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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

Dainier Aleman Garcia,	)	
	)	Case No. 3:25-cv-00522-RGJ
Petitioner,	)	
	)	
v.	)	
	)	
Jeff Tindall, Jailer, Oldham County	)	
Detention Center	)	
	)	
Todd M. Lyons, Acting Director, or his agent,	)	
U.S. Immigration and Customs Enforcement;	)	
	)	
Kristi Noem, Secretary of the U.S. Department of	)	
Homeland Security;	)	
	)	
Pam Bondi, Attorney General of the United States,	)	
in their official capacities,	)	
	)	
Respondents.	)	

**PETITIONER'S OBJECTION TO RESPONDENTS' MOTION FOR RELIEF UNDER
FED. R.CIV.P.60(b) AND EXTENSION OF TIME TO RESPOND**

Comes the Petitioner, by counsel, and responds to the motion(s) filed by the Respondents. As grounds for his reply, Petitioner states as follows:

Relief under Fed. R. Civ. P. 60(b):

1. The judge was clear in her *obiter dictum* on August 28, 2025 that what we have started, we must finish. The legality of the detention of the Petitioner is the matter before the court and for which the writ was filed in the first. The judge added that she is not trying to interfere with the Department's removal of the Petitioner. She however, does not want

to frustrate the process, by allowing the Respondents to move the Petitioner, thereby having this matter have to be filed in another district. "This is frustrating for us judges", she said, and "we need to finish". The habeas statutes provide that a federal court cannot entertain a habeas petition unless the petitioner is in custody. See *Maleng v Cook*, 490 U.S. 488 (1989); The Supreme Court has said that "in custody" requirement implies subject matter jurisdiction, which is an absolute bar to relief because that type of jurisdiction establishes whether the court can hear the case at all. The Petition is before this court. We need to have it determined by this court, without interfering with the process. Whether the Petitioner is in expedited removal or not, is irrelevant in this instance. It is relevant that at the time the petition was filed, the Petitioner had been held for over 3.5 months in the same facility Oldham County, over which this court has jurisdiction. All of a sudden, a few weeks after the petition was filed, the Respondents want him moved?! The Petitioner has a right to have this matter heard before this court because that's where jurisdiction lies. Moving him and perhaps disturbing the jurisdiction of this court, even if possible, will be prejudicial to the Petitioner, because at the very least, new custodians will have to be named. This is at least financially prohibitive to the Petitioner. We ask that the judge's order remain exactly as is.

Motion for Extension:

2. This matter came before the honorable court on August 28, 2025. The judge ordered a briefing schedule, granting the Petitioner ten days to file his brief in support of his petition and seven days after that for the Respondents to file theirs. The Petitioner complied, but the Respondents did not. Their brief was due on or about September 9,

2025. Instead they filed their motion requesting an extension long after the date their brief was due.

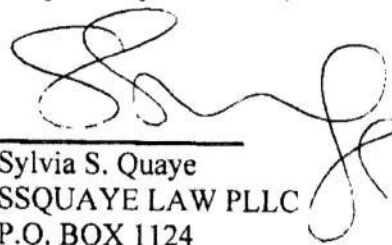
3. The Respondents did not/do not have enough respect for the judicial process to have requested the extension prior to the expiration of their deadline. Instead they waited four days after said expiration and then asked the court for the courtesy of extension to file their brief. When nothing they have done thus far offer any kind of courtesy or acknowledges the petitioner's right to due process.
4. In general, courts have the discretion to grant or deny extensions for missed deadlines in briefing schedules or scheduling orders. The decision normally depends on factors such as, the reason for the delay, whether the delay was within the control of the party, the potential prejudice to the opposing party, the length of the delay, and whether the party acted in good faith. See *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d 355 (2d Cir. 2003). The Second Circuit in that case emphasized that the concept of "excusable neglect" is a flexible one, and courts should consider all relevant circumstances surrounding the party's omission. The court noted that the reason for the delay is the most important factor. See also *In re Enron Corp.*, 419 F.3d 115 (2d Cir. 2005) where the court reiterated that "excusable neglect" encompasses situations where the failure to comply with a filing deadline is attributable to negligence. The court highlighted that the determination is an equitable one, taking into account all relevant circumstances. The Respondents cannot be seeking an equitable relief, when they have done nothing equitable in this matter. We are before this court for that exact reason – their violation of someone's right to due process. In *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993): The Supreme Court held that courts have broad discretion to accept late

filings caused by "excusable neglect." Factors considered include the danger of prejudice to the opposing party, the length of the delay, the reason for the delay, and whether the movant acted in good faith. The Respondents have not shown good faith in any of their dealings in this case, or the handling of the matter. They are so focused on removing someone, who was essentially manipulated into signing the reinstatement of his removal order, although he had been paroled prior. Then they arrested and detained him although he is not a criminal or a threat in any way that matters. The Court ordered that the Petitioner not be moved from the Oldham County Detention Center until the determination of the case. Yet the Respondents, have not only missed the deadline to filing their brief, but they challenge the validity of the court order, insisting that the Petitioner can and should be removed, with the writ of habeas still pending. *See Lujan v. National Wildlife Federation, 497 U.S. 871 (1990)*, where the Supreme Court held that a party's failure to meet a deadline due to inadvertence or mistake can be excused if the party demonstrates that the delay was not due to willful disregard of the court's rules. The Respondents have filed a notice of impending removal of the Petitioner, within 3-5 days. This is evidence of yet another delay tactic from the Respondents, not following the law and the judicial process, but insisting on doing whatever they want, however they want. Petitioner asserts that these motions are frivolous, and a willful and tactical delay on the part of the Respondents.

5. The Petitioner concludes the grant of an extension to the Respondents to file their brief, will further prejudice his rights, which have already been violated by the Respondents, and for which he seeks redress from this court, and any kind of delay, no matter the reason, will be prejudicial to the Petitioner.

6. Wherefore the Petitioner prays that for all the foregoing reasons, the court deny the Respondent's motion for relief under Fed. R. Civ. P 60(b), and determine the matter before it, and deny the Respondents' motion for extension of time to file their brief.

Respectfully submitted,



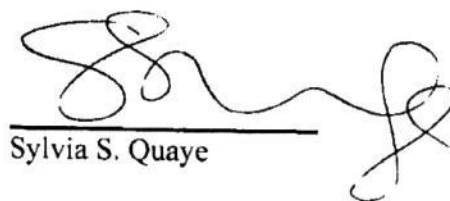
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Dated: September 18, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Dainier Aleman Garcia, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Motion, are true and correct to the best of my knowledge.

Dated this 18th day of September, 2025.



Sylvia S. Quaye