

UNITED STATES DISTRICT COURT**DISTRICT OF NEVADA**

OSCAR URIBE,

Petitioner

v.

ISIDRO BACA, et al.,

Respondents.

Case No.: 3:15-cv-00309-RCJ-WGC

Order

This case is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Oscar Uribe, a Nevada prisoner. The Court denied Uribe's petition on April 29, 2021, and judgment was entered accordingly. *See* ECF Nos. 39, 40. A copy of the order denying the petition was mailed to Uribe, but it was returned to the Court on May 21, 2021, with the notation "not deliverable as addressed." *See* ECF No. 41. Thereafter, Uribe filed a request for status on June 28, 2012, and, in response, this Court ordered the clerk to resend a copy of the order denying the petition to Uribe on July 1, 2012. ECF Nos. 42, 43. Twenty-one days later, on July 22, 2021, Uribe moved to reopen the time to file an appeal pursuant to Federal Rule of Appellate Procedure ("FRAP") 4(a)(6). ECF No. 44. The respondents did not respond to Uribe's motion.

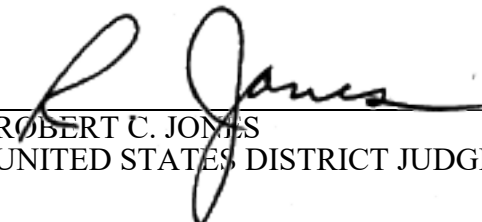
1 Under FRAP 4(a)(6), a district court may reopen the time for filing an appeal for a period
2 of 14 days if (a) the court finds that the moving party did not receive notice under Federal Rule
3 of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21
4 days after entry, (b) the motion is filed within 180 days after the judgment or order is entered or
5 within 14 days after the moving party receives notice under Federal Rule of Civil Procedure
6 77(d) of the entry, whichever is earlier; and (c) the court finds that no party would be prejudiced.
7 This Court has discretion in deciding whether to grant a motion to reopen. *See United States v.*
8 *Withers*, 638 F.3d 1055, 1061-62 (9th Cir. 2011). Given (1) the fact that Uribe did not timely
9 receive the Court's April 29, 2021, order, (2) the time it takes mail to be processed at the Nevada
10 Department of Corrections, especially due to the COVID-19 pandemic, and (3) the respondents
11 lack of a response, the Court exercises its discretion to grant Uribe's motion to reopen the time to
12 file an appeal.

13 IT IS THEREFORE ORDERED that the motion to reopen the time to file an appeal (ECF
14 No. 44) is granted.

15 IT IS FURTHER ORDERED that the petitioner shall have 14 days from the date of this
16 order to file a notice of appeal from this Court's April 29, 2021, order. (ECF No. 39.)

17 IT IS FURTHER ORDERED The Clerk shall mail a copy of this order to the petitioner at
18 the address listed on his motion at ECF No. 44 (High Desert State Prison) and shall modify the
19 petitioner's mailing address in the court's electronic filing system to the same.

20 DATED: September 7, 2021.

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22 ROBERT C. JONES
23 UNITED STATES DISTRICT JUDGE