

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Jesus Rosario Favela-Astorga,

10 Petitioner,

11 v.

12 United States of America,

13 Respondent.  
14

No. CV-24-00140-TUC-JGZ

**ORDER**

15 Pending before the Court is Petitioner’s Motion for Leave (Motion) to file an out-  
16 of-time reply brief. (Doc. 8.) On March 11, 2024, Petitioner filed a Motion to Vacate, Set  
17 Aside, or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255  
18 (Petition). (Doc. 1.) On June 7, 2024, Senior District Judge David Bury<sup>1</sup> ordered the Clerk  
19 of Court to serve the Petition on the United States Attorney for the District of Arizona.  
20 (Doc. 3.) On August 2, 2024, the government filed a Response. (Doc. 4.) The Court did not  
21 receive a reply brief from Petitioner, and on October 4, 2024, the Court issued an order  
22 denying the Petition. (Doc. 6.) On October 7, 2024, the Court received Petitioner’s pending  
23 Motion. In the Motion, Petitioner asserts that he did not receive the government’s Response  
24 until September 17, 2024 and that the copy of the document he received was missing three  
25 pages, which prevented him from “an opportunity to reply to his § 2255 issues.” (Doc. 8 at  
26 1.) Petitioner requests a complete copy of the government’s Response and a 30-day  
27 extension to file his reply brief. (*Id.*) The Court will deny the Motion.

28 <sup>1</sup> On September 10, 2024, the Clerk of the Court reassigned CR 11-150 TUC DCB and CV  
24-140 TUC DCB to this Court.

1 Under 28 U.S.C. § 2255, no due process violation occurs where a movant is not  
2 afforded the opportunity to file a reply. *Sarsak v. United States*, 2011 WL 13327342 (C.D.  
3 Cal. Apr. 13, 2011); *see also United States v. Schmutzler*, 2017 WL 4648146 (M.D. Pa.  
4 Oct. 17, 2017) (“a multitude of courts . . . have held that a § 2255 movant has no absolute  
5 right to file a reply brief and that it is entirely within a court’s discretion to decide whether  
6 to permit a reply brief”) (collecting cases). Here, the record clearly supported the Court’s  
7 order denying Petitioner’s ineffective assistance of counsel claims on the merits, which the  
8 Court considered even though Petitioner knowingly waived his right to collaterally attack  
9 his sentence under § 2255. The Court finds that reopening the case to allow Petitioner to  
10 file a reply is neither required by law, nor in the interests of justice. Therefore, Petitioner’s  
11 Motion will be denied.

12 However, Petitioner may file a motion for reconsideration under Rules 59(e) and  
13 60(b) of the Federal Rules of Civil Procedure and in accordance with LRCiv 7.2(g). The  
14 Court provides the standards governing motions for reconsideration to assist Petitioner in  
15 deciding whether to file such a motion. Under LRCiv 7.2(g), the Court will ordinarily deny  
16 motions for reconsideration “absent a showing of manifest error or a showing of new facts  
17 or legal authority that could not have been brought to its attention earlier with reasonable  
18 diligence.” LRCiv 7.2(g). A motion for reconsideration must also “point out with  
19 specificity the matters that the movant believes were overlooked or misapprehended by the  
20 Court.” *Id.*

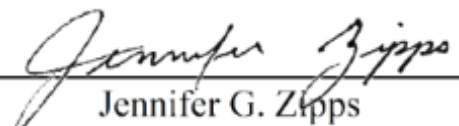
21 Under Rule 59 of the Federal Rules of Civil Procedure, a party may file a motion to  
22 alter or amend a judgment no later than 28 days after the entry of judgment. However,  
23 because 21 days have already passed since the entry of judgment, the Court will grant  
24 Petitioner 28 days from the date of this order in which to file a motion under Rule 59. Like  
25 the standard under LRCiv 7.2(g), reconsideration under Rule 59(e) is appropriate if the  
26 Court committed clear error or the initial decision was manifestly unjust, or if there is newly  
27 discovered evidence or an intervening change in controlling law. *Sch. Dist. No. 1J,*  
28 *Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

1 Under Rule 60(b) of the Federal Rules of Civil Procedure, a party may file a motion  
2 for relief from judgment within a reasonable time, but no more than a year if seeking relief  
3 under subsections (1), (2), and (3). Rule 60(b) provides six grounds for relief: (1) mistake,  
4 inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with  
5 reasonable diligence, could not have been discovered in time to move for a new trial under  
6 Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation,  
7 or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been  
8 satisfied, released, or discharged; it is based on an earlier judgment that has been reversed  
9 or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that  
10 justifies relief.

11 **IT IS ORDERED:**

- 12 1. Petitioner's Motion for Leave for Out-of-Time Reply (Doc. 8) is **denied**.
- 13 2. The Court's Order dated October 4, 2024, remains in effect.
- 14 3. The deadline to file a motion for reconsideration under Rule 59(e) is extended  
15 to November 22, 2024.

16 Dated this 25th day of October, 2024.

17  
18   
19 \_\_\_\_\_  
20 Jennifer G. Zipp  
21 Chief United States District Judge  
22  
23  
24  
25  
26  
27  
28