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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

E.Q., *et al.*,	)	Civil Action No. 1:25-cv-00791
Plaintiffs,	)	
v.	)	
U.S. Department of Homeland Security, *et al.*,	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFF E.Q.'S EMERGENCY MOTION TO ALTER THE JUNE 12, 2025 MEMORANDUM, DENYING HIS STAY OF REMOVAL

INTRODUCTION

Plaintiff E.Q. asks this Court to modify its June 12, 2025, Memorandum Opinion and Order, ECF No. 35, in which the Court denied Plaintiff's Emergency Motion for a Stay of Removal, ECF No. 25. *See* Pl's Mot., ECF No. 36 at 1. Specifically, E.Q. argues that modification of the Court's Order is warranted because Defendants "ha[ve] now produced previously unavailable evidence"—a February 25, 2025, Immigration Judge decision ("February IJ Affirmance")—which E.Q. alleges demonstrates standing to assert his claims. *Id*. at 1. Yet, the February IJ Affirmance shows that it was served on E.Q. at the conclusion of the hearing on February 25, 2025. *See* February IJ Affirmance, ECF No. 37-1 at 004 (filed under seal). Additionally, Defendants' evidence demonstrates that Plaintiff's counsel received the February IJ Affirmance on May 14, 2025, in response to their May 8, 2025, Freedom of Information Act ("FOIA") request. *See* June 24, 2025, Declaration of Jessica Harrold ("Harrold Decl."), attached hereto as Exhibit A. Accordingly, the February IJ Affirmance was not previously unavailable. And, even assuming *arguendo* that Plaintiff E.Q. did not receive the February IJ Affirmance until June 10, 2025, he could have submitted it for this Court's consideration at that juncture. Lastly, even if Plaintiffs could demonstrate that the February IJ Affirmance was previously unavailable to them (it was not), it does not change the outcome of this Court's Order. Plaintiff E.Q. has cited no authority establishing that the February IJ Affirmance means anything other than what it says and what Defendants represented to the Court during the May 22, 2025, hearing: the Immigration Judge affirmed the asylum officer's finding that Plaintiff E.Q. did not establish a credible fear, a fact the Court already considered. *See* Transcript of May 29, 2025 Hearing ("Tr.") at 40:4–25. Accordingly, the Court should deny Plaintiff E.Q.'s Emergency Motion.

ARGUMENT

Plaintiff E.Q. fails to meet his burden to establish that the February IJ Affirmance meets the requirements for an alteration of this Court's order. "Rule 59(e) motions to alter or amend a judgment are discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest justice." *Am. Bar Ass'n v. United States Dep't of Educ.*, 388 F. Supp. 3d 23, 26 (D.D.C. 2019) (internal citations omitted). Plaintiff E.Q. must establish that the February IJ Affirmance is: (i) "newly discovered or previously unavailable despite the exercise of due diligence" and (ii) would "change[] the Court's outcome." *Id.* (internal citations and punctuation omitted). Plaintiff E.Q. fails to meet both elements.

I. The February IJ Affirmance is neither newly discovered nor previously unavailable.

Plaintiff E.Q. fails to establish that the February IJ Affirmance is either newly discovered or previously unavailable. Plaintiff E.Q. received the February IJ Affirmance on February 25, 2025. February IJ Affirmance, ECF No. 37-1 at 004. And the Executive Office for Immigration Review ("EOIR") provided his counsel another copy on May 14, 2025. Harrold Decl. ¶ 8. Additionally, Plaintiff E.Q.'s counsel fails to demonstrate that they practiced due diligence as they first requested the February IJ Affirmance from the incorrect agency, U.S. Citizenship and Immigration Services ("USCIS"), rather than from EOIR. ECF No. 36-1 at ¶¶ 2, 7. Then, regardless of when it was received, Plaintiff E.Q. delayed submitting the record to the Court even after his counsel secured it.

In his Emergency Motion, Plaintiff E.Q. asserts numerous times that Defendants declined or failed to produce the February IJ Affirmance "despite repeated written requests." ECF No. 36 at 1, 4, 6. Specifically, Plaintiff E.Q.'s counsel asserts that they requested the administrative record for Plaintiff E.Q.'s removal order from USCIS's Asylum Office on March 13, 2025, and May 1,

2025. *Id.* at 4. However, Plaintiff states that USCIS's responses omitted the February IJ Affirmance and that his counsel did not receive the February IJ Affirmance until June 10, 2025, after they submitted a FOIA request with EOIR. *Id.* Plaintiff E.Q.'s counsel also alleges that Plaintiff E.Q. was not personally served with a copy of the February IJ Affirmance. *Id.* at 3–4. Instead, they claim that "[a]t some specified time, the document was simply mailed to 'Noncitizen c/o custodial officer.'" *Id.* at 4. Plaintiff E.Q. further contends that Defendants failed to provide the Court with a copy of the February IJ Affirmance with Defendants' Opposition. *Id.* at 1, 6.

Contrary to Plaintiff E.Q.'s assertions, the record in this matter demonstrates that *both* Plaintiff E.Q. and his counsel received copies of the February IJ Affirmance in advance of the Court's decision. *See* February IJ Affirmance, ECF No. 37-1 at 004; *see* Harrold Decl. ¶ 8. First, the Certificate of Service for the February IJ Affirmance clearly shows that the document was served on Plaintiff E.Q. through mail, care of the custodial officer. ECF No. 37-1 at 004. Plaintiff E.Q. has not introduced any evidence—apart from his counsel's unsupported assertions, which are not themselves evidence—to show that this service did not occur. *See generally* ECF Nos. 36, 36-1.

Second, even assuming *arguendo* that E.Q. did not personally receive a copy of the February IJ Affirmance, his counsel received a copy of the decision on May 14, 2025. Harrold Decl. ¶ 8. Although Plaintiff's counsel argues that they did not receive a copy of the February IJ Affirmance until EOIR responded to their FOIA request on June 10, 2025, EOIR records show that Plaintiff's counsel actually received the Affirmance much earlier than they assert. *See id.* According to EOIR internal records, Plaintiff's counsel made a FOIA request for Plaintiff E.Q.'s record of proceedings, request number 2025-59725, on May 8, 2025. *Id.* ¶ 5. On May 14, 2025, the completed FOIA request—including a copy of the February IJ Affirmance—was provided to

Plaintiff's counsel through a link to JEFS, a file sharing platform used by EOIR, provided in a closing letter and was also made available to counsel through their account in the FOIA request system. *Id*. ¶¶ 6, 8.

In Plaintiff E.Q.'s motion, his counsel asserts that they exercised due diligence in seeking access to the February IJ Affirmance. ECF No. 36 at 4, 6. In support of this argument, counsel note that they submitted two requests to USCIS's Asylum Office for Plaintiff E.Q.'s administrative record on March 13, 2025, and May 1, 2025. *Id*. at 4. However, USCIS is not the correct custodian of the administrative record for EOIR's affirmance of the asylum officer's negative credible fear determination—EOIR is. Here, Plaintiff's Motion acknowledges that USCIS promptly responded to these inquiries. *See id.* at 4 ("The following day, USCIS provided counsel with a record consisting solely of the following documents: Form I-869, Form I-863, Form I-870, the Securing the Border (SB) Worksheet, and the CFI Interview Notes and Decision."); *id*. at 4 ("That same day, USCIS responded by sending her the following documents by email: Form I-869, Form I-863, Form I-870, Securing the Border (SB) Worksheet, the Interview Notes from E.Q.'s first CFI, and the CFI Interview Notes and Decision from his second CFI."). As such, USCIS promptly and expeditiously responded to Plaintiff's counsel's record requests through USCIS's submission of relevant *USCIS documents.* At no time has Plaintiff E.Q. or his counsel alleged that any relevant *USCIS documents* are missing from those produced in response to counsel's two requests.

Critically, USCIS is not the custodian of Plaintiff E.Q.'s record as it relates to the Immigration Judge's review of USCIS's credible fear determination; instead, EOIR is the proper source of the Immigration Judge's February 2025 Credible Fear Review decision. *See* ECF Nos. 25, 25-1, 37-1 (filed under seal). As Plaintiff E.Q.'s Motion concedes, his counsel did not file a

FOIA request with EOIR until May 8, 2025, nearly two months after they sought documents from USCIS on March 13, 2025. ECF No. 36 at 4.

As such, Plaintiff E.Q. cannot demonstrate that he exercised "due diligence." *Am. Bar Ass'n*, 388 F. Supp. 3d at 26. Therefore, the Court should deny Plaintiff's Motion.

II. Even if Plaintiff's counsel did not receive the February IJ Affirmance until June 10, 2025, it does not change the outcome of the Court's Order.

The February IJ Affirmance does not change the outcome of the Court's order because the Court considered the February IJ Affirmance. *See* Tr. at 40: 4–25. Plaintiff's argument that the Court "focused its standing analysis solely on the asylum officer's CFI Decision" is incorrect. *See* ECF No. 36 at 6. On the contrary, the Court was fully aware of the import of the February IJ Affirmance, which was specifically discussed at the stay hearing and identified as "a checkbox form, similar to what the IJ used in the second interview." Tr. at 40:22–25; *see generally* ECF No. 37-1 (filed under seal).

At the hearing, the Court in fact considered the exact scenario on which Plaintiff attempts to create doubt now by specifically questioning Defendants' counsel as to whether there was "anything in that affirmance that relates to nexus or the reasons for the removal." Tr. at 40:19–21. Counsel for Defendants stated "No." Tr. at 40:22. The Court's June 12, 2025, Memorandum Opinion and Order further confirms that the Court was aware of the existence of the February IJ Affirmance. ECF No. 35 at 9 & n.2. Thus, Plaintiff has not shown that submission of the February IJ Affirmance would have changed the Court's analysis. *Am. Bar Ass'n*, 388 F. Supp. 3d at 26.

And importantly, Plaintiff E.Q. continues to bear the burden of establishing standing, and he has not made any kind of showing that the February IJ Affirmance alters the conclusion that the agency—that is, the asylum officer, affirmed by the Immigration Judge—denied Plaintiff E.Q.'s credible fear claim on a ground unrelated to the Mandatory Bars Rules. *See FDA v. All. for*

Hippocratic Med., 602 U.S. 367, 380 (2024) (burden to establish standing is on the plaintiff). The February IJ Affirmance merely stated that Plaintiff E.Q. "[h]as not established a reasonable possibility of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture." ECF No. 37-1 at 003. Although the rules at issue in this case allow the Immigration Judge, "where relevant," to "review . . . the asylum officer's application of any bars to asylum and withholding of removal," 8 C.F.R. § 1003.42(d), Plaintiff E.Q. has cited no authority establishing that the February IJ Affirmance means anything other than what it says: the Immigration Judge affirmed the asylum officer's findings establishing that Plaintiff E.Q. did not establish a credible fear.

Plaintiff asks this Court to take the D.C. Circuit's holding in *Sugar Cane Growers Co-op of Florida v. Veneman*, 289 F.3d 89 (D.C. Cir. 2002), and the district court's holding in *Kiakombua v. Wolf*, 498 F. Supp. 3d 1 (D.D.C. 2020), a step too far by insisting that the mere existence of a check-box affirmance of the asylum officer's two independent bases for the negative credible fear determination can establish traceability and redressability. *See* ECF No. 36 at 7–9. For instance, in *Sugar Cane*, the appeals court held it was not necessary for plaintiffs to show that the procedure they were deprived of—notice-and-comment—would have actually changed the government's subsidy program for sugar. 289 F.3d at 94–95. And in *Kiakombua*, the district court found that the plaintiffs' negative credible fear determinations were fairly traceable to a challenged training plan for officers who conducted credible-fear interviews.

But the Court's distinction of these cases still stands; these cases do not extend to situations where there is an independent and sufficient ground for the injury, and the outcome would not have been different even if the remedy sought were afforded. ECF No. 35 at 17–19. The mere fact that the asylum officer's determination was affirmed by an Immigration Judge does not establish

that his negative credible fear determination was fairly traceable to the rules at issue, or redressable by the Court. The Immigration Judge affirmed the asylum officer's decision wholesale and did not invalidate either finding. Therefore, regardless of the February IJ Affirmance of those bases, E.Q.'s injury remains neither traceable to the rules nor redressable by this Court. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). As such, Plaintiff E.Q. cannot establish that the February IJ Affirmance changes the Court's order. *Am. Bar Ass'n*, 388 F. Supp. 3d at 26. Therefore, the Court should deny his Motion.

CONCLUSION

Plaintiff E.Q. fails to meet the elements required for the Court to alter its Order. The February IJ Affirmance is neither newly discovered nor previously unavailable. The February IJ Affirmance was served on Plaintiff E.Q. the day it was decided, February 25, 2025. EOIR records confirm that his counsel received the February IJ Affirmance on May 14, 2025. Lastly, the February IJ Affirmance does not change the outcome of the Court's Order. E.Q. has cited no authority establishing that the February IJ Affirmance means anything other than what it says: the Immigration Judge affirmed the asylum officer's finding that Plaintiff E.Q. did not establish a credible fear. Accordingly, the Court should deny Plaintiff's Motion.

Dated: June 24, 2025

Respectfully submitted,

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