport the week of August 24. ECF 208 at 2; ECF 208-1. ERO Boston explains, however, that a temporary increase in transfer flights resulted from the combination of an ICE enforcement operation in Connecticut the week of August 24 and a cyberattack on ERO Botson's largest detention facility, Plymouth County Correctional Facility on August 13, 2026, that prevented intake of new detainees through September 1, 2026. *See* Charpentier Decl. ¶¶ 18–19; *see also* https://www.ice.gov/news/releases/ice-boston-arrests-118-illegal-aliens-during-4-day-operation-southern-connecticut (Sept. 11, 2026); Estes, Andrea, "Jail Visits Suspended After Cyberattack," Plymouth Independent (Aug. 15, 2026), *at* https://www.plymouthindependent.org/jail-visits-suspended-after-cyber-attack/.

In contrast to the limited impact on class members' requests for bond hearings if the transfer-notice requirement were vacated, the operational burden imposed on Defendants by this requirement is immense, and the government anticipates this burden will continue to grow. As explained above, the 72-plus hour hold on transfers strains detention operations and requires ERO Boston to hold detainees in temporary facilities pending identification of appropriate bed space. *See supra* at 9.

Moreover, the Order applies much more broadly than is conceivably necessary to address the Court's stated concern. It effectively requires notice of transfer of all class members—not just those who have requested a bond hearing. To avoid inadvertent non-compliance, Defendants have had to be over-inclusive in applying the Order's transfer-notice requirement. For example, at this time, ERO Boston is providing notice to class members who have not requested a bond hearing. *See* Charpentier Decl. ¶ 11. Such a cautious approach is necessary because it is possible, for example, that a class member who did not initially request a bond hearing decides to request a bond hearing (whether orally or in writing) after being designated for transfer. The agency is stuck between a rock and a hard place: it must either undertake expansive notice or be at risk of having to halt needed transfers. It should not have to choose between two extreme administrative challenges.

As another example, the Court's Order appears to require notice of intended transfer of class members who have withdrawn any pending request for a bond hearing—including those class members have been granted, and accepted, voluntary departure in lieu of a removal order on the condition of remaining detained pending departure, which effectively withdraws any pending

request for a bond hearing. *See* Charpentier Decl. ¶ 11. Although it appears, based on the Court's stated concerns, that the Court likely did not contemplate that notice of transfer was necessary for those who no longer have pending requests for a bond hearing, Petitioner and Class Counsel do not agree with this interpretation of the Court's order. Accordingly, Defendants are applying the transfer-notice requirement to such detainees. *Id.* For those detainees who have accepted voluntary departure on the condition of remaining in detention until departure, however, transfer is often *required* to effect their departure on a flight from the United States. *See id.* ¶ 10. A delay in transfer thus only serves to prolong those class members' time in detention pending voluntary departure, and the notice of intended transfer serves no purpose because a bond hearing is incompatible with acceptance of detention pending voluntary departure.

The Court's Order also may require notice of intended transfer even if a class member has already *received* a substantive bond hearing. Although Defendants' position is that such a class member is not contemplated by the Order, again, Petitioner and Class Counsel disagree. Accordingly, Defendants are currently providing notice of intended transfer even if a class member has already received a bond hearing and was denied release on bond. In such cases, the notice of intended transfer serves no purpose related to receipt of a substantive bond hearing.

Finally, the Order is overbroad on its face because it requires notice of intended transfer of class members outside the First Circuit, even if the transferee detention facility is within a jurisdiction where the governing law is consistent with that of the First Circuit. For example, ERO must still provide notice of intended transfer even if detainees are ultimately being transferred to another Circuit where the controlling Circuit law is largely consistent with the law in the First

Circuit concerning the governing detention authority. Notice of transfer to such a jurisdiction serves no purpose relevant to the Court's declaratory judgment.

Moreover, removing the transfer-notice requirement would also serve certain class members' interests. The logistical challenge presented by the transfer-notice requirement disrupts the provision of adequate detention spaces—in particular, for women detainees or other detainees with special needs. *See* Charpentier Decl. ¶¶ 12, 15–17. This can result in an inability to timely obtain appropriate bed space for such detainees—including those with urgent medical needs. *See id.* ¶ 17. Such an outcome is inequitable to both the government and to class members and thus should be redressed under Rule 60(b)(6).

Because there is no showing of irreparable injury and because the balance of the equities favors the government (and thus the public interest), injunctive relief in the form of a hold on transfers and a notice requirement is not warranted as further relief under § 2202.

V. CONCLUSION

Wherefore, Defendants respectfully request that the Court reconsider and vacate the transfer-notice requirement from its September 22 Order.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

AUGUST E. FLENTJE
Deputy Director

SAMUEL P. GO
Assistant Director

/s/ Katherine J. Shinners
KATHERINE J. SHINNERS
Senior Litigation Counsel
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
202-598-8259
katherine.j.shinners@usdoj.gov

CERTIFICATE OF SERVICE

I, Katherine J. Shinners, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). Paper copies will be sent to those indicated as non-registered participants.

Dated: October 20, 2026

By: */s/ Katherine J. Shinners*
KATHERINE J. SHINNERS
United States Department of Justice