UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR TRABELSI,
Petitioner-Plaintiff,

v.

JEFFREY CRAWFORD, in his official capacity as Warden of the Farmville Detention Center, et al.,

Respondents-Defendants.

Case No. 1:24-cv-01509 (RDA/LRV)

FEDERAL RESPONDENTS' MEMORANDUM OF LAW OPPOSING PETITIONER–PLAINTIFF'S MOTION TO VACATE

INTRODUCTION

Petitioner-Plaintiff Nizar Trabelsi trips at the starting block in his attempt to vacate this Court's order denying habeas relief, because he fails to even mention the elements essential to securing the relief he requested. That is, a party filing a motion to vacate pursuant to Fed. R. Civ. P. 60(b)(6) must "demonstrate a lack of prejudice to the nonmoving party, . . . proffer a meritorious defense," and show "extraordinary circumstances." *Chavez-Deremer v. Medical Staffing of America, LLC*, 147 F.4th 371, 416 (4th Cir. 2025). Mr. Trabelsi's motion did not. ECF No. 57-1. His silence about extraordinary circumstances in particularly noteworthy, because "[r]elief under Rule 60(b)(6) *requires* extraordinary circumstances." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 210 (2025) (emphasis added). That significant omission alone requires this Court to deny the motion.

Mr. Trabelsi's motion has even more flaws that require denial. First, even if he had addressed extraordinary circumstances, it is highly unlikely that he could have succeeded. For Rule 60(b)(6) motions, "such circumstances will rarely occur in the habeas context," such as the habeas

denial that Petitioner-Plaintiff seeks to vacate here. *Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005). Second and equally important, his current predicament stems from strategic decisions he made with his lawyers to bring claims under a hybrid pleading that combined his habeas petition with civil claims, and to refrain from appealing either this Court's habeas denial (ECF No. 50) or this Court's later dismissal of the remaining counts (a dismissal that Mr. Trabelsi actually requested) (ECF No. 61, at 1). A plaintiff's "strategic decisions made during the course of litigation—even if later second-guessed—will not justify relief under Rule 60(b)(6)." *Chavez-Deremer*, 147 F.4th at 416 (cleaned up).

Given that precedent defines extraordinary circumstances as a party's lost ability to appeal, it would be especially difficult for Mr. Trabelsi to meet that threshold where he has already made a strategic decision *not* to appeal. *See Ackermann v. United States*, 340 U.S. 193, 202 (1950) ("Neither the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within *Klapprott* or Rule 60(b)(6)") (distinguishing *Klapprott v. United States*, 335 U.S. 601 (1949), that found extraordinary circumstance excused failure to appeal). Even the "customary practice" Mr. Trabelsi describes in his motion is properly understood "to 'reverse or vacate' a judgment of a subordinate court that had become 'moot *while on its way* [*to the Court of Appeals*] *or pending* [*the Court of Appeals'*] *decision on the merits*.'" *Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 120 (4th Cir. 2000) (quoting *United States v. Munsingwear*, 340 U.S. 36, 39 (1950)) (cleaned up and emphasis added). More generally, the precedent that Mr. Trabelsi seeks to ground his motion in—*Munsingwear*, and its progeny—barely discusses Rule 60(b), and in any case supports the government's position rather than Mr. Trabelsi's.

It is not even clear what relief Mr. Trabelsi seeks in vacating the Court's order dismissing his habeas petition. He affirmatively sought his removal to Belgium, and in effect conceded

removability and did not appeal his removal order to the Board of Immigration Appeals. *See* ECF No. 56, at 1; ECF No. 57, at 3. As he is no longer confined, he is simply not subject to any consequence from either order for this Court to remedy through vacatur. Had Mr. Trabelsi wanted to challenge any possible collateral consequence of his removal order, he could have done so through an appeal to the Board of Immigration Appeals before his removal. *See* 8 C.F.R. § 1003.38. Such an administrative challenge is not available to him in habeas. *Jahed v. Acri*, 468 F.3d 230, 233 (4th Cir. 2006) ("The REAL ID Act eliminated access to habeas corpus for purposes of challenging a removal order.") (citing 8 U.S.C. § 1252(a)(5)). And a grant of his pending motion would not allow him to litigate anything now that he could not have litigated timely, even from Belgium. *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007) (a habeas petition may "continue to present a live controversy after the petitioner's release or deportation" if there is "some remaining 'collateral consequence' that may be redressed by success on the petition."). Vacating here, absent even a claim of a collateral consequence, would only upend settled law, an outcome courts avoid under Rule 60(b)(6). *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 205 (2025) ("This strict interpretation is essential to preserve the finality of judgments.").

Therefore, this Court must deny Petitioner-Plaintiff's motion to vacate.

RELEVANT BACKGROUND

Mr. Trabelsi, a native of Tunisia, was convicted in Belgium for "having attempted to destroy the military base of Kleine-Brogel with explosives, having committed forgery, and having been the instigator of a criminal association formed for the purpose of attacking people and property." ECF No. 50, at 2 (citation omitted). He subsequently was extradited to the United States, later was placed into removal proceedings from the United States, and he designated that he wanted to be removed to Belgium. *Id.* at 3, 4, 5. In July 2023, he was placed into mandatory custody. *Id.*

at 4, 17. While detained, Mr. Trabelsi, assisted by counsel, filed a single document to initiate this litigation, which he fashioned as a "Petition For Writ of Habeas Corpus & Complaint For Injunctive Relief" ECF No. 1, at 1. That filing in part sought release under the habeas statute, 28 U.S.C. § 2241. ECF No. 1, at 1, 4, 24. In the same document, he also sued for declaratory and injunctive relief allegedly related to the conditions of his confinement. ECF No. 1, at 24-25.

On December 2, 2024, this Court dismissed Mr. Trabelsi's habeas petition, specifically Counts 1-4, for lack of jurisdiction. ECF No 50, at 19. At that time, this Court did not dismiss Mr. Trabelsi's tort claims related to the conditions of his confinement, that is, Count 5 (concerning free speech) and Count 6 (concerning religious freedom). *See* ECF No. 50 at 19; ECF No. 61. Later, "[o]n August 19, 2025, Petitioner-Plaintiff filed a Notice stating that he has been removed to Belgium, and that his claims challenging his conditions of confinement are now moot." ECF No. 56, at 1; *see also* ECF No. 61, at 1. Accordingly, this Court dismissed the remaining portions of Mr. Trabelsi's litigation as moot (except for the pending motion to vacate). ECF No. 61, at 2. Plaintiff filed his motion to vacate on September 18, 2025. ECF No. 57.

ARGUMENT

A. Because Mr. Trabelsi failed to even address "extraordinary circumstances" and other elements required under Rule 60(b)(6), this Court must deny his motion.

Mr. Trabelsi's motion to vacate completely omits any discussion of multiple elements required to secure relief under Rule 60(b)(6). *See generally* ECF No. 57. The moving party must "demonstrate a lack of prejudice to the nonmoving party, . . . proffer a meritorious defense," and show "extraordinary circumstances." *Chavez-Deremer*, 147 F.4th at 416.[1] The omission of a

[1] Alternatively, the Fourth Circuit has phrased as threshold issues "(1) timeliness, (2) a meritorious defense, (3) a lack of unfair prejudice to the opposing party, and (4) exceptional circumstances," and then treated "extraordinary circumstances" as an additional requirement.

discussion about extraordinary circumstances is especially critical. "[O]nly truly extraordinary circumstances will permit a party successfully to invoke the 'any other reason' clause of § 60(b)." *Aikens v. Ingram*, 652 F.3d 496, 501 (4th Cir. 2011) (cleaned up and citation omitted). In other words, a "very strict interpretation of Rule 60(b) is *essential*" because, otherwise, "Rule 60(b)(6)['s] broad application would undermine numerous other rules that favor the finality of judgments." *Id.* (emphasis added); *see also BLOM Bank SAL*, 605 U.S. at 210 (making same point).

Further, Mr. Trabelsi cannot address these essential but omitted elements for the first time in his reply brief, because then Defendants could not rebut them. *See Hunt v. Nuth*, 57 F.3d 1327, 1338 (4th Cir. 1995) ("[C]ourts generally will not address new arguments raised in a reply brief because it would be unfair . . . ."). Indeed, when a party fails to satisfy a court that there is no extraordinary circumstance, it is appropriate to deny the 60(b)(6) motion, even in a habeas case. *Walker v. United States*, 2015 WL 13450316, at *3 (E.D. Va. May 4, 2015). Here, where Mr. Trabelsi has not endeavored to argue the required elements under Rule 60(b)(6), this Court must deny the motion.

B. The precedents that Mr. Trabelsi marshals illustrate the importance of extraordinary circumstances in Rule 60(b)(6) motions, and that phrase's association with a party's ability to appeal.

The cases that Mr. Trabelsi discusses do not exempt him from the critical extraordinary circumstances analysis. Rather, the legal authority he cites illustrates why he cannot demonstrate extraordinary circumstances here, where he has already decided not to pursue an appeal.

As an initial point, most of the cases that Mr. Trabelsi cites do not even mention Rule 60(b)(6). The key cases that he relies on are *United States v. Munsingwear, Inc.*, 340 U.S. 36

Justus v. Clarke, 78 F.4th 97, 105 (4th Cir. 2023). Under either construction, Mr. Trabelsi did not address these issues in his motion.

(1950); *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994); *Eden, LLC v. Justice*, 36 F.4th 166, 172 (4th Cir. 2022); *Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 327 (4th Cir. 2021); *Catawba Riverkeeper Found. v. N.C. Dep't of Transp.*, 843 F.3d 583 (4th Cir. 2016). Of these five cases, only one addresses Fed. R. Civ. P. 60. That one, *U.S. Bancorp*, contains only a passing mention of Rule 60. 513 U.S. at 29.

To be sure, the Fourth Circuit has recognized the importance of *U.S. Bancorp* to Rule 60(b)(6) analyses. "[W]e are convinced that *Bancorp*'s considerations of relative fault and public interest must also be largely determinative of a district court's decision whether to vacate its own judgment due to mootness under Rule 60(b), and specifically Rule 60(b)(6)." *Valero*, 211 F.3d at 118. But none of Mr. Trabelsi's precedent diminishes the importance of showing extraordinary circumstances to justify vacatur—meaning lost access to appeal and the potential to relitigate the same issues. *Id*. at 119-20; *see also Munsingwear*, 340 U.S. at 39-40.

Munsingwear, while not mentioning either Rule 60(b) or extraordinary circumstances, nonetheless addresses the threshold concern for vacating moot orders: "That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance." 340 U.S. at 40. But here, Mr. Trabelsi's actions make clear that he has *no* interest in appeal or relitigation, and the lack of an appeal of either of this Court's dismissal orders was not happenstance but his deliberate choice.[2]

Catawba, another precedent that Mr. Trabelsi relies on, also does not help him. According to that case, "[o]ur customary practice when a case is rendered moot on appeal is to vacate the moot aspects of the lower court's judgment." 843 F.3d at 589 (cleaned up); *see also* ECF No. 57,

[2] As a further indication that Mr. Trabelsi does not intend to relitigate, he has informed this Court that he is considering an end to this litigation through voluntary dismissal. ECF No. 56, at 1.

at 3. That quote itself demonstrates the importance to vacatur analysis of a pending or active appeal, which of course Mr. Trabelsi is not pursuing. Further, like in *Munsingwear*, *Catawba* goes on to discuss that vacating an order is important so that it can clear the way to relitigation. 843 F.3d at 589-90. But as the above discussion establishes, Mr. Trabelsi is not relitigating anything.

Another authority he cites is *Valero*, 211 F.3d at 112. *Valero* was fully aware of the importance of extraordinary circumstances to Rule 60(b)(6) motions. As the Fourth Circuit wrote in that decision: "the difference between Rule 60(b)(6) and Rules 60(b)(1)-(5) is that extraordinary circumstances are required to bring the Rule 60(b)(6) motion." *Valero*, 211 F.3d at 118 n.2. Mr. Trabelsi quotes part of a critical sentence in that case: "nothing in the text of the appellate and district court authorities of 28 U.S.C. § 2106 and Rule 60(b)(6) requires or suggests that different standards govern the vacatur decisions of the respective courts." *Id.*, *see also* ECF No. 57, at 3 n.2. So, given that extraordinary circumstances are required under Rule 60(b)(6), they are equally necessary to *Valero*'s analysis, even though Mr. Trabelsi declined to draw out this logic to its necessary endpoint by discussing extraordinary circumstances.

Further, *Valero* relies on the Supreme Court's decision in *Ackermann*, and its discussion of the requirement for extraordinary circumstances. The circuit court explained that in *Ackermann*, "the petitioner sought relief under Rule 60(b)(6) from a judgment of denaturalization, albeit not on grounds of mootness. The Court characterized such relief as 'extraordinary.'" *Valero*, 211 F.3d at 119 (quoting *Ackermann*, 340 U.S. at 200, 202). In *Ackermann*, a foreign national decided not to appeal a denaturalization judgment after receiving advice from an immigration official. 340 U.S. at 195-96. There, the Supreme Court ultimately affirmed the district court's denial of the Rule 60(b)(6) motion, for a lack of extraordinary circumstances: "Neither the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within *Klapprott* or

Rule 60(b)(6).” *Id.* at 202. By contrast, in *Klapprott* (which Mr. Trabelsi does not cite), the Supreme Court did find extraordinary circumstances, where a person was “in jail . . . , weakened from illness, without a lawyer” and had not “neglected to act in his own defense.” *Klapprott*, 335 U.S. at 614. Mr. Trabelsi—released to Belgium and represented by counsel in his legal strategy not to appeal or relitigate—like the person in *Ackermann*, does not meet the standard set in *Klapprott*.

In short, Mr. Trabelsi’s motion does not discuss or even acknowledge that the very cases he relies on establish the critical importance of extraordinary circumstances to mootness and Rule 60(b)(6) motions. And as discussed above, his motion does not address extraordinary circumstances anywhere.

C. Even if Mr. Trabelsi had addressed the required elements, this Court would still need to deny his Rule 60(b)(6) motion.

Mr. Trabelsi would have been hard pressed to show extraordinary circumstances in any event, for two reasons: his case concerns habeas, and his situation results from his own legal strategies and calculations.

1. It is extremely difficult for a party to demonstrate “extraordinary circumstances” in a habeas case.

Initially, extraordinary circumstances for Rule 60(b)(6) motions are especially difficult to establish. This Court’s December 2, 2024 order, which Mr. Trabelsi seeks to vacate, addressed only the habeas counts that he raised in this litigation. ECF No. 50, at 18. But for purposes of Rule 60(b)(6), extraordinary circumstances “will rarely occur in the habeas context.” *Gonzalez*, 545 U.S. at 534. For instance, a party abandoned by an attorney might be able to show extraordinary circumstances, if he is “inexcusably and grossly neglected by his counsel.” *Outlaw v. United States*, 2018 WL 717004, at *3 (E.D.N.C. Feb. 5, 2018) (cleaned up). Here, by contrast, Mr.

Trabelsi's lawyers have represented him since the start of this litigation, and they continue to do so now. *See Justus v. Clarke*, 78 F.4th 97 (2023) (holding extraordinary circumstances can exist due to "serious mental illness," which also has not been alleged here).

Here, in this habeas case, the threshold for extraordinary circumstances seems especially high, because Mr. Trabelsi actually received what his habeas litigation sought to secure: not only release from custody, but release to Belgium. ECF No. 1, at 24. While he failed to prevail on his habeas petition, he ultimately was removed to Belgium, the precise outcome he sought.

2. Mr. Trabelsi cannot use his own calculated legal strategies as the foundation for his Rule 60(b)(6) motion to vacate.

Mr. Trabelsi claims that the government created the mootness that he points to as the basis for his Rule 60(b)(6) motion. ECF No. 57, at 1, 5. But his removal did not create the current legal issue now before this court. Rather, Mr. Trabelsi's own legal strategies carved the path he now treads, and they also now place an unpassable obstacle in his way. As the Fourth Circuit has explained, "strategic decisions made during the course of litigation—even if later second-guessed—will not justify relief under Rule 60(b)(6)." *Chavez-Deremer*, 147 F.4th at 416 (cleaned up). That is especially true when a party specifically decides not to pursue an appeal and moves pursuant to Rule 60(b)(6) instead. Where there has been a "voluntary, deliberate, free, untrammeled choice of petitioner not to appeal," then "[n]either the circumstances of petitioner nor his excuse for not appealing is so extraordinary as to bring him within . . . Rule 60(b)(6)." *Ackermann*, 340 U.S. at 202. Therefore, "[t]o justify relief under subsection (6), a party must show extraordinary circumstances suggesting that the party is faultless in the delay." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 393 (1993) (cleaned up).

In stark contrast, Mr. Trabelsi is not faultless—he could have filed an appeal but did not. This Court's December 2, 2024 habeas order was made without prejudice, ECF 50, at 19, but the

Fourth Circuit permits appeals of such orders as final decisions. *See Bing v. Brivo Systems*, LLC, 959 F.3d 605 (4th Cir. 2020). Further, the Fourth Circuit permits interlocutory appeals, for instance, under the collateral order doctrine (*United States v. Lawrence*, 201 F.3d 536, 537 (4th Cir. 2000)) and the permissive appeal doctrine (*Richardson v. Thomas*, 718 F. App'x 192, 196 (4th Cir. 2018)). And the two civil counts the Court subsequently dismissed related to conditions of confinement do not properly sound in habeas and could not have led to his release. *See* ECF No. 50, at 18-19; ECF No. 61; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020) ("habeas is at its core a remedy for unlawful executive detention" and permits "simple release"); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 695 (E.D. Va. 2020) (Alston, J.). The issue is not whether Mr. Trabelsi would or would not have succeeded in any such appeal, but that he made a strategic decision to refrain from even trying.

Even if Mr. Trabelsi believed he could not appeal the habeas dismissal until the remaining issues were decided, he not only failed to appeal the second order, but invited that order with a notice of his intent to voluntarily dismiss his petition. ECF No. 56, at 1. Equally telling, Mr. Trabelsi did not appeal to the Board of Immigration Appeals the order that removed him from the United States to Belgium. 8 C.F.R. § 1003.38. That is clearly a legal strategy, and it is not one that involves either appeal or relitigation. *See Munsingwear*, 340 U.S. at 40. Put another way, as this Court has noted, the government Respondents-Defendants worked toward "removing Petitioner to Tunisia (his country of origin)." ECF No. 50, at 1 n.3. But Mr. Trabelsi then "institute[d] proceedings in this District in order to push the government to remove the obstacle it has presented to Petitioner's return to Belgium." *Id. That* was legal strategy.

On the issue of legal strategy, it is also critical to note that any appellate obstacle would be one of Mr. Trabelsi's own making, based on his pleading choices at the outset of this very litigation

in August 2024. Specifically, Mr. Trabelsi elected to proceed with a hybrid habeas petition and civil complaint. ECF No. 1 (titled "Petition For Writ of Habeas Corpus & Complaint For Injunctive Relief") (emphasis on ampersand added). That was a legally dubious pleading option to say the least.[3] He was under no obligation to plead his claims in this way.[4] He could have proceeded under those claims in separate pleadings thereby avoiding this issue altogether. That of course makes good sense—the two instruments are different and the rules governing the proceedings are different. *Malcom v. Starr*, 2021 WL 931213 (D. Minn. Mar. 11, 2021) (holding that petitioners-plaintiffs "cannot pursue a combined § 2241 petition and a civil complaint in this matter" and noting that "habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees" (citations omitted)); *Robinson v. Crawford*, 2022 WL 17340469, at *3 (E.D. Mich. Nov. 30, 2022) (similar). For example, the federal custodian in a habeas petition can be ordered to respond in as little as three days in response to a court order, but for a civil action, the federal government has sixty days to respond to a federal complaint after service of the complaint and issued summons. *Compare* 28 U.S.C. § 2243 (habeas), *with* Fed. R. Civ. P. 12(a)(2) (civil complaints).

Additionally, if Mr. Trabelsi had made separate filings for his habeas and tort claims, then there would be no doubt that this Court's December 2, 2024 order would have been a final order

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[3] *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) ("But we need not, in this case, explore the appropriate limits of habeas corpus as an alternative remedy to a proper action under § 1983.").

[4] Of course it is difficult to fathom how Mr. Trabelsi can shelter behind this fact when he has yet to even pay the statutorily required filing fee for his civil action. Though this case was initiated in August 2024, Mr. Trabelsi has yet to discharge his duty to pay this fee or seek reprieve from it. *See generally* Docket, *Trabelsi v. Crawford*, 1:24-cv-1509 (E.D. Va.); *see also* "Court Fees," U.S. Dist. Ct. for the E. Dist. of Va., https://www.vaed.uscourts.gov/court-fees (last accessed Dec. 12, 2025) (establishing that in accordance with 28 U.S.C. § 1914, the filing fee for civil complaints is $405.00).

on habeas. ECF No. 50. Mr. Trabelsi might have pursued an appeal from that denial as a final decision under 8 U.S.C. § 1291; *see Catlin v. United States*, 324 U.S. 229, 233 (1945) ("A final decision generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.") (cleaned up). According to 28 U.S.C. § 2107(b), a party has sixty days to appeal in a case where a United States employee is a party in an official capacity, which is the situation here. Those sixty days for the first order would have then expired on January 31, 2025. And mentioned above, Rule 60(b)(6) does not exist to allow a party to strategically vacate a judgment in lieu of an actual appeal. Thus, the procedural choice he made by submitting a hybrid filing is yet another reason why it is improper for Mr. Trabelsi to seek vacatur.

Because Mr. Trabelsi could have chosen to appeal or plead his claims in separate proceedings but did not, courts "will not justify relief under Rule 60(b)(6)." *Chavez-Deremer*, 147 F.4th at 416 (cleaned up).

D. Vacating this Court's December 4, 2024 decision is not in the public interest.

Finally, even if this Court were guided only by fault and public interest, as Mr. Trabelsi urges in his motion, he would still lose. *See Hirschfeld*, 14 F.4th at 327 ("[W]e are informed almost entirely, if not entirely, by the twin considerations of fault and public interest.") (cleaned up). As is discussed above, Mr. Trabelsi is at fault for his situation by failing to appeal when he could have and his pleading choices. Separately, the public interest also weighs against his motion to vacate. If he prevails, the December 4, 2024, decision will be uprooted, for no good reason—and definitely not for extraordinary circumstances. In contrast, the Supreme Court has emphasized the importance of the "philosophy favoring finality of judgments and the expeditious termination of litigation." *BLOM Bank SAL*, 605 U.S. at 213, quoting 6 Wright & Miller § 1489, at 816. This Court should do the same, and protect the finality of the December 4, 2024, decision.

CONCLUSION

For the reasons discussed above, this Court should deny Mr. Trabelsi's motion to vacate.

Dated: December 12, 2025

Respectfully submitted,

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