



1 applying it prospectively is no longer equitable; or

2 (6) any other reason that justifies relief.

3 Fed. R. Civ. P. 60(b). The rule further provides that “[a] motion under Rule 60(b) must be made  
4 within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of  
5 the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

6 Petitioner seeks relief under Rule 60(b)(1)-(3) and (6) from the order dismissing his  
7 petition on August 6, 2013 (ECF No. 27), and the order denying his motion for reconsideration on  
8 October 18, 2013 (ECF No. 36). ECF No. 44 at 1-2. He argues that because counsel for  
9 respondent perpetuated a fraud on the court, he is excused from the one-year time limit imposed  
10 by Rule 60(c)(1) or, alternatively, that his arguments should be considered under Rule 60(b)’s  
11 catchall provision. Id. at 6-21.

12 To the extent petitioner relies on subsections 1 through 3 of Rule 60(b), his motion is  
13 clearly untimely as it exceeds the one-year time limit by over six years, and his claim of fraud on  
14 the court is unavailing. While fraud on the court is not subject to the one-year limitation set out  
15 in Rule 60(c)(1), Fed. R. Civ. P. 60(d)(3), “relief from judgment for fraud on the court is  
16 ‘available only to prevent a grave miscarriage of justice.’” United States v. Sierra Pac. Indus.,  
17 Inc., 862 F.3d 1157, 1167 (9th Cir. 2017) (quoting United States v. Beggerly, 524 U.S. 38, 47  
18 (1998)). Furthermore, “relief for fraud on the court is available only where the fraud was not  
19 known at the time of settlement or entry of judgment.” Id. at 1168 (citations omitted).

20 Petitioner’s claim of fraud is premised on his allegation that respondent’s counsel  
21 misrepresented petitioner’s arguments in his motion for reconsideration. ECF No. 44 at 10-13.  
22 However, this is the same argument petitioner made in his reply in support of his motion for  
23 reconsideration. ECF No. 35. Not only are the allegations insufficient to establish fraud on the  
24 court, but there is no miscarriage of justice since the allegations have already been considered and  
25 were clearly known at the time of entry of judgment.

26 Petitioner also argues, in the alternative, that he should be granted relief under Rule  
27 60(b)(6). ECF No. 44 at 14-21.

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1 A party seeking relief under Rule 60(b)(6) must satisfy three  
2 requirements. The motion cannot be premised on another ground  
3 delineated in the Rule, See Liljeberg v. Health Serv. Acquisition  
4 Corp., 486 U.S. 847, 863 & n.11, 108 S. Ct. 2194, 100 L. Ed.2d 855  
5 (1988); it must be filed “within a reasonable time,” see Fed. R. Civ.  
6 P. 60(c)(1); and it must demonstrate “extraordinary circumstances”  
7 justifying reopening the judgment, See Pioneer Inv. Servs. Co. v.  
8 Brunswick Assoc. Ltd. P’ship, 507 U.S. 380, 393, 113 S. Ct. 1489,  
9 123 L. Ed.2d 74 (1993). Extraordinary circumstances occur where  
10 there are “other compelling reasons” for opening the judgment.  
11 Klapprott v. United States, 335 U.S. 601, 613, 69 S. Ct. 384, 93 L.  
12 Ed. 266 (1949).

13 Bynoe v. Baca, 966 F.3d 972, 979 (9th Cir. 2020).

14 Petitioner argues in essence that the denial of his motion for reconsideration, which  
15 contended that the delay in filing his state petition was caused by his inability to obtain mailing  
16 supplies, constitutes an extraordinary circumstance because it prevented him from accessing the  
17 courts. ECF No. 44 at 16-17. He also argues that the court erred in dismissing his petition as  
18 untimely, which also entitles him to relief. Id. at 17-21. These arguments are little more than a  
19 request that the court reconsider its previous decision. Petitioner was clearly aware of these  
20 circumstances in 2013, when his petition was dismissed and his motion for reconsideration was  
21 denied, and he therefore fails to demonstrate that the instant motion, brought over seven years  
22 after those decisions, was brought “within a reasonable time.”

23 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for relief from  
24 judgement (ECF No. 44) be denied.

25 These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
27 after being served with these findings and recommendations, any party may file written  
28 objections with the court and serve a copy on all parties. Such a document should be captioned  
“Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
objections shall be filed and served within fourteen days after service of the objections. The

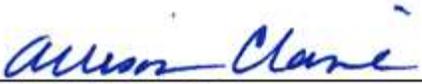
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1 parties are advised that failure to file objections within the specified time may waive the right to  
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: January 6, 2021

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5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE  
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