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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CRISTIAN CERVANTES,

Plaintiff - Appellant,

v.

JANET A. NAPOLITANO, Secretary,
States Department of Homeland Security
(CBP and Border Protection) and BILLY
WHITFORD, CBP Port Director at
Calexico,

Defendants - Appellees.

No. 14-55172

D.C. No. 3:12-cv-01045-JLS-JMA

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Argued and Submitted February 4, 2016
Pasadena, California

Before: REINHARDT, PAEZ, and M. SMITH, Circuit Judges.

Cristian Cervantes appeals the district court's order denying his application for relief under Federal Rule of Civil Procedure 60. We reverse and remand with

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

instructions.

1. The district court's denial was based in part on finding "a slight danger of prejudice" to defendants that "may result" from the delay attributable to Cervantes's neglect. This finding lacked "support in inferences that may be drawn from the record." *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258 (9th Cir. 2010). The defendants did not oppose Cervantes's application for relief, and at oral argument before this court counsel for defendants could not identify any actual prejudice arising from Cervantes's neglect. "[T]he mere possibility of prejudice from delay, which is inherent in every case, is insufficient to require denial of a 60(b)(1) motion." *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000) (quoting *Hibernia Nat'l Bank v. Administracion Cent. Sociedad Anonima*, 776 F.2d 1277, 1280 (5th Cir. 1985)).

2. In light of the lack of prejudice, the district court's finding of good faith, and the reasonably prompt filing of the Rule 60(b) application, a proper exercise of discretion required granting Cervantes's application for relief. On remand, the district court shall enter an order providing a reasonable period of time for Cervantes to file a Second Amended Complaint.

REVERSED AND REMANDED WITH INSTRUCTIONS.