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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAIME TAPIA PEREA,	)	Civil No. 10cv1565-RBB
	)	
Petitioner,	)	<b>ORDER GRANTING PETITIONER'S</b>
	)	<b>MOTION FOR EXTENSION OF TIME</b>
v.	)	<b>UNDER FED. R. APP. P.</b>
	)	<b>4(a)(5)[ECF NOS. 46, 53]</b>
	)	
RAY LOERA, Sheriff,	)	
	)	
Respondent.	)	
_____	)	

Petitioner Jaime Perea, proceeding pro se, filed a Petition for Writ of Habeas Corpus challenging his state court conviction on July 23, 2010 [ECF No. 1]. A Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 alleging claims based on actual innocence, prosecutorial misconduct, an involuntary plea, and equal protection was filed nunc pro tunc to December 7, 2010 [ECF No. 9]. On May 17, 2012, after concluding that Petitioner is not entitled to relief under 28 U.S.C. § 2254 on any of his claims, the Court denied Perea's Second Amended Petition, and declined to issue a certificate of appealability [ECF No. 40]. On

1 the same day, the Clerk of Court entered judgment in this case and  
2 closed the case file [ECF No. 41].

3 While the case was closed, Petitioner submitted a Motion for  
4 Extension of Time,<sup>1</sup> which was filed nunc pro tunc to June 12, 2012  
5 [ECF No. 46]. In his Motion, Perea sought a thirty-day extension  
6 of time to file (1) a motion for reconsideration of the Court's  
7 ruling and (2) a request for a certificate of appealability.  
8 (Mot. Extension Time 3, ECF No. 46.) He urged the same grounds in  
9 support of both requests. (Id. at 4.) On June 21, 2012, the  
10 Court granted Petitioner a thirty-day extension of time to file a  
11 motion for reconsideration but did not explicitly address an  
12 extension of time to request a certificate of appealability.  
13 (Order Granting Pet'r's Mot. Extension Time 3, ECF No. 47.)

14 On August 27, 2012, Perea filed a Motion to Reconsider and/or  
15 (COA) Certificate of Appeal, which was docketed as a Notice of  
16 Appeal [ECF No. 49]. On July 10, 2013, the Ninth Circuit remanded  
17 the case "for the limited purpose of allowing that court to rule  
18 on appellant's motion under Federal Rule of Appellate Procedure  
19 4(a)(5)." (Order 2, ECF No. 53.) Rule 4(a)(5) of the Federal  
20 Rules of Appellate Procedure provides that "[t]he district court  
21 may extend the time to file a notice of appeal if: (i) a party so  
22 moves no later than 30 days after the time prescribed by this Rule  
23 4(a) expires; and (ii) . . . that party shows excusable neglect or  
24 good cause." Fed. R. App. P. 4(a)(5). The Ninth Circuit has  
25 indicated that the motion to extend is timely. (Order 2, ECF No.  
26 53.) Consequently, this Court need only determine whether

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27  
28 <sup>1</sup> Because Perea's Motion for Extension is not consecutively  
paginated, the Court will cite to it using the page numbers assigned  
by the electronic filing system.

1 excusable neglect or good cause to grant an extension of time has  
2 been established.

3 The grounds Perea urged in support of an extension of time to  
4 file a motion for reconsideration also support an extension of  
5 time to file a request for a certificate of appealability. (Mot.  
6 Extension Time 4, ECF No. 46.) The Court previously concluded  
7 that Perea had established good cause for granting an extension of  
8 time to file a motion for reconsideration. The same grounds  
9 establish good cause to grant Perea a thirty-day extension of time  
10 to file a notice of appeal. Accordingly, the Motion is **GRANTED**  
11 [ECF Nos. 46, 53].

12 **IT IS SO ORDERED.**

13  
14 DATE: July 10, 2013

  
RUBEN B. BROOKS  
United States Magistrate Judge

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16 cc:  
17 All Parties of Record  
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