

2 He appealed. But the First Circuit affirmed on almost identical grounds. Ramos-Romero
3 v. United States, No. 10-1457, slip op. at 1 (1st Cir. July 22, 2010) (unpublished but available
4 at Docket # 35); see also id. (holding that “[t]he petitioner has also failed to make any of the
5 showings which would be required to equitably toll” the statute-of-limitations bar).

6 Undaunted, on April 2, 2013, the petitioner filed the instant motion for relief from the
7 judgment denying habeas corpus relief, pursuant to Federal Rule of Civil Procedure 60(b)(4)
8 & (6). Docket # 37. He makes a two-fold foray on “the integrity of the Section 2225 proceeding
9” Id., p. 4. In a nutshell, he maintains that this court’s “previous ruling on the one-year
10 statute of limitations was in error,” and that the “court failed to make any ruling on his equitable
11 tolling claims that were properly presented.” Id. He relies on two Supreme Court cases that
12 postdate his habeas petition: Holland v. Florida, 560 U.S. 631, 645 (2010), in which the
13 Supreme Court held that equitable tolling of the Antiterrorism and Effective Death Penalty
14 Act’s (AEDPA) limitations period was allowed in some circumstances; and Maples v. Thomas,
15 132 S.Ct. 912, 917 (2012), in which the Court held that a petitioner’s abandonment by post-
16 conviction counsel constitutes an extraordinary circumstance that can excuse a procedural
17 default in state court, so long as counsel caused the default by abandoning the petitioner without
18 notice. See Docket # 37, pp.13-19 (discussing these cases). The petitioner also requests an
19 evidentiary hearing. Id.

20 The respondent opposed, arguing that the petitioner falls miles short of meeting Rule
21 60(b)’s stringent standard. See generally Docket # 42.

22 **Standard of Review**

23 Federal Rule of Civil Procedure 60(b) provides six roads to relief from a final judgment.
24 Nansamba v. N. Shore Med. Ctr., Inc., 727 F.3d 33, 38 (1st Cir. 2013) (citing Fed. R. Civ. P.
25 60(b)(1)-(6)).¹ “[R]elief under Rule 60(b) is extraordinary in nature and motions invoking that

¹These are:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been

2 rule should be granted sparingly.” Id. at 37 (quoting Karak v. Bursaw Oil Corp., 288 F.3d 15,
3 19 (1st Cir. 2002)). The movant must at least show “that his motion is timely; that exceptional
4 circumstances exist, favoring extraordinary relief; that if the judgment is set aside, he has the
5 right stuff to mount a potentially meritorious claim or defense; and that no unfair prejudice will
6 accrue to the opposing parties should the motion be granted.” Karak, 288 F.3d at 19. Put another
7 way, the inquiry under this rule focuses on “balanc[ing] the importance of finality against the
8 desirability of resolving disputes on the merits.” Farm Credit Bank of Baltimore v. Ferrera-
9 Goitia, 316 F.3d 62, 66 (1st Cir. 2003). And the aim of the analysis is to determine where the
10 equities of the situation lie. See George P. Reintjes Co., Inc. v. Riley Stoker Corp., 71 F.3d 44,
11 49 (1st Cir.1995).

12 Most relevant to this case, Rule 60(b)(6), the “catch-all provision,” authorizes relief from
13 a judgment for “any other reason that justifies relief.” Ungar v. Palestine Liberation Org., 599
14 F.3d 79, 85 (1st Cir. 2010) (quoting Fed. R. Civ. P. 60(b)(6)).² Under clause (6), the movant
15 must “show that there are ‘exceptional circumstances justifying extraordinary relief.’” Dr. José
16 S. Belaval, Inc. v. Pérez-Perdomo, 465 F.3d 33, 38 (1st Cir. 2006) (quoting Ahmed v.

17 discovered in time to move for a new trial under Rule 59(b);

18 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
19 misconduct by an opposing party;

20 (4) the judgment is void;

21 (5) the judgment has been satisfied, released or discharged; it is based on an earlier
22 judgment that has been reversed or vacated; or applying it prospectively is no longer
23 equitable; or

24 (6) any other reason that justifies relief.

25 ²In his motion, the petitioner also mentions clause (4) but offers no argumentation applying that
ground. The Court accordingly treats any such argument as waived. See Nansamba, 727 F.3d at 38 n.
4 (citing United States v. Zannino, 895 F.2d 1, 17 (1st Cir.1990)). In any event, the judgment in this
case is clearly not void: It does not fall under the “only two sets of circumstances in which a judgment
is void (as opposed to voidable). . . .” O’Callaghan v. Shirazi, 204 F. App’x 35, 37 (1st Cir. 2006) (per
curiam) (unpublished).

2 Rosenblatt, 118 F.3d 886, 891 (1st Cir.1997)). “Such circumstances,” the Supreme Court has
3 said, “will rarely occur in the habeas context.” Gonzalez v. Crosby, 545 U.S. 524, 535 (2005).
4 Still, “Rule 60(b) has an unquestionably valid role to play in habeas cases.” Id. at 534.

5 **Applicable Law and Analysis**

6 A jurisdictional matter warrants discussion at the outset. Before prosecuting a second or
7 successive habeas petition in the district court, AEDPA requires that prisoners obtain from “the
8 appropriate court of appeals . . . an order authorizing the district court to consider the
9 application.” 28 U.S.C. § 2244(b)(3)(A) (as incorporated in 28 U.S.C. § 2255); see, e.g., Raineri
10 v. United States, 233 F.3d 96, 99 (1st Cir. 2000). District courts lack “jurisdiction to consider
11 a second or successive petition without . . . [the First Circuit’s] authorization.” Gautier v. Wall,
12 620 F.3d 58, 61 (1st Cir.2010) (citation omitted).

13 Here, the petitioner’s purported Rule 60(b) motion is in fact an unauthorized second or
14 successive habeas petition. See Muñoz v. United States, 331 F.3d 151, 152 (1st Cir. 2003) (per
15 curiam). So this court is “without jurisdiction to entertain it.” Burton v. Stewart, 549 U.S. 147,
16 153 (2007) (per curiam).

17 It is true, as the petitioner says, see Docket # 37, pp. 3-4, that a Rule 60(b) motion that
18 challenges only a district court’s prior ruling that a habeas petition was time barred (such as his),
19 “is not the equivalent of a successive habeas petition.” Gonzalez, 545 U.S. at 535-536; see
20 Rodwell v. Pepe, 324 F.3d 66, 71 (1st Cir. 2003) (“if the factual predicate of the motion
21 challenges only the procurement of the federal habeas judgment, it may be adjudicated under
22 Rule 60(b).” (emphasis added)). But it is equally true that where, as here, a Rule 60(b) motion
23 argues that “a subsequent change in substantive law is a ‘reason justifying relief from the
24 previous denial of a claim,’” Gonzalez, 545 U.S. at 531 (quoting Fed. R. Civ. R. 60(b)(6)), it
25 should be treated as a successive habeas motion, see United States v. Washington, 653 F.3d

2 1057, 1063 (9th Cir. 2011).³ And the petitioner’s Rule 60(b) hinges entirely on what he
3 perceives as an intervening change in the law. He expressly invokes the Supreme Court’s
4 decisions in Maples and Holland, see Docket # 37, p. 19, both of which were decided after the
5 denial of his original habeas corpus petition. But “[u]nder Gonzalez, such a claim cannot be
6 made in a true Rule 60(b) motion.” United States v. Miller, No. 13-6252, 2014 WL 1364000,
7 at *2 (10th Cir. Apr. 8, 2014) (unpublished) (citing 545 U.S. at 531).

8 In all events, even if the petitioner’s motion were a bona fide Rule 60(b) motion, it still
9 misses the mark. He argues that Holland and particularly Maples, as applied to his case,
10 constitute extraordinary circumstances (which prevented a timely filing of his § 2255 motion)
11 warranting relief from judgment under Rule 60(b)(6). See Docket # 37, p. 1. Not so.

12 As said, relief under this provision is an “extraordinary remedy” that should be granted
13 only in “exceptional circumstances.” Gonzalez, 545 U.S. at 535; see, e.g., Ramos-Martínez v.
14 United States, 638 F.3d 315, 321 (1st Cir. 2011). And unfortunately for the petitioner, Gonzalez
15 itself teaches that “a change in law showing that a previous judgment may have been incorrect
16 is not an ‘extraordinary circumstance’ justifying relief under Rule 60(b)(6).” Nash v. Hepp, 740
17 F.3d 1075, 1078 (7th Cir. 2014) (quoting Gonzalez, 545 U.S. at 536); accord Arthur v. Thomas,
18 739 F.3d 611, 631 (11th Cir. 2014); Diaz v. Stephens, 731 F.3d 370, 375 (5th Cir.), cert. denied,
19 134 S. Ct. 48 (2013). So even assuming (without deciding) that (1) Maples applies retroactively
20 to § 2255 petitions barred by AEDPA’s limitations period; (2) Maples in fact changed the
21 decisional law on equitable tolling; and (3) that the original judgment was incorrect — the
22 upshot is that any decisional law affected by Maples and Holland is no “extraordinary

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24 ³See also Hill v. Rios, 722 F.3d 937, 938 (7th Cir. 2013) (Easterbrook, C.J.) (noting that
25 Gonzalez “holds that Rule 60(b) cannot be used to reopen the judgment in a civil case just because later
authority shows that the judgment may have been incorrect”). Moreover, “an attack based on the
movant’s own conduct, or his habeas counsel’s omissions, ordinarily does not go to the integrity of the
proceedings, but in effect asks for a second chance to have the merits determined favorably.” Gonzalez,
545 U.S. at 532 n. 5 (internal citations omitted).

2 circumstance” sufficient to invoke Rule 60(b)(6). Howell v. Sec’y, Fla. Dep’t of Corr., 730 F.3d
3 1257, 1261 (11th Cir. 2013) (interpreting Gonzalez “to mean that the change of law in Holland
4 was not an extraordinary circumstance”); see Hill, 722 F.3d at 938 (“[L]egal developments after
5 a judgment becomes final do not qualify as extraordinary.”).

6 Worse, “the petitioner makes a poor showing of equitable factors necessary to reopen his
7 judgment” Diaz, 731 F.3d at 378.⁴ Quite the opposite: This case is a far cry from Maples,
8 a death penalty case, in which counsel literally abandoned the petitioner without warning. See
9 132 S. Ct. at 929 (Alito, J., concurring) (remarking that “[w]hat occurred . . . [in Maples] was
10 . . . a veritable perfect storm of misfortune, a most unlikely combination of events that, without
11 notice, effectively deprived petitioner of legal representation”). Here, in contrast (and by the
12 petitioner’s own admission, see Docket # 37-3, ¶ 7), his direct-appeal counsel informed him of
13 the denial of his appeal in September 2007 — at least four months before “the time expire[d]
14 for filing a petition for certiorari contesting the appellate court’s affirmation of the conviction.”
15 Clay v. United States, 537 U.S. 522, 525 (2003). The alleged two-month delay by his counsel
16 in returning his trial transcript — to be sure, a byproduct of the petitioner’s own lackadaisical
17 approach to this case, see Ramos-Romero, 2010 WL 568697, at *3-4 (finding that petitioner
18 “failed to take affirmative steps to seek information regarding his appeal, and any other
19 available post conviction remedies”) — does not alter this conclusion.

20 Under these circumstances, the petitioner cannot shoulder the “substantial burden to
21 establish an exception to the statutory rule by showing that he exercised reasonable diligence

22 ⁴See also, e.g., Fisher v. Kadant, Inc., 589 F.3d 505, 512 (1st Cir. 2009) (“Success under . . .
23 [Rule 60(b)] requires more than merely casting doubt on the correctness of the underlying judgment.”);
24 Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co., Inc.,
25 953 F.2d 17, 20 (1st Cir. 1992) (“Although we appear never to have said so unreservedly, it is the
invariable rule, and thus, the rule in this circuit, that a litigant, as a precondition to relief under Rule
60(b), must give the trial court reason to believe that vacating the judgment will not be an empty
exercise.” (collecting caselaw on this point)).

2 in trying to preserve his rights but was prevented from timely filing by extraordinary
3 circumstances.” Dominguez v. Duval, 527 F. App’x 38, 39-40 (1st Cir. 2013) (Souter, J.)
4 (unpublished); cf. Nash, 740 F.3d at 1079. The Court also rejects petitioner’s request for an
5 evidentiary hearing as patently without merit. See 28 U.S.C. § 2255 (providing that district
6 courts must grant an evidentiary hearing “unless the motions and the files and records of the
7 case conclusively show that the prisoner is entitled to no relief”).⁵

8 There is one loose end to tie up. Rule 11(a) of the Rules Governing § 2255 Proceedings
9 provides that “the district court must issue or deny a certificate of appealability [COA] when
10 it enters a final order adverse to the applicant.” To obtain a COA, “[t]he petitioner must
11 demonstrate that reasonable jurists would find the district court’s assessment of the
12 constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537 U.S. 322, 338 (2003)
13 (citation and internal quotation marks omitted). For the foregoing reasons, the denial of the
14 petitioner’s Rule 60(b) motion is neither wrong nor debatable. The petitioner’s COA is therefore

15 **DENIED.**

16 **Conclusion**

17 For the reasons stated, the petitioner’s motion is **DENIED**.

18 **SO ORDERED.**

19 In San Juan, Puerto Rico, this 13th day of June, 2014.

20 *s/ Salvador E. Casellas*
SALVADOR E. CASELLAS
21 U.S. Senior District Judge

22 ⁵Even if his Rule 60(b) motion were construed under clause (1), see Claremont Flock Corp. v.
23 Alm, 281 F.3d 297, 299 (1st Cir. 2002) (reiterating that Rule 60(b)(6) cannot be used to obtain relief
24 on ground that comes within Rule 60(b)(1)), any such request on reason (1) would be tardy, as correctly
25 argued by the respondent. See Fed. R. Civ. P. 60(c) (“A motion under Rule 60(b) must be made within
a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment
or order or the date of the proceeding.”). His motion, the respondent correctly points out, see Docket
42, p. 6, was filed more than a year and over two years since Maples and Holland were decided.