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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DAVID RODRIGUES,
Petitioner,
vs.
STATE OF NEVADA, *et al.*,
Respondents.

3:09-cv-00029-LRH-VPC
ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. On September 28, 2009, petitioner filed a motion for an appeal bond. (Docket #30.) The court entered an order denying petitioner’s motion on November 6, 2009. (Docket #35.) On December 7, 2009, petitioner filed a motion for reconsideration of that order. (Docket #38.) Respondents oppose the motion.

Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the district court. The Rule permits a district court to relieve a party from a final order or judgment on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud . . . of an adverse party, . . . or (6) any other reason justifying relief from the operation of the judgment.” Fed. R. Civ. P. 60(b). The motion for reconsideration must be made within a reasonable time, in any event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.* The Ninth Circuit has stated that “[c]lause 60(b)(6) is residual and ‘must be read as being exclusive of the preceding clauses.’” *LaFarge Conseils et Etudes, S.A. v. Kaiser Cement*, 791 F.2d 1334, 1338 (9th Cir. 1986), quoting *Corex Corp. v. United States*, 638 F.2d 119 (9th Cir. 1981). Accordingly, “the

1 clause is reserved for 'extraordinary circumstances.'" *Id.*

2 Bail pending the resolution of a habeas corpus petition filed in a district court is reserved to
3 "extraordinary cases involving special circumstances" and where there is a high probability of the
4 petitioner's success. *United States v. Mett*, 41 F.3d 1281, 1282 (9th Cir. 1994), *quoting*, *Land v.*
5 *Deeds*, 878 F.2d 318, 318-319 (9th Cir. 1989). A petitioner must demonstrate some circumstance
6 that makes him exceptional and especially deserving of such special treatment in the interests of
7 justice. *See*, *Aronson v. May*, 85 S.Ct. 3, 5 (1964) (Douglas, Circuit Justice, in chambers); *Benson v.*
8 *California*, 328 F.2d 159, 162 (9th Cir. 1964). In addition to these factors, the Court must take into
9 consideration the petitioner's risk of flight and the danger to the community should he be released.
10 *See*, *Marino v. Vasquez*, 812 F.2d 499, 508-09 (9th Cir. 1987).

11 Petitioner argues in support of his motion for reconsideration that this court incorrectly
12 applied the holding in *Mett*, requiring him to show both that his case is extraordinary and that there is
13 a high probability of success. Petitioner's argument is without merit. This court applied the *Mett*
14 requirements in the disjunctive, holding that "petitioner demonstrated neither that this is an
15 extraordinary case involving special circumstances nor that there is a high probability of the
16 petitioner's success." The court has reviewed petitioner's additional arguments and finds no basis
17 for reconsideration of its prior decision.

18 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration is **DENIED**.
19 (Docket #38.)

20 DATED this 8th day of January, 2010.



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23 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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