

ACE

TRULINCS 40236424 - GARCIA, MICHAEL A - Unit: FTD-S-B

FROM: 40236424
TO:
SUBJECT: req_jud/2255_COVER
DATE: 03/28/2012 08:15:47 PM

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
CHICAGO

FILED
APR 05 2012 *aw*
APR 05 2012
THOMAS G BRUTON
CLERK, U S DISTRICT COURT

MICHAEL A. GARCIA
PETITIONER

v

civil no. 09-cv-02113

UNITED STATES OF AMERICA
RESPONDENT

MOTION REQUESTING JUDGMENT
WITH REQUEST FOR EXPEDITED REVIEW AND EMERGENCY RELIEF

COMES NOW, Michael A. Garcia, hereinafter referred to as Movant, acting on his own behalf, pro-se, currently incarcerated at the Federal Correctional Institution, to bring this action in a constitutional claim of liberty interest and Due Process right violations. Movant requests judgment. Movant's reason are contained herein.

Movant was sentenced to a term of incarceration of 84 months. According to Movant's PSI, Movant was sentenced under criminal history two and an offense level of 28 (LINE 171 OF MOVANT'S PSI). Movant's projected home confinement date is February 14, 2014. Should Movant prevail in his plea to correct his sentence, this Honorable court could conceivably reduce his term of incarceration by up to twenty-three months. This would move Movant's projected home confinement date up to March of this year.

FROM: 40236424

TO:

SUBJECT: req_jud/2255_pleadings(1-8)

DATE: 03/28/2012 08:16:03 PM

- 1) ALL pleadings have been filed and are now ripe for review.
 - 2) On April 3, 2009, Movant filed his 2255 motion to vacate, set aside or correct his sentence. In this particular instance, Movant is asking for a correction in his sentencing. SEE DOCKET ENTRY 1
 - 3) On May 14, 2009, the government filed its response opposing Movant's 2255 motion. SEE DOCKET ENTRY 5 & 6
 - 4) On November 12, 2009, this Honorable court ordered Movant to reply to government's opposition response and set a December 12, 2009 deadline. SEE DOCKET ENTRY 8
 - 5) On December 10, 2009, Movant tenders his reply brief, to government's opposition response, to his unit six unit TEAM case manager, Mr. K. Bullock. SEE EXHIBIT A, FRONT COVER OF LEGAL PARCEL which contained Movant's reply brief. Case manager Mr. K. Bullock signs, dates and time stamps front cover of legal parcel. HOUSTON v LACK, 101 L.Ed.2d, 245 holds that "pro-se prisoners' notices are filed the moment of delivery to prison officials. Further, unable to leave prison, a prisoner's control over the processing of his notice ceases as soon as he hands it over to the only public officials he has access to--prison officials."
 - 6) On February 1, 2010, Movant files a supplement to his reply to the government's opposition response. SEE DOCKET ENTRY 9. Movant is not aware, at this time, that his reply to the government's response, tendered to case manager Bullock on December 10, 2009, has not been received by this Honorable court.
 - 7) On or about April 14, 2010, Movant orders a docket sheet (1(FOOTNOTE)).
 - 8) On or about May 10, 2010, Movant receives a docket sheet. Docket sheet indicates Movant's reply to the government's opposition, tendered to case manager Bullock on December 10, 2009, was never received by this court. Movant's supplement to his reply to the government's response, deposited in Movant's unit mail box, was received by this court.
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1. Movant ordered 09-cv-2113 docket sheet, 120 days after he tendered his reply to the government's response to case manager Bullock, for the purposes of obtaining a status.

FROM: 40236424

TO:

SUBJECT: req_jud/2255_pleadings(9-14)

DATE: 03/28/2012 08:16:16 PM

- 9) Movant, upon learning this Honorable court had not received his reply to the government's opposition response, does the only thing his very limited legal training instinctually tells him to do and re-submits his reply via regular United States mail. Movant attaches a cover letter as well.
- 10) On May 11, 2010, unbeknownst to Movant, this Honorable court terminates his 2255 motion. The termination was based on an incomplete record before the court. SEE DOCKET ENTRY 11
- 11) Movant has never received a termination order from this Honorable court (2(FOOTNOTE)).
- 12) On or about August 19, 2010, Movant re-submits his reply to the government's opposition response. Movant attaches exhibits proving case manager Bullock failed to log his reply in the outgoing legal mail log and informing the United States Postmaster General of case manager Bullock's negligence (3(FOOTNOTE)). Specifically, obstructing Movant's access to this Honorable court. A violation of Movant's constitutional rights. Due Process, among others. SEE DOCKET ENTRY 17
- 13) On April 26, 2011, after months of research and familiarization with the rules of civil procedure, overcoming the hardships inherently associated with the prison environment, Movant compiles and files an application for relief under rule 60(B)(5), excusable neglect.
- 14) Due to this excusable neglect, and through no fault of Movant, Movant's reply to the government's opposition response, dated and tendered to case manager Bullock on December 10, 2009, was not received by this Honorable court.

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2. Movant attaches EXHIBIT B, RESPONSE TO HIS INMATE REQUEST TO STAFF, MR. HOLTERMAN. Mr. Holterman's reputation and character is above reproach. As Movant had no legal mail from this Honorable court, he was never aware his 2255 was terminated when he re-submitted his reply on May 10, 2010.
3. Movant begs this Honorable court to consider that, one, at the time of this re-submission, Movant was not aware of his case being terminated and two, at the time of the August 19, 2010 re-submission of his reply to the government's opposition response, he was UNTRAINED in and thus, IGNORANT of the law. Movant mistakenly thought he could seek relief by again re-submitting his reply brief. Movant was also concerned he had not received a response to the May 10, 2010 re-submission of his reply.

TRULINCS 40236424 - GARCIA, MICHAEL A - Unit: FTD-S-B

FROM: 40236424

TO:

SUBJECT: req_jud/2255_conclusion(pr)

DATE: 03/28/2012 08:16:30 PM

WHEREFORE, Movant prays this Honorable, for all the reasons stated above, accepts his application for relief under the rules of civil procedure, rule 60(b)(5), excusable neglect, vacates its judgment of May 11, 2010 and considers Movant's reply to the government's opposition response.

Respectfully submitted,

Michael Garcia 3/29/12

Michael A. Garcia
40236-424
bldg. 5852
FCI
p o box 2000
Fort Dix NJ 08640

TRULINCS 40236424 - GARCIA, MICHAEL A - Unit: FTD-S-B

FROM: 40236424
TO:
SUBJECT: COS_b
DATE: 03/28/2012 08:16:42 PM

CERTIFICATE OF SERVICE

I, Michael A. Garcia, hereby certifies that the original request for judgment document has been placed in a certified, pre-paid postage envelope, certification number 7011 0470 0003 0271 1383 and logged in the FCI Fort Dix unit six unit TEAM legal mail log so that it may be deposited with the United States postal service so that it may be served upon the clerk of the court, addresses below, this 29th day of March, 2012. A courtesy copy of this document has been placed in a pre-paid postage envelope and deposited in Movant's unit mail box so that it may be served upon the United States Attorney's Office, address below, this 29th day of March, 2012.

CLERK OF THE COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, CHICAGO
219 SOUTH DEARBORN
CHICAGO IL 60604

UNITED STATES ATTORNEY'S OFFICE
DANIEL MAY, AUSA
219 SOUTH DEARBORN
CHICAGO IL 60604

Michael Garcia 3/29/12
Michael A. Garcia
40236-424
bldg. 5852
FCI
p o box 2000
Fort Dix NJ 08640

FCI

p. o. box 2000

Fort Dix NJ 08640

70
Aiken
Post Box

U.S. Postal Service
1314
1314

Hon James Zagel
United States Courthouse
219 S. Dearborn St
Chgo IL 60604

EXHIBIT A

USA FIRST-CLASS



TO: (Name and Title of Staff Member) <i>Mr. Halterman, Counselor</i>	DATE: <i>March 19, 2012</i>
FROM: <i>Michael Garcia</i>	REGISTER NO.: <i>40236-424</i>
WORK ASSIGNMENT: <i>FS/40</i>	UNIT: <i>5852</i>

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I need a copy of the incoming legal mail log for the months of May, June, July and August, 2010. Or, in the alternative, a statement from unit six that states I did not receive legal mail from the United States District Court, Northern District of Illinois, Eastern Division, Chicago, during the months enumerated above, please.

Michael Garcia

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
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Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94




EXHIBIT B1

Garcia, Michael
Reg. No. #40236-424
Inmate Request to Staff

This is in response to your Inmate Request to Staff.

In response to your inmate request to staff, you did not receive legal mail from the United States District Court, Northern District of Illinois, Eastern Division, Chicago during the months of May, June, July, and August of 2010. Incoming mail which has been classified as special/legal mail will be recorded into a log book and signed for by the inmate upon delivery. In the absence of either adequate identification or the "special mail" marking appearing on the envelope, staff may treat the mail as general correspondence and it will be delivered to the inmate during mail call.

March 27, 2012

Fos


J.Sanchez / Correctional Counselor

EXHIBIT B2