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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TRAVIS BOWLES,

Case No. 3:18-cv-00272-MMD-WGC

Petitioner,

ORDER

v.

ISIDRO BACA, et al.,

Respondents.

On May 16, 2019, the Court entered an order granting in part and denying in part Respondents' motion to dismiss, which had not been opposed by Petitioner. (ECF No. 20.) As the petition in this action was deemed to be mixed, the Court directed Petitioner to elect how he would like to proceed. (Id.) In response, Petitioner filed a motion to vacate the Court's order of May 16, 2019, arguing that he did not know he could file a response to the opposition to dismiss but would have done so had he known. (ECF No. 21.) The Court construes Petitioner's motion as a motion for reconsideration.

Absent highly unusual circumstances, the Court should grant a motion for reconsideration only where: (1) it is presented with newly discovered evidence; (2) it has committed clear error, or the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law. See *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona*, 229 F.3d at 890. "A party seeking reconsideration . . . must state with particularity

1 the points of law or fact that the court has overlooked or misunderstood. Changes in legal
2 or factual circumstances that may entitle the movant to relief also must be stated with
3 particularity.” LR 59-1.

4 Neither Petitioner’s motion nor his reply sets forth a basis justifying vacatur of the
5 Court’s prior order. First, in its order directing service of the petition and a response, the
6 Court specifically told Petitioner that he could file an opposition to a motion to dismiss
7 within thirty days of service of the motion. (ECF No. 3 at 4 (“It is further ordered that
8 petitioner shall have 30 days from service of the answer, motion to dismiss, or other
9 response to mail a reply or response to the clerk of court for filing.”).)

10 Second, the local rules provide a default time period for opposing a motion to
11 dismiss: fourteen days. See LR 7-2(b). Petitioner’s argument that Local Rule 7-2(b) does
12 not and cannot apply in habeas cases is frivolous.

13 Petitioner was therefore on notice in at least two different ways that a response to
14 the motion to dismiss could be filed—if not within thirty days than at least within fourteen
15 days.¹ His arguments to the contrary are unavailing and unpersuasive. Petitioner’s
16 arguments that there has been a change in factual or legal circumstances are also
17 unpersuasive.

18 It is therefore ordered that Petitioner’s motion to vacate (ECF No. 21) is denied.

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24 ¹Petitioner asserts that he did not receive the Court’s order directing service and a
25 response. However, the docket of this action indicates that a copy of the order was mailed
26 to Petitioner at his institutional address of record, and no returned mail has been received
27 by the Court. The Court is therefore not necessarily persuaded by Petitioner’s assertion,
28 but the issue is unnecessary to decide. Regardless of whether Petitioner received the
Court’s order, Petitioner was on notice via the local rules that he could file an opposition
to the motion to dismiss.

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It is further ordered that Petitioner will have fifteen days from the date of entry of this order to make an election as set forth in the Court's order of May 16, 2019. Failure to do so will result in the dismissal of this mixed petition without prejudice and without further advance notice.

DATED THIS 3rd day of July 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE