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5 **UNITED STATES DISTRICT COURT**  
6 **SOUTHERN DISTRICT OF CALIFORNIA**

7 ROBERT CHAVIRA,

8 Petitioner,

9 v.

10 DEBBIE ASUNCION and  
11 KAMALA D. HARRIS,

12 Respondents.

Case No.: 15-cv-1997-WQH-BGS

**ORDER**

13 HAYES, Judge:

14 The matters before the Court are Petitioner Robert Chavira’s Motion for Relief from  
15 Final Judgment (ECF No. 30) and the Order of the Court of Appeals remanding this case  
16 to this Court to determine whether the Motion for Relief from Final Judgment includes a  
17 motion to extend the time to appeal (ECF No. 35).

18 **I. Background**

19 On September 8, 2015, Petitioner Robert Chavira filed a Petition for a Writ of  
20 Habeas Corpus pursuant to 28 U.S.C. § 2254 naming J. Soto<sup>1</sup> and Kamala Harris as  
21 Respondents (ECF No. 1). On February 12, 2018, this Court entered an Order denying  
22 Chavira’s Petition. (ECF No. 22).

23 On April 2, 2018, Chavira filed a Motion for Relief from Final Judgment under  
24 Federal Rule of Civil Procedure (“Rule”) 60(b) (ECF No. 30). On April 20, 2018,  
25 Asuncion filed a Response to the Motion for Relief from Final Judgment. (ECF No. 33).  
26 On May 7, 2018, Chavira filed a Reply to Asuncion’s Response. (ECF No. 34).

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28 <sup>1</sup> Debbie Asuncion has been substituted for J. Soto under Federal Rule of Civil Procedure 25(d).

1 On March 23, 2018, Chavira filed a Notice of Appeal (ECF No. 24). On June 26,  
2 2018, the Court of Appeals issued an Order stating

3 [T]he notice of appeal, served on March 19, 2018 and filed on March 23, 2018,  
4 was not filed or delivered to prison officials within 30 days after the district  
5 court’s judgment entered on February 12, 2018. *See* 28 U.S.C. § 2107(a);  
6 *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of  
7 timely notice of appeal is jurisdictional).

8 A review of the district court docket reflects that, on April 2, 2018,  
9 appellant filed a motion for relief from final judgment in the district court, and  
10 that motion remains pending. This appeal is therefore remanded to the district  
11 court for the limited purpose of allowing that court to determine whether  
12 appellant’s April 2, 2018 motion includes a motion to extend the time to  
13 appeal pursuant to Federal Rule of Appellate Procedure 4(a)(5), and if so, to  
14 rule on that motion.

15 (ECF No. 35 at 1–2).

## 16 **II. Remand from the Court of Appeals**

17 After reviewing Chavira’s Motion for Relief from Final Judgment, the Court  
18 concludes that the Motion for Relief from Final Judgment does not include any language  
19 that could be reasonably construed as a motion to extend the time to appeal pursuant to  
20 Federal Rule of Appellate Procedure 4(a)(5).

## 21 **III. Motion for Relief from Final Judgment**

22 Chavira’s Motion for Relief from Final Judgment asks the Court to annul his state  
23 court conviction and sentence on the grounds that the state court decision granting the  
24 prosecution’s motion to consolidate the charges against Chavira violated Chavira’s rights  
25 under the Fourteenth Amendment to the United States Constitution. (ECF No. 30 at 24–  
26 33). Asuncion contends that Rule 60(b) is not the appropriate mechanism for raising such  
27 a claim. (ECF No. 33 at 4). Chavira contends that he is able to seek his requested relief  
28 under Rule 60(b). (ECF No. 34 at 4).

When a petitioner brings a motion under Rule 60(b) that “assert[s a] federal basis  
for relief from a state court’s judgment of conviction . . . such a pleading, although labeled  
a Rule 60(b) motion, is in substance a successive habeas petition and should be treated  
accordingly.” *Gonzalez v. Crosby*, 545 U.S. 524, 530–31 (2005). Chavira’s Motion for

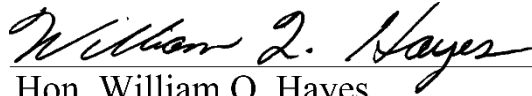
1 Relief from Final Judgment seeks relief from a state court judgment based on alleged  
2 violations of Chavira's rights under the United States Constitution. (ECF No. 30 at 24–  
3 33). Consequently, the Court will treat Chavira's Motion for Relief from Final Judgment  
4 as a successive habeas petition. *Gonzalez*, 545 U.S. at 530–31.

5 If a petitioner's Rule 60(b) motion is the equivalent of a successive petition, this  
6 Court lacks jurisdiction to consider the motion absent a certificate from the Ninth Circuit  
7 authorizing the filing of the petition. *United States v. Washington*, 653 F.3d 1057, 1065  
8 (9th Cir. 2011); 28 U.S.C. § 2244(b)(3). The record reflects that the Ninth Circuit has not  
9 issued a certificate authorizing Chavira to file a successive petition raising his argument  
10 that the state court decision consolidating the charges against him violated his Fourteenth  
11 Amendment rights. Consequently, this Court lacks jurisdiction to consider the arguments  
12 made in Chavira's Motion for Relief from Final Judgment. *See id.*

13 **IV. Conclusion**

14 Chavira's Motion for Relief from Final Judgment is DENIED. The Clerk of Court  
15 is directed to serve a copy of this Order on the Clerk for the United States Court of Appeals  
16 for the Ninth Circuit.

17 Dated: July 11, 2018

  
18 Hon. William Q. Hayes  
19 United States District Court  
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