

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
KENTUCKY, SOUTHERN DIVISION

In re: The Estate of Brian Keith Bennett, et al. v. C. Gomez, Warden,
et al.

No. 6:22-CV-45-REW-HAI (E.D. Ky. Jan. 23, 2026) · No. 6:22-CV-45-REW-HAI · Decided January 23, 2026

SUMMARY

The United States District Court for the Eastern District of Kentucky denies Plaintiffs’ Rule 60(b) motion seeking relief from a judgment dismissing their claims arising from Brian Keith Bennett’s death while incarcerated. The court concludes that most arguments were untimely, and that Plaintiffs failed to establish by clear and convincing evidence any qualifying mistake, newly discovered evidence, discovery misconduct, excusable neglect, or extraordinary circumstance. The court also reiterates that the pleaded failure-to-protect theory was not cognizable under Bivens and that Plaintiffs failed to plead individual deliberate-indifference liability.

CASE DETAILS

COURT	United States District Court for the Eastern District of Kentucky, Southern Division
WRITING FOR THE COURT	Robert E. Wier
JURISDICTION	United States District Court for the Eastern District of Kentucky, Southern Division
DECIDED	January 23, 2026
DOCKET	6:22-CV-45-REW-HAI
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs' Rule 60(b) motion for relief from judgment following dismissal of prisoner civil rights (Bivens) complaint under Rule 12(b) (6)
STANDARD OF REVIEW	Clear and convincing evidence required for Rule 60(b) relief; timeliness assessed for reasonableness of delay
PRECEDENTIAL VALUE	unpublished

TOPICS

- motion for reconsideration
- civil procedure
- civil rights
- prisoners rights
- qualified immunity

PRACTICE AREAS

civil procedure

civil rights

constitutional law

prisoner litigation

QUESTIONS PRESENTED

1. Whether Plaintiffs' Rule 60(b) motion was timely filed
2. Whether Plaintiffs are entitled to relief under Rule 60(b)(1) for judicial mistake or attorney error/excusable neglect
3. Whether Plaintiffs are entitled to relief under Rule 60(b)(2) for newly discovered evidence
4. Whether Plaintiffs are entitled to relief under Rule 60(b)(3) for opposing party's fraud or misconduct
5. Whether Plaintiffs are entitled to relief under Rule 60(b)(6) for attorney abandonment constituting extraordinary circumstances
6. Whether Plaintiffs adequately developed their arguments for Rule 60(b) relief

HOLDINGS

1. Most of Plaintiffs' Rule 60(b) claims are untimely due to unreasonable delay; Plaintiffs could have brought nearly all challenges within days of the judgment but waited a full year without adequate explanation. However, the Rule 60(b)(2) claim based on newly discovered video evidence (available only since May 2025) is not time-barred.
2. The court did not commit the legal errors Plaintiffs identify. Plaintiffs were initially permitted to proceed on their Carlson/Estelle deliberate-indifference claim, and the subsequent dismissal was based on Plaintiffs' failure to allege direct action or involvement by named Defendants, not on a misinterpretation of law. The failure-to-protect claim was properly foreclosed by *Egbert v. Boule*.
3. Attorney Noll's failure to file a Rule 59(e) motion does not justify relief because Plaintiffs failed to identify any viable underlying claim that would have altered the court's analysis.
4. Plaintiffs' newly discovered video evidence would not change the outcome of the Rule 12(b)(6) analysis because it does not establish individual liability by the named Defendants for deliberate indifference to Bennett's medical needs.
5. Defendants did not commit discovery misconduct because they were never under a specific obligation to produce discovery; a discovery stay was properly granted pending resolution of the Rule 12(b)(6) motion.
6. Plaintiffs' allegations of attorney Noll's deficient performance and abandonment do not meet the extraordinary circumstances threshold required for Rule 60(b)(6) relief, and Plaintiffs failed to demonstrate a good underlying claim.
7. Plaintiffs waived their Rule 60(b) claims by failing to articulate the applicable legal standards or show how their arguments fit within those standards, offering only perfunctory and skeletal argumentation.

KEY QUOTATIONS

“Relief under Rule 60(b) is the exception, not the rule, and we are guided by the constraints imposed by a public policy favoring finality of judgments and termination of litigation.” (Section II (Legal Standard))

“Rule 60(b) provides ‘an extraordinary remedy . . . granted only in exceptional circumstances.’” (Section II (Legal Standard))

“This strict standard is ‘essential if the finality of judgments is to be preserved.’” (Section II (Legal Standard))

“Rule 60(b) grounds are intended to ‘attack[], not the substance of the federal court’s resolution of a claim on the merits, but some defect in the integrity of the . . . proceedings.’” (Section II (Legal Standard))

“Rule 60(b) motions are ‘neither a substitute for, nor a supplement to, an appeal.’” (Section II (Legal Standard))

“Rule 60(b)(6) may only be invoked where ‘something more’ is present—‘unusual and extreme situations where principles of equity mandate relief.’” (Section III.B.1.iv)

“Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the Court to . . . put flesh on its bones.” (Section III.B.2)

“‘[N]eglect and abandonment by counsel have persuaded some courts to afford relief under Rule 60(b)(6).’” (Section III.B.1.iv)

“the Complaint did not meet the governing plausibility standard” (Section III.B.1.i)

“Plaintiffs’ inability, as a matter of law, to recover against Defendants under a respondeat superior theory of liability and on account of their complete failure to ‘allege . . . direct action, direct involvement, or [a] factual role, relative to the medical management of [Brian] Bennett, by the named Defendants.’” (Section III.B.1.i)

FACTUAL BACKGROUND

Brian Keith Bennett was murdered by other inmates while incarcerated at USP McCreary in Pine Knot, Kentucky. His estate and family members (mother Wanda Ellen Bennett and son Michael Keith Bennett) brought a Bivens action against prison officials, including Warden C. Gomez, Donald Hudson, and Tina Ritchie, alleging failure to protect and deliberate indifference to serious medical needs. The complaint was dismissed with prejudice after Plaintiffs failed to allege direct involvement by the named Defendants in Bennett’s medical management. Plaintiffs’ prior attorney, James G. Noll, withdrew after the judgment. Approximately one year later, Plaintiffs filed a Rule 60(b) motion through new attorney John L. Caudill, citing newly discovered video evidence from the criminal proceedings against Bennett’s assailants (available May 2025), alleged discovery misconduct, the court’s purported legal errors, and Noll’s deficient performance and abandonment.

PROCEDURAL HISTORY

Plaintiffs brought a Bivens action alleging Eighth Amendment claims (failure to protect and deliberate indifference to serious medical needs) against federal prison officials after inmate Brian Keith Bennett was murdered by other inmates at USP McCreary. The court granted Defendants’ first Rule 12(b)(6) motion in part, dismissing the failure-to-protect claim but retaining the deliberate-indifference claim under *Carlson v. Green* and

Estelle v. Gamble. Defendants' second Rule 12(b)(6) motion succeeded because Plaintiffs failed to allege direct action or involvement by the named Defendants and could not proceed under respondeat superior. The complaint was dismissed with prejudice. Plaintiffs did not appeal. Exactly one year later, Plaintiffs filed a Rule 60(b) motion through new counsel, alleging judicial error, newly discovered evidence, discovery misconduct, and prior counsel's deficient performance and abandonment.

DISPOSITION

other

CASES CITED

- Egbert v. Boule, 596 U.S. 482 (2022)
- Ziglar v. Abbasi, 137 S. Ct. 1843 (2017)
- Carlson v. Green, 446 U.S. 14 (1980)
- Estelle v. Gamble, 429 U.S. 97 (1976)
- Franklin v. Jenkins, 839 F.3d 465 (6th Cir. 2016)
- Waifersong, Ltd. v. Classic Music Vending, 976 F.2d 290 (6th Cir. 1992)
- McAlpin v. Lexington 76 Auto Truck Shop, Inc., 229 F.3d 491 (6th Cir. 2000)
- BLOM Bank SAL v. Honickman, 145 S. Ct. 1612 (2025)
- Gonzalez v. Crosby, 545 U.S. 524 (2005)
- Info-Hold, Inc. v. Sound Merch., Inc., 538 F.3d 448 (6th Cir. 2008)
- Carter v. Anderson, 585 F.3d 1007 (6th Cir. 2009)
- GenCorp., Inc. v. Olin Corp., 477 F.3d 368 (6th Cir. 2007)
- Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291 (6th Cir. 1989)
- Olle v. Henry & Wright Corp., 910 F.2d 357 (6th Cir. 1990)
- In re G.A.D., Inc., 340 F.3d 331 (6th Cir. 2003)
- Miller v. Mays, 879 F.3d 691 (6th Cir. 2018)
- Tyler v. Anderson, 749 F.3d 499 (6th Cir. 2014)
- Kemp v. United States, 599 U.S. 528 (2022)
- McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc., 298 F.3d 586 (6th Cir. 2002)
- Yeschick v. Mineta, 675 F.3d 622 (6th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)
- Luna v. Bell, 887 F.3d 290 (6th Cir. 2018)
- Buck v. Davis, 580 U.S. 100 (2017)
- McPherson v. Kelsey, 125 F.3d 989 (6th Cir. 1997)
- Overstreet v. Lexington-Fayette Urban County Government, 305 F.3d 566 (6th Cir. 2002)
- Fisher v. Hollingsworth, 115 F.4th 197 (3d Cir. 2024)

- Kellar v. Yunion, Inc., 157 F.4th 855 (6th Cir. 2025)
- Outfront Media, LLC v. LeMaster, No. 7:17-CV-66, 2020 WL 4582412 (E.D. Ky. Aug. 10, 2020)
- Bennett v. United States, No. 6:24-CV-31 (E.D. Ky.)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF KENTUCKY SOUTHERN DIVISION LONDON IN RE: THE ESTATE OF BRIAN KEITH) BENNETT, et al.,)) Plaintiffs,) No. 6:22-CV-45-REW-HAI) v.) OPINION & ORDER) C. GOMEZ, WARDEN, et al.,)) Defendants.) *** ** Previously, Donald Hudson, Tina Ritchie, and Christopher Gomez (collectively, “Defendants”) filed a motion to dismiss the present action—brought by the Estate of Brian Keith Bennett, Wanda Ellen Bennett, and Michael Keith Bennett (collectively, “Plaintiffs”)—under Federal Rule of Civil Procedure 12(b)(6).

See DE 49 at 3–8. The Court granted that motion in part, retaining Plaintiffs’ Eighth Amendment claims insofar as they alleged that Defendants were deliberately indifferent to Brian Bennett’s serious medical needs. See DE 56 at 7–9, 11–13. Defendants then filed another Rule 12(b)(6) motion, arguing that Plaintiffs had failed to adequately plead their remaining Eighth Amendment claim.

See DE 59 at 2–3. The Court agreed, concluding that the Complaint did not meet the governing plausibility standard. See DE 67 at 4–5. As a result, the Court dismissed the Complaint with prejudice and struck the matter from the active docket. See DE 68. Plaintiffs did not appeal. Exactly one year later, Plaintiffs filed the instant motion seeking relief from the Court’s judgment under Federal Rule of Civil Procedure 60(b).

See DE 77. In their 24-part submission, Plaintiffs contend that they are entitled to relief on account of the Court’s legal errors, certain newly discovered evidence, Defendants’ alleged discovery misconduct, and their counsel’s deficient performance and subsequent abandonment. See generally DE 77-1. Defendants responded in opposition to the motion, see DE 78, and Plaintiffs filed a reply in which they raised several entirely different Rule 60(b) arguments, see DE 80.

Finding that most of Plaintiffs’ claims are untimely and that Plaintiffs have failed to produce clear and convincing evidence establishing that they are entitled to relief, the Court DENIES DE 77. I. BACKGROUND Brian Keith Bennett was tragically murdered by other inmates while incarcerated at USP McCreary in Pine Knot, Kentucky. See DE 1 ¶¶ 27–28, at 10. Around one year after his death, Plaintiffs initiated the present action.

See generally *id.* In their Complaint, they alleged that Defendants—along with a number of other unnamed staff members and inmates—contributed to Brian Bennett’s death by failing to maintain his safety or otherwise harmed him by failing to provide adequate medical care. See *id.* ¶¶ 64–67,

at 23–24. Wanda Ellen Bennett and Michael Keith Bennett (Brian’s mother and son, respectively) also joined the action through a wrongful death claim.¹ See *id.* ¶ 75–80, at 26.

Since then, this case has taken a circuitous procedural journey. For the purpose of deciding the instant motion, the Court notes four particular steps along the way. First, Defendants’ initial Rule 12(b)(6) motion. See DE 49.

In it, they asserted that Plaintiffs could not invoke a *Bivens*-style implied right of action or establish a legitimate reason for extending *Bivens* to a novel context pursuant to *Egbert v. Boule*, 142 S. Ct. 1793 (2022), and *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017). See *id.* at 3–8.

The Court granted Defendants’ motion in part, finding that Plaintiffs’ failure to protect claim was indeed flawed as a *Bivens* theory. See DE 56 at 7–9. The Court did, however, 1 The Complaint also stated that Wanda Bennett is the representative of Brian Bennett’s estate. See DE 1 ¶ 70, at 25. permit Plaintiffs to proceed on their theory that Defendants had been deliberately indifferent to Brian Bennett’s serious medical needs, finding that they could rely on a *Bivens*-style implied right of action pursuant to both *Carlson v. Green*, 100 S. Ct.

1468 (1980), and *Estelle v. Gamble*, 97 S. Ct. 285 (1976). See DE 56 at 11–13. Second, Defendants’ subsequent Rule 12(b)(6) motion. See DE 59. In their motion, Defendants argued that Plaintiffs had failed to plead adequate facts to recover against any of them on the remaining *Carlson/Estelle* claim. See *id.* at 2–3.

The Court agreed, finding that the Complaint was insufficient on account of Plaintiffs’ inability, as a matter of law, to recover against Defendants under a respondeat superior theory of liability and on account of their complete failure to “allege... direct action, direct involvement, or [a] factual role, relative to the medical management of [Brian] Bennett, by the named Defendants.” See DE 67 at 4–5.

As a result, the Court dismissed Plaintiffs’ final claim. See *id.* Third, Defendants’ motion to stay discovery. See DE 60. Shortly after filing their second Rule 12(b)(6) motion, Defendants moved for a stay, arguing that further discovery was unnecessary given that the case was likely going to be resolved by answering the purely legal question of whether Defendants were immune from Plaintiffs’ suit for money damages.

See *id.* at 2. United States Magistrate Judge Hanly A. Ingram recommended the Court to grant the stay, see DE 64 at 2–3, and over Plaintiffs’ objections, see DE 65, the Court did so while simultaneously dismissing Plaintiffs’ remaining claims, see DE 67 at 5–6. Fourth, attorney James G. Noll’s motion to withdraw. See DE 69. Noll, citing irreconcilable differences, moved to terminate his representation of Plaintiff Wanda Ellen Bennett about one month after the Court’s entry of the judgment.

See *id.* In a supplemental filing, Noll asserted that Wanda Ellen Bennett had spurned his services in favor of Michael Creusere, a senior paralegal who had “insert[ed] himself into th[e] case.”² See DE 72. Noll also attached a letter that he had sent to Wanda Bennett notifying her of his intent to withdraw. See DE 72-1. Around that same time, Creusere—no longer in Noll’s employment—filed a brief on Plaintiffs’ behalf, leveling a series of accusations against Noll and requesting the Court to set aside its dismissal.

See DE 71; DE 71-2. In a single Order, the Court resolved Noll’s motion, denied Creusere’s request, and referred the latter’s filing to the Kentucky Bar Association for an assessment of whether Noll had committed wrongdoing and/or whether Creusere had engaged in the unauthorized practice of law. See DE 74. Soon after, Wanda Bennett sent a then-moot letter to the Court requesting that Noll terminate his representation of her and Brian Bennett’s estate.

See DE 75. Back to the present. On August 2, 2025, exactly one year after the Court entered its judgment, Plaintiffs filed the immediate Rule 60(b) motion through their new attorney, John L. Caudill. See DE 77. The memorandum supplementing the motion is, to put it bluntly, messy. See DE 77-1. But generally, it appears that Plaintiffs are relying on some combination of Rule 60(b) (1), (2), (3), and (6).

See *id.* at 1–6, 10–15, 20–24; DE 80 at 2–5. They effectively argue that they are entitled to relief on account of the Court’s misinterpretation of the applicable law, newly discovered video evidence, allegations of various discovery misconduct, and Noll’s deficient performance and subsequent abandonment. See DE 77. Defendants filed a response in opposition, arguing that Plaintiffs’ motion is untimely and that Plaintiffs are unable to prevail on any one of their Rule 60(b) theories.

See DE 78. Plaintiffs then filed a similarly jumbled reply. See generally DE 80. The matter is now ripe for the Court’s decision. ² The Court treats Noll’s arguments with great suspicion, given the facts it has already recounted in the separate action brought under the Federal Tort Claim Act. See *Bennett v. United States*, No. 6:24-CV-31 (E.D. Ky. filed Nov.

25, 2024), at DE 29. II. LEGAL STANDARD Under Rule 60(b), a party may request the Court to relieve it “from a final judgment, order, or proceeding” by any one of six discrete paths. FED. R. CIV. P. 60(b). Four of these paths include: (1) “mistake, inadvertence, surprise, or excusable neglect”; (2) “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)”; (3) “fraud (whether... intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party”; and (4) “any other reason that justifies relief.”³ *Id.* 60(b)(1)–(3), (6).

Crucially, Rule 60(b) relief should not be granted freely. See *Franklin v. Jenkins*, 839 F.3d 465, 472 (6th Cir. 2016) (“Relief under Rule 60(b) is the exception, not the rule, and we are guided by

the constraints imposed by a ‘public policy favoring finality of judgments and termination of litigation.’” (quoting *Waifersong, Ltd. v. Classic Music Vending*, 976 F.2d 290, 292 (6th Cir.

1992))). Rather, Rule 60(b) provides “an extraordinary remedy... granted only in exceptional circumstances.” *McAlpin v. Lexington 76 Auto Truck Shop, Inc.*, 229 F.3d 491, 502–03 (6th Cir. 2000) (quoting *Dickerson v. Bd. of Educ. of Ford Heights*, 32 F.3d 1114, 1116 (7th Cir. 1994)). This strict standard is “essential if the finality of judgments is to be preserved.” *BLOM Bank SAL v. Honickman*, 145 S. Ct.

1612, 1620 (2025) (quoting *Gonzalez v. Crosby*, 125 S. Ct. 2641, 2649 (2005)). In light of this standard, the movant bears the burden of demonstrating “grounds for... relief by clear and convincing evidence.” *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 454 (6th Cir. 2008) (citing *Crehore v. United States*, 253 F. App’x 547, 549 (6th Cir. 2007)). Rule 60(b) grounds are intended to “attack[], not the substance of the federal court’s resolution of a claim on the merits, but some defect in the integrity of the... proceedings.” 3 The other two paths are available when: (1) “the judgment is void”; and (2) “the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable.” FED.

R. CIV. P. 60(b)(4)–(5). Neither one of these two even arguably applies here. *Carter v. Anderson*, 585 F.3d 1007, 1011 (6th Cir. 2009) (quoting *Gonzalez*, 125 S. Ct. at 2648). This means that parties may not generally raise “arguments that were, or should have been, presented on appeal.” *GenCorp., Inc. v. Olin Corp.*, 477 F.3d 368, 373 (6th Cir. 2007).

After all, Rule 60(b) motions are “neither a substitute for, nor a supplement to, an appeal.” *Id.* (citing *Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294 (6th Cir. 1989)). As a final aside, Rule 60(b) motions are subject to strict timing requirements.

In no instance may a motion claiming relief under Rule 60(b)(1)–(3) be made “more than a year after the entry of the judgment or order or the date of the proceeding.” FED. R. CIV. P. 60(c)(1). And regardless of the specific path that a party pursues, a court should deny a Rule 60(b) motion as untimely if there was an unreasonable delay in filing. See *id.*; see also *Olle v. Henry & Wright Corp.*, 910 F.2d 357, 363–64 (6th Cir.

1990) (citing *Jones v. Anderson-Tully Co.*, 722 F.2d 211, 212–13 (5th Cir. 1984)). In instances where the “reason to set aside the judgment is known within the time for filing notice of appeal, a [Rule 60(b)] motion should be brought... during that period.” *In re G.A.D., Inc.*, 340 F.3d 331, 334 (6th Cir. 2003) (citing *Barrier v. Beaver*, 712 F.2d 231, 234–35 (6th Cir.

1983)). III. ANALYSIS A. Timeliness of the Motion While Plaintiffs filed their motion exactly one year after entry of the judgment (and therefore, are not automatically barred from bringing their

claims under Rule 60(b)(1)–(3)), most of their claims are still untimely due to unreasonable delay. Any Rule 60(b) motion must be filed within a “reasonable period of time.” FED.

R. CIV. P. 60(c)(1). This is a highly “fact-specific determination” that principally turns on the movant’s “diligence in seeking relief.” *Miller v. Mays*, 879 F.3d 691, 699 (6th Cir. 2018) (citing *Sheppard v. Robinson*, 807 F.3d 815, 821 (6th Cir. 2015); *Wright v. Warden, Riverbend Maximum Sec. Inst.*, 793 F.3d 670, 672 (6th Cir. 2015)). Other factors going to the reasonability of delay include “the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief,” if any.

Olle, 910 F.2d at 365. Significantly, the Supreme Court has found an eight-month delay, measured from when the Rule 60(b) motion could have been filed to when it actually was, to be unreasonable. See *Gonzalez*, 125 S. Ct. at 2650–51. Considering that precedent, a full year of inaction will necessarily require a strong and specific justification.

Here, Plaintiffs could have brought nearly all of their Rule 60(b) challenges—including that the Court misapplied the law, that Defendants engaged in discovery misconduct, and that Noll performed deficiently and subsequently abandoned the case—within days of the Court’s entry of the judgment. And when the “reason to set aside the judgment is known within the time for filing notice of appeal, a [Rule 60(b)] motion should be brought... during that period.” *G.A.D.*, 340 F.3d at 334 (citing *Barrier*, 712 F.2d at 234–35).

Plaintiffs did not do so. Instead, they waited a full year before filing the present motion. See generally DE 77. And while Plaintiffs argue that their delay was justified by their need to secure new counsel after Noll left their representation, see DE 80 at 14, the record shows that they did secure new representation by at least January 2025, see *Bennett v. United States*, No. 6:24-CV-31 (E.D.

Ky. filed Jan. 15, 2025), at DE 33. Plaintiffs offer no explanation for their eight months of silence or inaction, apart from Caudill’s asserted “need to understand” the case. See DE 80 at 14. That is an insufficient explanation given the length of the delay and the motion’s repetition of themes raised repeatedly in prior briefing. See *Tyler v. Anderson*, 749 F.3d 499, 510 (6th Cir.

2014) (citing *G.A.D.*, 340 F.3d at 334) (“[A] moving party must articulate a reasonable basis for delay.”). This inadequately explained period of inaction, coupled with the substantial prejudice Defendants would face if forced to resume litigation more than a year after their dismissal, confirms that the bulk of Plaintiffs’ claims are untimely. But Plaintiffs’ Rule 60(b)(2) argument presents a closer question.

Plaintiffs assert that certain “newly discovered evidence”—specifically, video footage that they first reviewed during the sentencing of Brian Bennett’s assailant and the criminal trial of his

accomplice, both of which occurred in May 2025—could not have been obtained earlier. See DE 80 at 2–3. This less than three-month period of delay is far more reasonable.

See *Stokes v. Williams*, 475 F.3d 732, 734–35 (6th Cir. 2007) (considering, but denying on its merits, a Rule 60(b)(6) motion filed about one month after the relevant denial of a writ of certiorari). Their claim under Rule 60(b)(2) is not, in the Court’s assessment, time barred. And although the Court concludes that Plaintiffs’ remaining claims are untimely, it will nevertheless address their merits for the sake of completeness.

B. Merits of the Motion On its merits, Plaintiffs’ Rule 60(b) motion fails for two independent reasons. First, even after accounting for a generous gloss on their claims, Plaintiffs have not put forward clear and convincing evidence establishing that they are entitled to relief under any of Rule 60(b)(1), (2), (3), or (6).

Second, and on a more fundamental level, Plaintiffs have not alleged any single ground for relief with adequate specificity. 1. Plaintiffs’ Asserted Grounds for Rule 60(b) Relief Are Unavailing Neglecting the fact that they were the ones responsible for providing clarity, Plaintiffs state that “there is some uncertainty” regarding which Rule 60(b) categories apply.

See DE 77-1 at 1. Nevertheless, Plaintiffs appear to raise Rule 60(b)(1) and (6) arguments in their motion, see *id.*, and Rule 60(b)(2), (3), and (6) arguments in their reply, see DE 80 at 2–5.4 While the Court 4 And as the Sixth Circuit has plainly stated, “[a]n argument raised for the first time in a reply brief will not be considered.” *Overstreet v. Lexington-Fayette Urb.*

Cnty. Gov’t, 305 F.3d 566, 578 (6th Cir. 2002) (citing accepts that at least one of these four paths could conceivably apply in the present case, none of them in actuality do. i. Rule 60(b)(1)—Judicial Mistake and Attorney Error Plaintiffs allege two grounds on which they could obtain Rule 60(b)(1) relief.

First, they argue that the Court made a mistake of law in dismissing their Eighth Amendment claims, focused particularly on the failure to protect basis. See DE 77-1 at 5–8, 17–24; DE 80 at 5–12; see also *Kemp v. United States*, 142 S. Ct. 1856, 1861–62 (2022) (recognizing that a court’s mistake of law can form the basis for Rule 60(b)(1) relief).

Second, they contend that Noll’s failure to file a post- dismissal motion amounts to mistake or excusable neglect sufficient to warrant relief.⁵ See DE 77- 1 at 1–4, 13; see *McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc.*, 298 F.3d 586, 594– 95 (6th Cir. 2002) (“[I]n assessing a claim of excusable neglect, ‘the proper focus is upon whether the neglect of [the parties] and their counsel was excusable.’” (alteration in original) (quoting *Pioneer Inv.*

Servs. Co. v. Brunswick Assocs. Ltd., 113 S. Ct. 1489, 1499 (1993))). Plaintiffs’ first argument fails because the Court did not commit the legal errors they identify. Although Plaintiffs insist that

they should have been permitted to move forward on their Carlson/Estelle claim due to Defendants' deliberate indifference to Brian Bennett's serious medical needs, see DE 77-1 at 5–8, 17–24, they fail to cede the fact that they were permitted to proceed on their claim, at least initially, see DE 56 at 11–13.6 For the later dismissal, the Court *Wright v. Holbrook*, 794 F.2d 1152, 1156 (6th Cir.

1986)); see also *Sanborn v. Parker*, 629 F.3d 554, 579 (6th Cir. 2010) (citing *Am. Trim, L.L.C. v. Oracle Corp.*, 383 F.3d 462, 477 (6th Cir. 2004)) (“We have consistently held... that arguments made to us for the first time in a reply brief are waived.”). 5 At least, the Court believes this is one of Plaintiffs' claims. They do, however, also state that Noll's “actions were intentional, not excusable neglect,” so there is some confusion here.

DE 77-1 at 2. 6 Plaintiffs indirectly suggest that they should have been permitted to amend their Complaint. See DE 77- 1 at 13. In support, they point to a portion of the initial pleading reading that “[a]n amended complaint is likely to be needed as... Defendants have not been forthcoming... with current fact knowledge.” DE 1 ¶ 8, at 5–6. But Plaintiffs misinterpret the Court's role.

If Plaintiffs wished to amend their Complaint, then they were free to attempt, by motion, to do so under the terms of Federal Rule of Civil Procedure 15. A then, screening the pleadings, determined that Plaintiffs could not “recover under a theory of respondeat superior... [and] allege[d] no direct action, direct involvement, or factual role, relative to the medical management of [Brian] Bennett, by the named Defendants.” DE 67 at 5.

And while Plaintiffs broadly assert that Defendants (but mostly others at the BOP) committed various wrongs, see generally DE 77-1, they never grapple with that core deficiency. Similarly, Plaintiffs' motion does not effectively challenge the Court's determination that Egbert forecloses any relief under their “failure to protect” claim. See DE 56 at 8–9.

Although they tangentially address the Court's conclusion in their reply, see DE 80 at 11–12, they only do so to briefly state arguments they have already raised. See *Foster v. Bush*, No. 24-1337, 2024 WL 5457975, at *2 (6th Cir. Dec. 9, 2024) (citing *Tyler*, 749 F.3d at 509) (noting that movant could not “use Rule 60(b) to relitigate his case”).

The Court considered the issue carefully and followed the Supreme Court's directions, and Circuit guidance, to foreclose the novel Bivens theory. Courts continue to recognize that Bivens does not support a claim for failure to protect against inmate violence. See, e.g., *Fisher v. Hollingsworth*, 115 F.4th 197, 206–07 (3d Cir. 2024) (rejecting failure to protect theory under Bivens and citing to a list of “sister courts” agreeing that “recognizing a damages action for failure to protect would require an impermissible extension of Bivens”).

Because Plaintiffs failed to allege facts sufficient to support relief on either of their claims, the Court's dismissal was not a mistake of law. Their second argument fares no better. Plaintiffs seem

to contend in their motion that Noll's failure to file a motion to alter or amend the judgment constitutes mistake or excusable neglect. See DE 77-1 at 1–3; see also FED.

R. CIV. P. 59(e). In assessing attorney neglect under plaintiff must state a plausible claim to open the doors to discovery. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009) (“Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.”); see also *Bell Atlantic Corp. v. Twombly*, 127 S. Ct.

1955, 1965–67 (2007). Rule 60(b)(1), courts consider: “(1) culpability—that is, whether the neglect was excusable; (2) any prejudice to the opposing party; and (3) whether the party holds a meritorious underlying claim or defense.” *Yeschick v. Mineta*, 675 F.3d 622, 628 (6th Cir. 2012).

In this instance, the third factor is dispositive.⁷ Plaintiffs identify no facts or aspects that would alter the Court's analysis of their Complaint, and they do not explain how a Rule 59(e) motion would have changed the Court's ultimate disposition. Without proof of a viable underlying claim, and Plaintiffs still do not reference any, attorney neglect cannot justify the amendment of a final judgment.

See *Yeschick*, 675 F.3d at 628. Therefore, Plaintiffs' excusable neglect theory fails for the same reason as their mistake of law theory—they did not allege a plausible claim for relief in their Complaint. ii. Rule 60(b)(2)—Newly Discovered Evidence Plaintiffs also allege, though only in their reply, that they are entitled to relief under Rule 60(b)(2) on account of “newly discovered evidence” that they could not have discovered through reasonable diligence.

See DE 80 at 2–3. Namely, they point to video evidence showing “two guards that deserted their post giving time for” Brian Bennett's assault and murder.⁸ *Id.* at 3. In order to prevail under Rule 60(b)(2), a movant must “show by clear and convincing evidence... that it exercised due diligence to obtain the evidence and... that the evidence is material, i.e., would have clearly resulted in a different outcome.” *Luna v. Bell*, 887 F.3d 290, 294 (6th Cir.

2018) (citing *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)); see also *Good v. Ohio Edison Co.*, 149 F.3d 413, 423 (6th Cir. 1998) (citing *Yachts Am., Inc. v. United States*, 779 F.2d 7 The Court finds it unnecessary to consider all three given the clear lack of a meritorious claim and the fact that Plaintiffs themselves failed to discuss any of these factors.

See generally DE 77-1; DE 80. ⁸ While Plaintiffs attach some other evidence in their initial motion, all of that evidence was either in their possession or publicly available. See DE 77-3; 77-4; 77-5; 77-6. Defendants are also correct in asserting that Plaintiffs provide “little to no explanation” as to how that evidence would contribute to their attempted Rule 60(b)(2) claim.

DE 78 at 11. 656, 662 (Fed. Cir. 1985)) (“[T]he [newly discovered] evidence cannot be merely impeaching or cumulative.”). The Court need not reach the diligence analysis. In what is now a familiar refrain, the Court reiterates that Plaintiffs’ newly discovered evidence would do nothing to change their failure to state a claim upon which relief can be granted.

Plaintiffs appear to argue that this video evidence would subject Defendants to individual liability on their deliberate indifference theory.⁹ First, and again, the failure to protect theory exceeds *Bivens*. Further, Plaintiffs never alleged facts suggesting that Defendants were individually liable for deliberate indifference to Brian Bennett’s serious medical needs.

See generally DE 1. They cannot do so now after the Court’s dismissal, particularly given that the video (and any individual guard conduct) is far removed from the actions of distinct wardens and a remote BOP person in charge of placement decisions.

As a result, Plaintiffs have failed to show that their “newly discovered evidence” would yield a different outcome on the Court’s Rule 12(b)(6) analysis. iii. Rule 60(b)(3)—Discovery Misrepresentations Plaintiffs use much of their briefing to argue that Defendants engaged in discovery abuse (or at least misrepresentation) when failing to share relevant information, videos, witnesses, and documents in their possession.

See DE 77-1 at 8–17; DE 80 at 3–5, 12–13. Rule 60(b)(3) allows for relief on account of “misrepresentation... by an opposing party.” See FED. R. CIV. P. 60(b)(3). But a movant must demonstrate “that the adverse party committed a deliberate act that adversely impacted the fairness of the relevant legal proceeding [in] question.” *Info-Hold*, 538 F.3d at 455 (alteration in original) (quoting *Jordan v. Paccar, Inc.*, No. 95-3478, 1996 WL 528950, at *6 (6th Cir.

Sept. 17, 1996)).⁹ Or perhaps they believe that it would assist in their failure to protect claim. However, that belief would be mistaken. As stated prior, that claim is foreclosed by *Egbert*. See DE 56 at 8–9. Defendants did not commit any unfair act, as they were never obligated to produce specific discovery.¹⁰ Shortly after Judge Ingram ordered the parties to conduct a Rule 26(f) conference, see DE 57, Defendants properly moved for a stay, asserting that their second—and at the time, pending—Rule 12(b)(6) motion foreclosed the need for discovery, see DE 60 at 1–2.

Judge Ingram recommended that the Court grant Defendants’ motion on account of their “argument[] that they ‘had no involvement whatsoever in any medical treatment of the decedent.’” DE 64 at 2 (quoting DE 60 at 2). Judge Ingram also emphasized the Court’s prior statement that there appeared to be a “grave deficiency” in Plaintiffs’ Complaint—namely, their failure to state a plausible claim for relief.

See *id.* (citing DE 60 at 1–2). The Court then adopted Judge Ingram’s recommendation over Plaintiffs’ objections, relying on the Court’s broad discretion to do so and on relevant case authority, all in the face of a lacking pleading. See DE 67 at 6. While Plaintiffs spend a brief

portion of their reply contesting the Court's decision, see DE 80 at 12–13, their argument is unavailing for two reasons.

First, although Plaintiffs note that a Rule 12(b)(6) motion alone is usually insufficient to stay discovery, see *id.* at 13 (citing *Baker v. Swift Pork Co.*, No. 3:15-CV-663, 2015 WL 6964702, at *1 (W.D. Ky. Nov. 10, 2015)), they do not dispute the Court's previously cited authority suggesting that a stay is often appropriate when a party contends it is immune from suit, see DE 67 at 6 (citing *Purvis v. Praxair, Inc.*, No. 5:19- CV-08, 2021 WL 2627384, at *2 (E.D.

Ky. May 11, 2021)). Second, even if the stay had been erroneously granted, that would do nothing to suggest that Defendants themselves engaged in any kind of misrepresentation. The Court granted the sought stay after plenary briefing. Of course, Defendants were required to produce their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1).

However, nowhere do Plaintiffs allege that Defendants failed to meet their initial disclosure obligations. See generally DE 77-1; DE 80. Because Defendants were not under any specific discovery obligation, it cannot be said that their failure to produce discovery amounted to misconduct. This is doubly true for any information Plaintiffs sought regarding their failure to protect claim (including information regarding Defendants' supervision of Brian Bennett and his placement at USP McCreary), see DE 77-1 at 8–17; DE 80 at 3–4, as the Court dismissed that claim before Judge Ingram even ordered the parties to conduct a Rule 26(f) conference.

See DE 56 at 14. iv. Rule 60(b)(6)—Attorney Abandonment and Injustice Finally, Plaintiffs attempt to develop a Rule 60(b)(6) argument, see DE 77-1 at 1–4, 13; DE 80 at 2, 4–5, asserting that Noll's deficient performance and subsequent abandonment amount to “other reason[s] that justif[y] relief.” FED. R. CIV. P. 60(b)(6). Rule 60(b)(6) relief, however, is only available when “Rules 60(b)(1) through (b)(5) are inapplicable,” and even then, only when “extraordinary circumstances” justify reopening the judgment.

Kemp, 142 S. Ct. at 1861 (quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 108 S. Ct. 2194, 2204 n.11 (1988)). That is, Rule 60(b)(6) may only be invoked where “something more” is present —“unusual and extreme situations where principles of equity mandate relief.” *Olle*, 910 F.2d at 365 (emphasis in original) (citing *Hopper*, 867 F.2d at 294). Plaintiffs do exceedingly little to show that their Rule 60(b)(6) claim meets those demanding requirements.

They primarily rely on a statement from *Outfront Media, LLC v. LeMaster*, No. 7:17-CV-66, 2020 WL 4582412, at *6 (E.D. Ky. Aug. 10, 2020), where the undersigned observed that “[n]eglect and abandonment by counsel have persuaded some courts to afford relief under Rule 60(b)(6).” See DE 77-1 at 3–4. But the authorities cited in *Outfront Media* involved different derelictions of duty, like counsel's complete failure to respond to a motion for summary judgment despite his assurance that he would do so, see *Reno v. Int'l Harvester Co.*, 115 F.R.D.

6, 8–9 (S.D. Ohio 1986), and counsel’s neglect of a dispositive motion deadline, resulting in dismissal of the case, see *Gregson v. Metro Life. Ins.*, No. 3:13-CV-678, 2018 WL 4701854, at *5 (M.D. Tenn. June 20, 2018). By contrast, while Plaintiffs broadly characterize Noll’s performance as deficient, their only concrete allegation of abandonment concerns his failure to file a Rule 59(e) motion.¹¹ See DE 77-1 at 3–4.

Missing a Rule 59(e) deadline is not comparable to missing a summary judgment deadline or dispositive motion deadline. Those latter failures directly undermine a litigant’s opportunity to receive a ruling on the merits of their claims. By contrast, by the time that Noll could have filed a Rule 59(e) motion, the Court had already entered its judgment and addressed Plaintiffs’ Complaint.

The facts that Plaintiffs describe are troubling, to be sure, and the Court has made its pointed observations about Noll. But Rule 60(b)(6) relief is reserved for truly extraordinary attorney misconduct that results in severe prejudice. See *Olle*, 910 F.2d at 365 (citing *Hopper*, 867 F.2d at 294). Plaintiffs’ allegations do not, on the particulars cited, reach that threshold.

Setting the above analysis aside, Plaintiffs’ Rule 60(b)(6) claim fails for another reason. A “good claim or defense” is a precondition to awarding Rule 60(b)(6) relief. *Buck v. Davis*, 137 S. Ct. 759, 780 (2017) (citing 11 *WRIGHT & MILLER’S FEDERAL PRACTICE & PROCEDURE* § 2857 (3d ed. 1998)).

However, as the Court previously stated when addressing their request for Rule 60(b)(1) relief, Plaintiffs have done nothing to show that a Rule 59(e) motion would change the Court’s analysis of their Complaint. As such, granting Plaintiffs relief under Rule 60(b)(6) would simply be improper.

The absence of a tenable claim under *Bivens* forecloses the theory. ¹¹ And deficiencies of counsel that do not arise to the serious level of “neglect” and “abandonment” must instead be considered under Rule 60(b)(1). See *McCurry*, 298 F.3d 586, 592–96 (noting that Rule 60(b)(1) and Rule 60(b)(6) are mutually exclusive categories, and it is necessary to consider granting Rule 60(b)(1) relief before granting Rule 60(b)(6) relief).

2. Plaintiffs Have Not Adequately Developed Any Ground for Relief Even if the Court determined that the present motion was timely and conducted none of the preceding merits analysis, it would still deny relief on account of Plaintiffs’ failure to claim any ground under Rule 60(b) with adequate specificity.

The Sixth Circuit has long held that “[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the Court to... put flesh on its

bones.” *McPherson v. Kelsey*, 125 F.3d 989, 995–96 (6th Cir. 1997) (quoting *Citizens Awareness Network, Inc. v. U.S. Nuclear Regul.*

Comm’n, 59 F.3d 284, 293–94 (1st Cir. 1995)). Here, Plaintiffs have failed to articulate the applicable and particular legal standard for any of their Rule 60(b) claims, and they have certainly failed to show how their arguments fit within those uncited standards. See generally DE 77-1; DE 80. Really, the Court’s previous merits analysis represents its own efforts to marshal Plaintiffs’ 24-part motion and 22-part reply into the applicable Rule 60(b) categories.

Plaintiffs have made few, if any, efforts to do the same and explain the motion.¹² It is not the Court’s responsibility to aid Plaintiffs in making their arguments. See *Kellar v. Yunion, Inc.*, 157 F.4th 855, 882–83 (6th Cir. 2025) (citing *Warman v. Mount St. Joseph Univ.*, 144 F.4th 880, 896 (6th Cir. 2025)).

As such, the Court also finds that Plaintiffs have waived their Rule 60(b) claims on account of their failure to offer any developed argumentation, given the taxing bar of the applicable rule. ¹² Their strongest efforts to do so are in the first few pages of the reply. See DE 80 at 1–5. But even then, these arguments are insufficiently stated, and to the extent that they were not raised in the initial motion, they are waived.

See, e.g., *Overstreet*, 305 F.3d at 578 (citing *Wright*, 794 F.2d at 1156); *Sanborn*, 629 F.3d at 579 (citing *Am. Trim, L.L.C.*, 383 F.3d at 477). IV. CONCLUSION For the above-stated reasons, the Court DENIES Plaintiffs’ motion for relief from the Court’s judgment under Rule 60(b). See DE 77. This the 23rd day of January, 2026. kgs. Signed By: Wei) Robert E. Wier ☐☐ “=n United States District Judge 17