

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Reynaldo Agavo v. Calvin Johnson

Agavo · No. 2:13-cv-01741-JCM-DJA · Decided January 13, 2026

SUMMARY

The United States District Court for the District of Nevada granted Respondents’ unopposed motion for relief from judgment under Federal Rule of Civil Procedure 60(b). The court modified its prior conditional habeas judgment to extend the deadline for the State to comply with the writ, including by retrying Petitioner, until June 16, 2026. The extension was granted after the parties reached an agreement in principle for Petitioner to plead guilty and requested time for immigration counsel to review the plea agreement.

CASE DETAILS

COURT	United States District Court for the District of Nevada
JURISDICTION	United States District Court for the District of Nevada
DECIDED	January 13, 2026
DOCKET	2:13-cv-01741-JCM-DJA
DISPOSITION	other
PROCEDURAL POSTURE	Respondents moved under Federal Rule of Civil Procedure 60(b) for relief from the judgment imposing a conditional habeas writ and extending the deadline for the State to begin jury selection in a retrial. The motion was unopposed.
STANDARD OF REVIEW	Relief under Federal Rule of Civil Procedure 60(b), including consideration of the Pioneer four-factor test: prejudice to the nonmoving party, length of delay, reason for delay and whether it was within the movant's control, and good faith.
PRECEDENTIAL VALUE	Unknown; district-court order with no reporter or neutral citation identified.
PARTIES	Calvin Johnson v. Reynaldo Agavo

TOPICS

- federal habeas corpus
- post-conviction relief
- sentence modification
- civil procedure
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court could modify its conditional habeas writ after the period originally prescribed by the writ had lapsed.
2. Whether Respondents were entitled to relief from the judgment under Federal Rule of Civil Procedure 60(b) and an extension of the deadline for the State to comply with the conditional writ.

HOLDINGS

1. A district court may modify a conditional habeas writ and grant the State additional time to cure the constitutional deficiency even after the time prescribed in the conditional writ has lapsed.
2. Relief from the judgment and an extension of the conditional-writ deadline were warranted under Rule 60(b) after consideration of the Pioneer factors and the absence of opposition from Petitioner.

KEY QUOTATIONS

“Logically, the equitable power of the district court in deciding a habeas petition includes the ability to grant the state additional time beyond the period prescribed in a conditional writ to cure a constitutional deficiency.” (Discussion, at 1)

“conditional writs enable habeas courts to give states time to replace an invalid judgment with a valid one.” (Discussion, at 1)

“In consideration of the Pioneer factors and because Petitioner does not oppose motion, the Court will grant Respondents’ motion.” (Order, at 2)

FACTUAL BACKGROUND

The federal court had conditionally granted habeas relief, vacated Agavo's state conviction, and ordered his release unless the State elected to retry him and commenced jury selection within the specified period. The State elected to retry him, but the court amended and extended the deadline several times. Respondents later sought an extension through June 16, 2026 because the parties had reached an agreement in principle for Agavo to plead guilty, while counsel sought appointment of immigration counsel to review the plea agreement.

PROCEDURAL HISTORY

In October 2021, the court conditionally granted Agavo's habeas petition as to ground one, vacated the state-court conviction, and ordered release unless the State elected to retry him and commenced jury selection within 120 days. After the State elected to retry Agavo, the court amended and repeatedly extended the jury-selection deadline. Respondents sought another extension through June 16, 2026, citing an agreement in principle for Agavo to plead guilty and the need for immigration counsel to review the plea agreement. The court granted the motion and modified the judgment.

DISPOSITION

CASES CITED

- Preiser v. Rodriguez, 411 U.S. 475, 484 (1973)
- Wilkinson v. Dotson, 544 U.S. 74, 87, 89 (2005)
- Herrera v. Collins, 506 U.S. 390, 403 (1993)
- Harvest v. Castro, 531 F.3d 737, 742, 744-45 (9th Cir. 2008)
- Gilmore v. Bertrand, 301 F.3d 581, 582-83 (7th Cir. 2002)
- Stewart v. Dupnik, 243 F.3d 549, 549 (9th Cir. 2001)
- Pioneer Invs. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 392 (1993)

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 REYNALDO AGAVO, Case No.: 2:13-cv-01741-JCM-DJA 4 Petitioner Order 5 v. 6 CALVIN JOHNSON, 7 Respondents 8 Before the Court in this habeas matter is Respondents' unopposed Motion for Relief from 9 Judgment (ECF No. 108) under Fed. R. Civ. P. 60(b). 10 Background 11 In October 2021, the Court conditionally granted the petition for writ of habeas corpus as 12 to ground one, vacated the state court judgment of conviction, and ordered Petitioner's release 13 unless the state elected to retry Petitioner and commence jury selection within 120 days 14 following the election to retry Petitioner.

ECF No. 88 at 41-42. Following appellate proceedings, 15 on October 26, 2023, the state filed a notice of intent to retry Petitioner. ECF No. 95. As such, 16 the deadline to commence jury selection was February 23, 2024.

In April 2024, the Court granted 17 Respondents' request to amend the judgment to allow jury selection in the retrial to commence 18 no later than June 24, 2024. ECF No. 96 at 3. In October 2024, the Court granted Respondents' 19 unopposed motion to extend the deadline for the State to commence jury selection in the retrial 20 to May 22, 2025. ECF No. 102. 21 Respondents now request an extension of time to comply with the conditional writ up to 22 and including June 16, 2026.

ECF No. 108. The parties reached an agreement in principle for 23 Agavo to plead guilty, but counsel has requested appointment of immigration counsel to review 1 the guilty plea agreement. Id. at 2. 2 Discussion 3 When a court issues a writ of habeas corpus, it declares in essence that the petitioner is 4 being held in custody in violation of his constitutional rights.

See 28 U.S.C. § 2254(a); Preiser v. 5 Rodriguez, 411 U.S. 475, 484 (1973). Courts employ a conditional order of release in appropriate 6 circumstances, which orders the State to release the

petitioner unless the State takes some 7 remedial action, such as to retry the petitioner. See, e.g., *Wilkinson v. Dotson*, 544 U.S. 74, 89 8 (2005) (describing the “common practice of granting a conditional writ,” that is, “ordering that a 9 State release the prisoner or else correct the constitutional error through a new 10 hearing”); *Herrera v. Collins*, 506 U.S. 390, 403 (1993) (“The typical relief granted in federal 11 habeas corpus is a conditional order of release unless the State elects to retry the successful 12 habeas petitioner, or in a capital case a similar conditional order vacating the death sentence.”) 13 “[C]onditional orders are essentially accommodations accorded to the state, in that conditional 14 writs enable habeas courts to give states time to replace an invalid judgment with a valid one.” 15 *Wilkinson*, 544 U.S. at 87.

See also *Harvest v. Castro*, 531 F.3d 737, 742 (9th Cir. 2008). 16 The Ninth Circuit has held that a district court can modify its conditional writ even after 17 the time provided in the conditional writ has lapsed. *Harvest*, 531 F.3d at 744. “Logically, the 18 equitable power of the district court in deciding a habeas petition includes the ability to grant the 19 state additional time beyond the period prescribed in a conditional writ to cure a constitutional 20 deficiency.” *Id.* (citing *Gilmore v. Bertrand*, 301 F.3d 581, 582-83 (7th Cir.

2002). Such 21 modifications are governed by the Habeas Rules and, by incorporation, the Rules of Civil 22 Procedure, including Rule 60. *Harvest*, 531 F.3d at 745. 23 1 Under Rule 60, the court may relieve a party from a final judgment or order for the 24 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief 5|| from the judgment.

Fed. R. Civ. P. 60(b); *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000). 6 The Court considers the four-factor test the Supreme Court established in *Pioneer*: (1) the 7|| danger of prejudice to the nonmoving party; (2) the length of delay; (3) the reason for the delay, including whether it was within reasonable control of the movant; and (4) whether the moving 9|| party’s conduct was in good faith.

Pioneer Invs. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 392 (1993). In consideration of the *Pioneer* factors and because Petitioner does not oppose motion, the Court will grant Respondents’ motion. 12 IT IS THEREFORE ORDERED that Respondents’ Motion for Relief from Judgment CECF No. 108) is granted. 14 It is further ordered that Judgment (ECF No. 88) is modified to extend the deadline for the State to comply with the conditional writ to June 16, 2026.

16 DATED January 13, 2026. 17 TAMES G MAHAN UNITED STATES DISTRICT JUDGE 19
20 21 22 23