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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MATTHEW AARON BROWN,
Petitioner,
v.
PARAMO,
Respondent.

Case No. [17-cv-03948-JD](#)

**ORDER DENYING MOTION TO
ALTER OR AMEND THE
JUDGMENT**

Re: Dkt. No. 21

Petitioner, a state prisoner, filed a pro se habeas petition pursuant to 28 U.S.C. § 2254 that was denied on the merits. Petitioner has filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e).

A motion to alter or amend judgment under Rule 59 must be made no later than twenty-eight days after entry of judgment. *See* Fed. R. Civ. P. 59(e). A Rule 59(e) motion “should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the law.” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (citation omitted) (en banc).


Evidence is not newly discovered for purposes of a Rule 59(e) motion if it was available prior to the district court’s ruling. *See Ybarra v. McDaniel*, 656 F.3d 984, 998 (9th Cir. 2011) (affirming district court’s denial of habeas petitioner’s motion for reconsideration where petitioner’s evidence of exhaustion was not “newly discovered” because petitioner was aware of such evidence almost one year prior to the district court’s denial of the petition).

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Assuming that this motion is timely, petitioner is not entitled to relief. Petitioner seeks to amend the judgment to bring an entirely new claim in this habeas petition that was already denied on the merits. Petitioner states he only recently became aware of the factual predicate of the new claim, but he provides no specific information to warrant reopening this case and has not shown that any evidence is newly discovered. His arguments that he has shown cause and prejudice for procedural default and he is entitled to equitable tolling do not affect this motion to alter or amend. To the extent he seeks to bring a successive petition he must first obtain permission from the Ninth Circuit. The motion to alter or amend the judgment (Docket No. 21) is **DENIED**.

IT IS SO ORDERED.

Dated: November 2, 2018



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 MATTHEW AARON BROWN,
4 Plaintiff,
5 v.
6 PARAMO,
7 Defendant.
8

Case No. [17-cv-03948-JD](#)

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on November 2, 2018, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Matthew Aaron Brown ID: AW-1636
18 R.J. Donovan Correctional Facility D-19-127
19 480 Alta Rd.
20 San Diego, CA 92179

21 Dated: November 2, 2018

22
23 Susan Y. Soong
24 Clerk, United States District Court

25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28