

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**DAVID APPLEBY,**

**Petitioner,**

**v.**

**Civil Action No. 3:05cv87  
(Judge Bailey)**

**WARDEN, Northern Regional Jail  
and Correctional Facility,**

**Respondent.**

**ORDER GRANTING MOTION FOR LEAVE  
TO FILE RESPONSE OUT OF TIME**

For good cause shown, the respondent's Motion for Leave to File a response out-of-time (dckt. 29) is **GRANTED** to the extent that the response filed on May 10, 2007, is deemed timely. Consequently, the petitioner's motion for default judgment (dckt. 26) is **DENIED as MOOT**.

IT IS SO ORDERED.

The Clerk is directed to mail a copy of this Order to the *pro se* petitioner.

DATED: September 14, 2007.

*/s/ John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE