

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 STEVEN WALKER,

12 Plaintiff,

13 v.

14 ROB BONTA, in his official capacity as
15 Attorney General of the State of
16 California; MERRICK B. GARLAND, in
17 his official capacity as Attorney General
18 of the United States of America; and
19 DOES 1-100,

20 Defendants.

Case No.: 20-cv-00031-DMS-AGS

**ORDER DENYING PLAINTIFF'S
MOTION TO VACATE JUDGMENT**

21
22 Pending before the Court is Plaintiff's Motion to Vacate Judgment pursuant to
23 Federal Rule of Civil Procedure 60(b). (ECF No. 26.) Plaintiff argues that the Court's
24 previous orders dismissing Plaintiff's Complaint for failing to state a claim (ECF No. 16)
25 and affirming dismissal of the complaint (ECF No. 25) are void because (a) the Court
26 "lacked jurisdiction" to issue those orders, and (b) the Court erroneously relied on a
27 previously vacated order in issuing the subsequent orders filed at ECF Nos. 16 and 25. For
28 the reasons explained below, the Court **DENIES** Plaintiff's motion.

I. BACKGROUND

On January 6, 2020, Plaintiff filed a Complaint alleging that certain federal and state firearm regulations, which prohibit Plaintiff from possessing firearms due to his status as a convicted felon, violate the Second Amendment. (Compl. at ¶ 1, ECF No. 1.) On April 24, 2020, this Court sua sponte dismissed the complaint for failure to state a claim. (Order, ECF No. 3.) Plaintiff appealed the dismissal to the Ninth Circuit, which affirmed dismissal. *Walker v. United States*, 848 F. App'x 744 (9th Cir. 2021) (ECF No. 13). On October 17, 2022, Plaintiff moved to reopen the case (Req. to Reopen Case, ECF No. 14) and filed an amended complaint (ECF No. 15) following the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). The Court granted the motion to reopen, granted leave to file an amended complaint, and sua sponte dismissed the claim again pursuant to 28 U.S.C. § 1915(a). (Order, Oct. 28, 2022, ECF No. 16.)

On November 22, 2022, Plaintiff then filed a motion requesting (a) that the undersigned judge be recused from the case, (b) that the Court "vacate" its Order dated October 28, 2022, and (c) that the Court grant Plaintiff leave to file an amended complaint naming the undersigned judge and others as defendants. (Pl.'s Mot. to Vacate, ECF No. 17.) The Court interpreted Plaintiff's motion to vacate as a Rule 59(e) motion,¹ and denied the motion. (Order, Apr. 6, 2023, ECF No. 25.) On April 28, 2023, Plaintiff timely filed the instant Rule 60(b) motion. (Pl.'s Mot. to Vacate (hereinafter, "Pl.'s Mot."), ECF No.

¹ Plaintiff argues that the Court "purposefully misconstrued" his first motion to vacate (ECF No. 17) as a motion to alter or amend under Federal Rule of Civil Procedure 59(e) rather than a motion for relief from judgment under Rule 60(b). (Pl.'s Mot. at 2 n.1, ECF No. 26.) Generally, a motion to modify or reconsider an earlier order, including a motion stylized as a "motion to vacate," "is construed under Rule 59(e) if it is filed within 28 days of entry of judgment; otherwise, it is considered under Rule 60(b) as a motion for relief from a judgment or order." *Nguon v. Glynn*, No. 21CV2113-CAB (JLB), 2022 WL 17652837, at *1 (S.D. Cal. Dec. 13, 2022) (construing "motion to vacate" under Rule 60(b) because it was brought more than 28 days after the challenged order was entered). The Court accordingly construed Plaintiff's Motion to Vacate (ECF No. 18) under Rule 59(e) because it was filed on November 22, 2022, within 28 days of the Order dated October 28, 2022. The Court did not "intentionally mislabel[]" Plaintiff's motion. (Pl.'s Mot. at 2 n.1.) Further, it is not clear that the Rule 60(b) standard meaningfully differs from the Rule 59(e) standard in this context.

1 26.) On June 9, 2023, Plaintiff filed a notice of appeal to the Ninth Circuit. (ECF No. 27.)
2 On July 31, 2023, the Ninth Circuit ordered that appellate proceedings be held in abeyance
3 until this Court resolved Plaintiff’s Rule 60(b) motion. (ECF No. 30.) On September 1,
4 2023, Plaintiff filed a request for the court to expedite its decision. (ECF No. 31.)

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 60(b) empowers a district court to set aside a
7 judgment for any of the following reasons: (1) “mistake, inadvertence, surprise or
8 excusable neglect”; (2) “newly discovered evidence that, with reasonable diligence, could
9 not have been discovered in time to move for a new trial under Rule 59(b)”; (3) “fraud . . .
10 , misrepresentation, or misconduct by an opposing party”; (4) “the judgment is void”; (5)
11 “the judgment has been satisfied released or discharged; it is based on an earlier judgment
12 that has been reversed or vacated; or applying it prospectively is no longer equitable”; or
13 (6) “any other reason that justifies relief.” Fed. R. Civ. P. 60(b). “Rule 60 reconsideration
14 is generally appropriate in three instances:” (1) “when there has been an intervening change
15 of controlling law,” (2) “new evidence has come to light,” or (3) “when necessary to correct
16 a clear error or prevent manifest injustice.” *Nguon v. Glynn*, No. 21CV2113-CAB (JLB),
17 2022 WL 17652837, at *1 (S.D. Cal. Dec. 13, 2022) (quoting *United States v. Westlands*
18 *Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2001)).

19 **III. DISCUSSION**

20 Plaintiff argues that this Court should vacate its Orders dated October 28, 2022 (ECF
21 No. 16) and April 6, 2023 (ECF No. 25) (hereinafter, “the Orders”) because they are “void,”
22 Fed. R. Civ. P. 60(b)(4), and “based on an earlier judgment that has been reversed or
23 vacated,” Fed. R. Civ. P. 60(b)(5). The Court disagrees for the reasons explained below.

24 **A. Rule 60(b)(4)—Voidness**

25 A judgment is void “only . . . where there is a ‘total want of jurisdiction’ as opposed
26 to an ‘error in the exercise of jurisdiction.’” *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606,
27 612 (9th Cir. 2016) (quoting *Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985)). A total
28 want of jurisdiction exists when the court issuing the judgment lacked jurisdiction over the

1 general subject matter, *Watts*, 752 F.2d at 409, lacked personal jurisdiction over the parties,
2 *Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d
3 1247, 1255–56 (9th Cir. 1980), or “acted in a manner inconsistent with due process of law,”
4 *In re Ctr. Wholesale, Inc.*, 759 F.2d 1440, 1448 (9th Cir. 1985).

5 Plaintiff raises no valid ground for challenging the validity of the Orders. First, it is
6 uncontested that the Court had subject matter jurisdiction over Plaintiff’s Second
7 Amendment claim. The basic statutory grants of subject-matter jurisdiction are contained
8 in 28 U.S.C. §§ 1331 and 1332. Section 1331 provides for federal-question jurisdiction
9 and section 1332 provides for diversity of citizenship jurisdiction. “A plaintiff properly
10 invokes § 1331 jurisdiction when she pleads a colorable claim ‘arising under’ the
11 Constitution or laws of the United States.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 513
12 (2006). Plaintiff’s Second Amendment challenge raised a federal question arising under
13 the Constitution of the United States. Plaintiff also cannot challenge personal jurisdiction
14 as the plaintiff who initiated this suit. *See Viron Int’l Corp. v. David Boland, Inc.*, 237 F.
15 Supp. 2d 812, 818 (W.D. Mich. 2002) (“A court may lack personal jurisdiction over a
16 defendant, but never over a plaintiff, who consents to such jurisdiction by filing suit.”).

17 Plaintiff further raises no plausible due process challenge. “A judgment may be set
18 aside on voidness grounds under Rule 60(b)(4) for a violation of the due process clause of
19 the Fifth Amendment.” *In re Ctr. Wholesale, Inc.*, 759 F.2d at 1448. “An elementary and
20 fundamental requirement of due process in any proceeding which is to be accorded finality
21 is notice reasonably calculated, under all the circumstances, to apprise interested parties of
22 the pendency of the action and to afford them an opportunity to present their objections.”
23 *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, (1950). Plaintiff does not assert
24 that he lacked notice or an opportunity to be heard in this Court’s adjudication of his claim.

25 Plaintiff’s arguments for why this Court lacks jurisdiction lack merit. First, Plaintiff
26 argues that the Orders are both “based on . . . the previously vacated order and judgment
27 utilizing the Constitutionally restricted use of a means-end scrutiny” and are therefore
28 “invalid for want of jurisdiction.” (Pl.’s Mot. at 7–8.) Plaintiff appears to argue that the

1 Orders improperly relied on the Court’s Order dated April 24, 2020 (ECF No. 3) dismissing
2 Plaintiff’s original complaint. The Court disagrees. The mere fact that the Court’s Order
3 dismissing Plaintiff’s amended complaint in 2022 (ECF No. 16) reached the same result
4 (dismissal) as the Court’s Order dismissing the original complaint in 2020 (ECF No. 3)
5 does not mean that the Court’s 2022 Order was “based upon” its 2020 order. In fact, the
6 Court granted Plaintiff’s motion to file an amended complaint in 2022 precisely because
7 the Court recognized that the Supreme Court’s *Bruen* decision “fundamentally changed
8 Second Amendment jurisprudence.” *Renna v. Bonta*, No. 20-cv-02190-DMS-DEB, 2023
9 WL 2846937, at *4 (S.D. Cal. Apr. 3, 2023), *appeal docketed*, No. 23-55367 (9th Cir. Apr.
10 20, 2023). Nonetheless, this Court concluded that the felon-in-possession laws Plaintiff
11 challenged survive constitutional scrutiny even in light of *Bruen*. And this Court was not
12 alone in so holding. It appears every district court within the Ninth Circuit which has
13 addressed the constitutionality of federal felon-in-possession laws following *Bruen*—from
14 California to Montana to Arizona to Alaska—has concluded such laws are constitutional.²
15

16
17 ² See, e.g., *United States v. Filoialii*, No. 3:21-CR-00052-JMK, 2023 WL 5832153 (D. Alaska Sept. 8,
18 2023); *United States v. Robinson*, No. 2:22-CR-00212-TL, 2023 WL 5634712 (W.D. Wash. Aug. 31,
19 2023); *Long v. Garland*, No. 3:23-CV-710-YY, 2023 WL 5624147 (D. Or. Aug. 31, 2023); *United States*
20 *v. Saba*, No. 1:22-cr-00248-AKB, 2023 WL 5333255 (D. Idaho Aug. 17, 2023); *United States v. Owens*,
21 No. 3:23-CR-00026-SLG-KFR, 2023 WL 5291341 (D. Alaska Aug. 17, 2023); *United States v. Hatch*,
22 No. 23-CR-1201-CAB, 2023 WL 5020270 (S.D. Cal. Aug. 7, 2023); *United States v. Estrada*, No. 1:22-
23 CR-00256-BLW, 2023 WL 4181325 (D. Idaho June 26, 2023); *United States v. Pineda*, No. 6:21-cr-
24 00482-AA, 2023 WL 4053583 (D. Or. Jun. 16, 2023); *United States v. Bulltail (Bulltail I)*, No. CR22-86-
25 BLG-SPW-1, 2023 WL 3947823 (D. Mont. Jun. 12, 2023); *United States v. Sais*, No. 22-CR-2456-GPC,
26 2023 WL 3510406 (S.D. Cal. May 17, 2023); *United States v. Chatman*, No. 22-cr-00453-CRB-1, 2023
27 WL 3509699 (N.D. Cal. May 16, 2023); *United States v. Villalobos*, No. 3:19cr-00040-DCN, 2023 WL
28 3044770 (D. Idaho Apr. 21, 2023); *United States v. Guthery*, No. 2:22-cr-00173-KJM, 2023 WL 2696824
(E.D. Cal. Mar. 29, 2023); *United States v. Cleveland-McMichael*, No. 3:21-CR-00119-SLG, 2023 WL
2613548 (D. Alaska Mar. 23, 2023); *United States v. Kilgore*, No. 1:21-cr-00277-JLT-SKO, 2023 WL
2505012 (E.D. Cal. Mar. 14, 2023); *United States v. Davis*, No. 1:21-cr-00206-ADA-BAM-1, 2023 WL
2505039 (E.D. Cal. Mar. 14, 2023); *United States v. Barber*, No. 3:22-CR-00065-SLG-MMS, 2023 WL
2140526 (D. Alaska Feb. 21, 2023), *reconsideration denied*, No. 3:22-CR-00065-SLG-MMS, 2023 WL
4157177 (D. Alaska June 23, 2023); *United States v. Jackson*, No. CR22-37-RSL, 2023 WL 1967199
(W.D. Wash. Feb. 13, 2023); *United States v. Jackson*, No. CR-22-01969-TUC-JGZ-JR, 2023 WL
1965424 (D. Ariz. Feb. 13, 2023); *United States v. Serrano*, No. 21-cr-1590-JLS, 2023 WL 2297447 (S.D.

1 Second, Plaintiff argues that this Court’s Orders are “void for want of jurisdiction”
2 because Plaintiff disagrees with the Court’s analysis. (Pl.’s Mot. at 8–12, “Judge Sabraw
3 intentionally refused to conduct the textual and historical approach constitutionally
4 required. This type of conduct is a usurpation of power.”) However, “[j]urisdiction is the
5 power to adjudicate a case upon the merits, and dispose of it as justice may require.”
6 *Logistics Mgmt., Inc. v. One (1) Pyramid Tent Arena*, 86 F.3d 908, 912 (9th Cir. 1996)
7 (quoting *The Resolute*, 168 U.S. 437, 439 (1897)). As explained above, this Court has
8 federal question subject-matter jurisdiction over Plaintiff’s constitutional challenge.
9 Plaintiff may disagree with the Court’s analysis and conclusion, but he makes no serious
10 argument that this Court lacked jurisdiction over his claim. To the extent that Plaintiff
11 disagrees with the Court’s conclusion, he is free to raise those arguments on appeal.

12 Finally, Plaintiff argues that the Court’s Orders were “void for want of jurisdiction”
13 because they relied on faulty Ninth Circuit precedent (Pl.’s Mot. at 12–15) and on
14 nonbinding dicta from the Supreme Court (Pl.’s Mot. at 15–18). For the reasons explained
15 above, these are not jurisdictional arguments—they are expressions of disagreement with
16 the Court’s analysis which may be properly raised on appeal.

17 **B. Rule 60(b)(5)—Reliance on Previously Vacated or Reversed Judgment**

18 Rule 60(b)(5) permits a court to grant relief from a judgment on the grounds that the
19 “judgment has been satisfied, released or discharged; it is based on an earlier judgment that
20 has been reversed or vacated; or applying it prospectively is no longer equitable.” Fed. R.

21
22
23 Cal. Jan. 17, 2023); *United States v. Moore*, No. CR20-474, 2023 WL 154588 (D. Or. Jan. 11, 2023);
24 *United States v. Wondra*, No. 1:22-CR-00099-BLW, 2022 WL 17975985 (D. Idaho Dec. 27, 2022);
25 *United States v. Butts*, 637 F. Supp. 3d 1134 (D. Mont. 2022); *United States v. Carleson*, No. 3:22-CR-
26 00032-SLG, 2022 WL 17490753 (D. Alaska Oct. 28, 2022); *United States v. Ridgeway*, No. 22cr175-
27 CAB, 2022 WL 10198823 (S.D. Cal. Oct. 17, 2022); *United States v. Delpriore*, 634 F. Supp. 3d 654 (D.
28 Alaska 2022); *United States v. Siddoway*, No. 1:21-cr-00205-BLW, 2022 WL 4482739 (D. Idaho Sept.
27, 2022); *United States v. Perez*, No. 21-cr-508-CAB-1, 2022 WL 17484969 (S.D. Cal. Sep. 26, 2022);
United States v. Hill, 629 F. Supp. 3d 1027 (S.D. Cal. 2022); *United States v. Nevens*, No. CR19-774,
2022 WL 17492196 (C.D. Cal. Aug. 15, 2022); *United States v. Ramos*, No. 2:21-CR-00395-RGK-1,
2022 WL 17491967 (C.D. Cal. Aug. 5, 2022).

1 Civ. P. 60(b)(5). The Supreme Court has explained that “Rule 60(b)(5) *may not be used to*
2 *challenge the legal conclusions on which a prior judgment or order rests,*” but that the
3 Rule allows a party to “ask a court to modify or vacate a judgment or order if ‘a significant
4 change either in factual conditions or in law’ renders continued enforcement ‘detrimental
5 to the public interest.’” *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates*
6 *of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)) (emphasis added).

7 As explained above, Plaintiff appears to argue that the Orders improperly relied on
8 the Court’s Order dated April 24, 2020 (ECF No. 3) dismissing Plaintiff’s original
9 complaint, and that therefore, relief under Rule 60(b)(5) is warranted because the Orders
10 are based on the earlier vacated order from 2020. (Pl.’s Mot. at 7–8.) The Court disagrees.
11 As noted, the mere fact that the Court’s 2022 Order (ECF No. 16) reached the same result—
12 dismissal—as the Court’s 2020 Order (ECF No. 3) does not mean that the Court’s 2022
13 Order was “based upon” its 2020 order, or that the 2020 order was a “necessary element”
14 (Pl.’s Mot. at 7) of the Court’s 2022 Order. This Court concluded that Plaintiff failed to
15 state a claim in light of *Bruen* because felon-in-possession laws were constitutional even
16 under *Bruen*’s stricter standard. The Court reached this conclusion independently of its
17 2020 pre-*Bruen* Order. Accordingly, relief under Rule 60(b)(5) is not warranted.

18 IV. CONCLUSION

19 In *United States v. Vongxay*, the Ninth Circuit held that 18 U.S.C. § 922(g)(1), which
20 prohibits a person from possessing a firearm if that person has previously been convicted
21 of a crime punishable by a term of imprisonment greater than one year, “does not violate
22 the Second Amendment as it applies to Vongxay, a convicted felon.” 594 F.3d 1111, 1118
23 (9th Cir. 2010).³ As this Court explained in its previous orders, “*Bruen* did not effectively
24 overrule *Vongxay*,” *United States v. Hill*, 629 F. Supp. 3d 1027, 1030 (S.D. Cal. 2022)
25

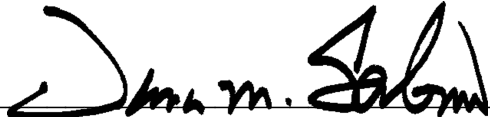
26
27
28 ³ See also *Vongxay*, 594 F.3d at 1114 (explaining that the defendant Peter Vongxay had been previously
convicted of three non-violent felonies: two for car burglary and one for drug possession).

1 (internal quotations omitted), and therefore, *Vongxay* remains binding on this Court.⁴ In
2 accord with every other district court within the Ninth Circuit to decide this issue, this
3 Court reaffirms its conclusion that 18 U.S.C. § 922(g)(1) and other federal and California
4 felon-in-possession laws which Plaintiff challenges remain constitutional in light of *Bruen*.

5 For the foregoing reasons, the Court **DENIES** Plaintiff’s motion to vacate pursuant
6 to Rule 60(b) and reaffirms its Order dated October 28, 2022 (ECF No. 16) dismissing
7 Plaintiff’s complaint with prejudice.

8 **IT IS SO ORDERED.**

9
10 Dated: September 19, 2023

11 
12 Hon. Dana M. Sabraw, Chief Judge
13 United States District Court

14
15
16
17
18
19
20
21
22
23
24

⁴ See also *United States v. Bulltail (Bulltail III)*, which observed:

25 *Vongxay* did not apply the means-end scrutiny rejected by *Bruen*, which would render
26 *Vongxay* clearly irreconcilable with *Bruen*. Rather, [*Vongxay*] applied *Heller* to conclude
27 that the felon dispossession statute—§ 922(g)(1)—is constitutional because it is consistent
28 with longstanding limitations on gun possession and because “the right to bear arms does
not preclude laws disarming the unvirtuous citizens (i.e. criminals)”

No. CR-22-86-BLG-SPW, 2023 WL 5458780, at *2 (D. Mont. Aug. 24, 2023) (quoting *Vongxay*, 594
F.3d at 1118).