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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE MIGUEL AVALOS,)	No. C 08-0949 WHA (PR)
)	
Petitioner,)	ORDER GRANTING MOTION FOR
)	EXTENSION OF TIME; INSTRUCTIONS
v.)	TO CLERK
)	
BEN CURRY,)	
)	
Respondent.)	
)	(Docket No. 35)
_____)	

Petitioner Jose Miguel Avalos, a California prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus challenging his conviction pursuant to 28 U.S.C. 2254. The petition and a certificate of appealability (“COA”) were denied, and judgment was entered, on December 1, 2011. On January 27, 2012, petitioner filed a motion requesting the United States Court of Appeals for the Ninth Circuit for an extension of time in which to seek a COA from that court. On April 5, 2012, petitioner filed a motion for a COA from the Court of Appeals. Because he filed that motion in this court, the motion was construed as a notice of appeal, and the clerk processed the appeal. The Court of Appeals has construed the January 27, 2012, motion as a timely motion for an extension of time to file an appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5), and noted that the district court never decided that motion. The Court of Appeals remanded the case to this court for the limited purpose of ruling on the motion.

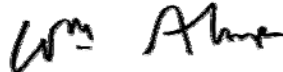
The January 27, 2012, motion was not decided by this court because the caption and body of the motion indicated that the motion was directed to the Court of Appeals. Specifically, petitioner sought an extension of time from the Court of Appeals in which to file a motion for a

1 COA from the Court of Appeals, the district court having already denied a COA. Pursuant to the
2 order of the Court of Appeals construing the motion as seeking an extension of time to file a
3 notice of appeal from the district court, the motion (dkt. 35) is **GRANTED** in light of plaintiff's
4 allegations of limited access to the law library and limited English.

5 A copy of this order shall be sent to the Court of Appeals.

6 **IT IS SO ORDERED.**

7 DATED: November 19, 2012.

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9 _____
10 WILLIAM ALSUP
11 UNITED STATES DISTRICT JUDGE

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