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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 RAUL ARELLANO,

Petitioner,

12
13 v.

14 DANIEL PARAMO,

Respondent.

Case No.: 17-cv-0354-WQH-MDD

ORDER

15
16 HAYES, Judge:

17 On February 21, 2017, Petitioner Raul Arellano, a state prisoner proceeding *pro se*,
18 filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF. No. 1). On
19 October 26, 2018, this Court entered an Amended Judgment in this matter, granting the
20 Motion to Dismiss the First Amended Petition and certifying for appeal grounds one and
21 two. (ECF No. 84). Petitioner appealed, and the Ninth Circuit Court of Appeals dismissed
22 Petitioner's appeal for untimely filing and lack of jurisdiction on June 27, 2019. (ECF No.
23 98). On March 18, 2021, Petitioner filed a 60(b) Motion. (ECF No. 189). On April 26,
24 2021, this Court issued a minute entry denying Petitioner's 60(b) Motion. (ECF No. 191).

25 On October 29, 2021, Petitioner filed a Notice of Appeal as to this Court's April 26,
26 2021 minute entry denying Petitioner's 60(b) Motion. (ECF No. 201). On November 2,
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1 2021, the Clerk's Office of the United States Court of Appeals for the Ninth Circuit issued
2 a letter that stated:

3 Dear Appellant

4 The Clerk's Office of the United States Court of Appeals for the Ninth
5 Circuit has received a copy of your notice of appeal and/or request for a
6 certificate of appealability.

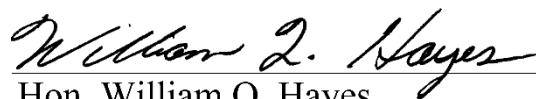
7 A briefing schedule will not be set until the district court and, if
8 necessary, this court determine whether a certificate of appealability should
9 issue.

10 (ECF No. 202 at 1 (emphasis omitted)).

11 Rule 11 of the Rules Following 28 U.S.C. § 2254 requires district courts to “issue or
12 deny a certificate of appealability when it enters a final order adverse to the applicant.”
13 Rule 11, 28 U.S.C. foll. § 2254. A certificate of appealability will issue when the petitioner
14 makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253;
15 *Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005). A “substantial showing” requires a
16 demonstration that “reasonable jurists would find the district court’s assessment of the
17 constitutional claims debatable or wrong.” *Beatty v. Stewart*, 303 F.3d 975, 984 (9th Cir.
18 2002) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

19 This Court concludes that Petitioner has not made the required showing. Petitioner
20 has failed to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C.
21 § 2253; *Pham*, 400 F.3d at 742. Petitioner has not presented sufficient evidence to support
22 a claim that “mistake, inadvertence, surprise, or excusable neglect” occurred in this case or
23 “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). The Certificate of
24 Appealability as to ECF No. 191 is denied.

25 Dated: November 4, 2021

26 

27 Hon. William Q. Hayes
28 United States District Court