

# APPENDIX A

ORDER OF DENIAL BY THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT 7/24/23  
BEFORE CLIFTON and FORREST, Circuit judges

Received 7/28/23

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUL 24 2023

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JOSEPH G. CUA,

Petitioner-Appellant,

v.

W. L. MONTGOMERY, Acting Warden,

Respondent-Appellee.

No. 22-15636

D.C. No. 3:15-cv-01119-VC  
Northern District of California,  
San Francisco

ORDER

Before: CLIFTON and FORREST, Circuit Judges.

This appeal is from the denial of appellant's Fed. R. Civ. P. 60(b) and 59(e) motions. (Docket Entry No. 4). The request for a certificate of appealability is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *Ortiz v. Stewart*, 195 F.3d 520, 520-21 (9th Cir. 1999); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

Any pending motions are denied as moot.

**DENIED.**

# APPENDIX B

ORDER DENYING MOTION FOR RELIEF FROM COURT'S ORDER AND JUDGMENT  
DATED 6/29/21 (Rule 60(d)(1) motion)

Judge: Vince Chhabria

Received  
7/2

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH G. CUA,  
Petitioner,  
v.  
W. L. MONTGOMERY,  
Respondent.

Case No. 15-cv-01119-VC (PR)

**ORDER DENYING MOTION FOR  
RELIEF FROM COURT'S ORDER  
AND JUDGMENT**

Re: Dkt. No. 35

Joseph G. Cua, a state inmate, moves under Rule 60(d)(1)<sup>1</sup> of the Federal Rules of Civil Procedure for relief from the court's order granting the motion to dismiss the petition for a writ of habeas corpus and the accompanying judgment. The motion is denied.

On March 10, 2015, Cua filed his petition for a writ of habeas corpus. His petition alleged nine grounds for relief. On June 2, 2015, the respondent moved to dismiss based on untimeliness. Cua filed an opposition arguing that his petition was timely and, in the alternative, he was entitled to the actual innocence exception to the statute of limitations. On September 16, 2015, the court granted the motion to dismiss and entered a separate judgment.

Cua appealed. On January 19, 2016, the Ninth Circuit Court of Appeals issued an order denying Cua's request for a certificate of appealability. Cua filed a petition for a writ of certiorari in the United States Supreme Court, which was denied on October 31, 2016. On August 21, 2019, the Ninth Circuit denied Cua's request for authorization to file a second or successive petition in the district court.

On May 24, 2021, Cua filed this motion for relief from the court's order and judgment. He argues that this court mistakenly dismissed his petition based on statute of limitations

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<sup>1</sup> Cua must mean Rule 60(b)(1), which allows relief from a final order or judgment based on mistake, inadvertence, surprise, or excusable neglect. Rule 60(d) requires the filing of an independent action.