U.S. Department of Justice

United States Attorney
Eastern District of New York

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BY ECF

March 4, 2026

Honorable Nina R. Morrison
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *E.R.D. v. Secretary of Homeland Security Kristi Noem, et al.*, No. 26-cv-85 (NRM)

Dear Judge Morrison:

This Office represents Respondents in this action. Consistent with the parties' joint proposal (ECF 8), the January 28, 2026 Scheduling Order not only set Petitioner's date to file the amended pleading, but also set Respondents' time to respond within 60 days of service of that pleading – to wit April 20, 2026. However, on February 18, 2026, the Court set a deadline of 7 days to respond to the amended pleading, and today set a new deadline of March 6, 2026. Respondents apologize for failing to see the February 18 Order for the reasons set forth below. This letter is written to respectfully request a modification of the Order by when Respondents must answer, move, or otherwise respond, to conform with the date agreed by the parties in attempting to resolve their differences (ECF 8), and which the Court had approved on January 28, 2026. Petitioner consents.

By way of background, Petitioner's habeas action alleged that Immigration and Customs Enforcement (ICE) had revoked a 2024 Order of Supervision (OSUP) and had detained Petitioner. On January 9, 2026, Respondents informed the Court that ICE had released Petitioner and that the habeas action was moot, and while Petitioner considered whether to dismiss the action, proposed a status report. ECF 4. The Court directed the parties to file that status report, and a further one on January 27, 2026. ECF 5, 8. The January 27 status report not only informed the Court that on January 16, 2026, ICE had issued a new OSUP – that contained precisely the same conditions as the OSUP that had been revoked – but also that while Respondents deemed the action moot, the parties jointly respectfully had set forth a joint proposal. ECF 8.

Specifically, that January 27 letter (ECF 8) respectfully jointly informed the Court that Petitioner preferred to amend the pleading, and that, without waiving any of Respondents' defenses to such amended pleading, and rather than litigating mootness, Respondents consented both to that amendment, and to Petitioner's preferred date of February 17, provided that Respondents were given 60 days from the service date of such pleading to answer, move, or otherwise respond, to which time-frame Petitioner consented in the joint proposal. ECF 8.

Thereafter, the Court issued the January 28, 2026 Scheduling Order, which set exactly those deadlines – both the February 17 date and the 60 day response, to wit, by April 20, 2026 (because the last day of the 60 days would otherwise fall on the weekend). Petitioner filed the amended pleading on February 17, asserting inter alia, claims under the Administrative Procedure Act.

However, on February 18, 2026 -- without vacating the January 28 Order based on the parties' prior joint proposal ECF 8 -- the Court issued an Order setting Respondents time for 7 days.

The undersigned apologizes to the Court for inadvertently not seeing the February 18 Order. The undersigned was on leave for a few days thereafter, and handling a number of emergency proceedings, and simply was not anticipating that the deadline of 60 days would be shortened to one week and failed to notice that change had been made. Additionally, the case was being internally reassigned, in light of the 60 days that had been jointly proposed and accepted by the Court, and the reconfigured nature of the action. The undersigned apologizes to the Court for the oversight in not seeing the February 18 Order, and inadvertently failing to immediately write to the Court and make the request made in this letter.

Today, the Court issued a new Order, directing Respondents respond to the Amended Petition by March 6, 2026 at 5:00 p.m.

Respondents respectfully request -- with the consent of Petitioner's counsel -- that this Order be modified to reflect the parties' agreement in resolving their differences, and their joint proposal, set forth in the January 27, 2026 letter, that not only would Petitioner be afforded until February 17 to amend the pleading, but also that Respondents' response to the Amended Petition be made 60 days after service of such amendment, such that that Respondents shall have until April 20 to answer, move, or otherwise respond. Respondents respectfully note that such Order exists on the docket, and has not been vacated (*see* January 28 Order), and respectfully request that the new Order be amended to reflect the April 20 date (or vacated in favor of the January 28 Order).

Thank you for the Court's time and attention to this submission and proposal.

Respectfully submitted,

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