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

RUBEN DARIO PERLAZA,

Petitioner,

v.

WARDEN,

Respondent.

Case No.: 3:24-cv-0760-CAB-AHG

**ORDER: (1) DENYING MOTION
FOR RECONSIDERATION [ECF No.
4]; AND

(2) GRANTING EXTENSION OF
TIME TO FILE IN FORMA
PAUPERIS APPLICATION OR PAY
FILING FEE**

INTRODUCTION

On April 22, 2024, Petitioner, a federal prisoner proceeding pro se, filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241,¹ along with an application to proceed *in forma pauperis* (“IFP”). ECF Nos. 1, 2. On April 30, 2024, the Court denied the IFP request and dismissed the action without prejudice because Petitioner failed provide

¹ Petitioner was convicted in a criminal case before this Court, and sentenced to a Bureau of Prisons term of 56 months on March 23, 2022. *See* 3:21-cr-0637-GPC, ECF No. 141. On April 22, 2024, Petitioner filed a “Motion to Reduce Sentence Pursuant to 18 U.S.C. 3582(c)” in that case. ECF No. 167. That motion is still pending. *See* ECF Nos. 171, 172.

1 the required support for his IFP motion. ECF No. 3. The Court gave Petitioner until June
2 14, 2024 to either pay the \$5.00 filing fee or provide adequate proof of his inability to pay.
3 *See id.* On May 30, 2024, Petitioner filed a “Motion for Reconsideration” of the Court’s
4 order denying IFP and dismissing the action. ECF No. 4.

5 **MOTION FOR RECONSIDERATION**

6 In his Motion for Reconsideration, Petitioner states he “is ‘in forma pauperis’ status
7 in front of this Honorable Court in a criminal matter.” *Id.* at 1. He also notes that he did not
8 receive a copy of the Court’s form IFP application. *Id.*

9 The Court construes the Motion for Reconsideration under Rule 60(b) of the Federal
10 Rules of Civil Procedure. *See Elias v. Wolf*, 2020 WL 10790290, at *2 (C.D. Cal. Sept. 17,
11 2020) (“A motion seeking reconsideration of a denial of leave to file a complaint IFP may
12 be construed as one arising under Rule 60(b)”). Under Rule 60(b), relief from a judgment
13 or order is available for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
14 discovered evidence; (3) fraud, misrepresentation, or misconduct by the opposing party;
15 (4) voiding of the judgment; (5) satisfaction of the judgment; or (6) “any other reason that
16 justifies relief.” *See Fed. R. Civ. P. 60(b)*. “Motions for relief from judgment pursuant to
17 Rule 60(b) are addressed to the sound discretion of the district court and will not be
18 reversed absent an abuse of discretion.” *Casey v. Albertson’s Inc.*, 362 F.3d 1254, 1257
19 (9th Cir. 2004).

20 Here, Plaintiff has failed to meet any of the requirements of Rule 60(b). As noted in
21 the Court’s previous Order, an indigent prisoner may initiate a habeas action without
22 paying the \$5 fee if he submits an IFP application that includes the following: (a) the
23 prisoner’s financial declaration and acknowledgement showing an inability to prepay fees
24 and costs, (b) a financial certificate signed by the prisoner and an authorized prison official,
25 and (c) a copy of the prisoner’s account statement for the six-month period prior to filing.
26 *See 28 U.S.C. § 1915(a); CivLR 3.2(b), (g)*. Petitioner has only submitted the affidavit and
27 as such, has failed to meet the requirements set forth in § 1915(a). There is no basis for
28 reconsideration of the denial of Petitioner’s IFP motion. Therefore, the motion for

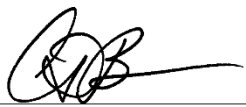
1 reconsideration is DENIED. In the interest of justice, however, the Court *sua sponte*
2 GRANTS Petitioner an extension of time to submit a properly supported IFP motion or to
3 pay the \$5.00 filing fee.

4 **CONCLUSION AND ORDER**

5 Based on the above, the Court **DENIES** the motion for reconsideration. ECF No. 4.
6 And while the case remains dismissed, the Court **GRANTS** Petitioner until **no later than**
7 **July 12, 2024** to have his case reopened by either submitting a properly supported IFP
8 motion or paying the \$5.00 filing fee. For Petitioner’s convenience, *the Clerk of Court*
9 *shall send Petitioner a blank Southern District of California in forma pauperis*
10 *application which contains the proper affidavit along with a copy of this Order.*

11 **IT IS SO ORDERED.**

12 Dated: June 3, 2024

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15 Hon. Cathy Ann Bencivengo
16 United States District Judge
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