

1 requirement for jurisdiction because her children are “illegally” in the custody of
2 their supposed father as a result of the order in the State Case; and (2) there is
3 “sufficient state action to bring these cases within the civil rights statutes” (*i.e.*,
4 “county employees acting under color of state law maliciously used perjured
5 testimony, fabricated evidence and failed to disclose exculpatory evidence to
6 warrantlessly take illegal custody [of petitioner’s children],” denying her children
7 and her “fundamental constitutional liberty interests”). (Memo at 4-5, 7; Decl. at
8 ¶¶ 2, 5-10). Petitioner further alleges that she has “low-income status” and has
9 requested that the Court appoint her counsel. (Memo at 10; Decl. at 11).

10 First, petitioner’s request for the appointment of counsel is denied. There is
11 no constitutional right to appointed counsel in a civil case. See Storseth v.
12 Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e),
13 the Court has discretionary power to request an attorney to represent a party
14 unable to afford counsel. If petitioner is seeking an order for an attorney to
15 represent her without compensation, 28 U.S.C. § 1915(e) does not authorize
16 federal courts to make coercive appointments of counsel. See Mallard v. U.S.
17 Dist. Court for Southern Dist. of Iowa, 490 U.S. 296, 310 (1989); United States v.
18 30.64 Acres of Land, 795 F.2d 796, 801 (9th Cir. 1986). Given that the Court has
19 found it lacks habeas jurisdiction to consider this case and petitioner’s ability to
20 articulate her claims *pro se* in light of the complexity of the legal issues involved,
21 the Court finds no exceptional circumstances merit requesting counsel for
22 petitioner. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
23 (discussing standard for requesting counsel under section 1915(e), formerly
24 section 1915(d)).

25 Second, petitioner’s request that the Court reconsider and set aside the
26 judgment entered in this case is also denied. Reconsideration is an “extraordinary
27 remedy, to be used sparingly in the interests of finality and conservation of judicial
28 resources.” Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.

1 2000) (citation omitted) (discussing reconsideration under Fed. R. Civ. P. 59(e)).
2 Where, like here, the Court’s ruling has resulted in a final judgment, a motion for
3 reconsideration may be based either on Federal Rule of Civil Procedure 59(e)
4 (“Rule 59(e)”) or Federal Rule of Civil Procedure 60(b) (“Rule 60(b)”). The
5 difference between motions brought under Rule 59(e) and Rule 60(b) is largely
6 one of timing rather than substance.

7 Pursuant to Rule 59(e), a party may move to alter or amend a judgment
8 within twenty-eight days after entry of the challenged judgment. Allstate
9 Insurance Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (citing Fed. R. Civ.
10 P. 59(e)). District courts have “considerable discretion” when ruling on a motion
11 under Rule 59(e). See Turner v. Burlington Northern Santa Fe R. Co., 338 F.3d
12 1058, 1063 (9th Cir. 2003) (citations omitted). Absent “highly unusual
13 circumstances” not present in this case, relief under Rule 59(e) is available only
14 for: (1) a court’s clear error of law or fact; (2) “newly discovered or previously
15 unavailable evidence”; (3) a “manifestly unjust” decision; or (4) “an intervening
16 change in the controlling law.” Rishor v. Ferguson, 822 F.3d 482, 491-92 (9th
17 Cir. 2016) (citation omitted), cert. denied, 137 S. Ct. 2213 (2017); McDowell v.
18 Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999) (per curiam) (en banc) (citations
19 omitted), cert. denied, 529 U.S. 1082 (2000).

20 Rule 60(b) permits courts to grant relief from a final judgment or order, and
21 reopen a case, in certain limited circumstances (*i.e.*, when there is (1) mistake,
22 inadvertence, surprise or excusable neglect; (2) newly discovered evidence that,
23 with reasonable diligence, could not have been discovered before the court’s
24 decision; (3) fraud, misrepresentation or misconduct by the opposing party;
25 (4) voiding of the judgment; (5) satisfaction of the judgment; and (6) “any other
26 reason that justifies relief.”). See Fed. R. Civ. P. 60(b); Gonzalez v. Crosby, 545
27 U.S. 524, 528 (2005); Hall v. Haws, 861 F.3d 977, 984 & n.2 (9th Cir. 2017).
28 Although worded broadly, Rule 60(b)(6) is a “catchall category” available only in

1 “extraordinary circumstances” which “will rarely occur in the habeas context.”
2 Buck v. Davis, 137 S. Ct. 759, 772 (2017)(citation omitted); Hall, 861 F.3d at 987
3 (Rule 60(b)(6) “should be used sparingly as an equitable remedy to prevent
4 manifest injustice.”) (citation omitted); see generally Martella v. Marine Cooks &
5 Stewards Union, Seafarers International Union of North America, AFL-CIO, 448
6 F.2d 729, 730 (9th Cir. 1971) (per curiam) (to merit relief under Rule 60(b)(6)
7 litigant must “establish the existence of extraordinary circumstances which
8 prevented or rendered him unable to prosecute [his case]”) (citations omitted),
9 cert. denied, 405 U.S. 974 (1972). District Courts have “wide discretion” when
10 ruling on Rule 60(b) motions generally. Buck, 137 S. Ct. at 777 (citation omitted).

11 Here, petitioner has failed to show any basis for relief from the judgment
12 entered in this case. Assuming, *arguendo*, the truth of petitioner’s allegations in
13 the Motion, she still has not alleged a basis to confer habeas jurisdiction on this
14 Court. As explained in the Court’s order summarily dismissing the Petition, the
15 Supreme Court decision in Lehman forecloses any argument that petitioner or her
16 children are “in custody” so as to confer habeas jurisdiction with this Court. See
17 Lehman v. Lycoming Cty. Childrens Servs. Agy., 458 U.S. 502, 511 (1982)
18 (children who had been placed in foster homes pursuant to state court order were
19 not in the “custody” of the State as that term is used to determine availability of
20 the writ of habeas corpus – “federal habeas has never been available to challenge
21 parental rights or child custody”; “The ‘custody’ of foster or adoptive parents over
22 a child is not the type of custody that traditionally has been challenged through
23 federal habeas. Ms. Lehman simply seeks to relitigate, through federal habeas, not
24 any liberty interest of her sons, but the interest in her own parental rights.”)
25 (footnotes omitted).

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1 If petitioner wishes to pursue a civil rights claim against the state actors
2 about whom she complains, she must file a civil rights complaint.¹ Although a
3 district court, after notifying and obtaining informed consent from a petitioner,
4 may construe a habeas petition to plead a civil rights claim if the petition is
5 amenable to conversion on its face, see Nettles v. Grounds, 830 F.3d 922, 935-36
6 (9th Cir. 2016) (en banc), cert. denied, 137 S. Ct. 645 (2017), the Court will not do
7 so here. Civil rights actions are subject to different requirements than federal
8 habeas proceedings. The filing fee for civil rights actions is at least \$350 rather
9 than the \$5 habeas filing fee. 28 U.S.C. § 1914(a). It is not in the interest of
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11 ¹Before doing so, petitioner may wish to avail herself of one of the Federal “Pro Se”
12 Clinics in this district in Los Angeles, Riverside, and Santa Ana. The Clinics offer on-site
13 information and guidance to individuals who are representing themselves (proceeding pro se) in
14 federal civil actions. The Clinics are administered by non-profit organizations, not by the Court.

15 The Clinic in Los Angeles is located in the Edward Roybal R. Federal Building and
16 United States Courthouse, 255 East Temple Street, Suite 170, Terrace Level, Los Angeles, CA
90012.

17 The Los Angeles Clinic is open **by appointment only** on Mondays, Wednesdays, and
18 Fridays, 9:30 a.m. – 12:00 p.m. and 2:00 p.m. – 4:00 p.m. One may schedule a telephonic or in-
19 person appointment by calling the Clinic (213-385-2977, ext. 270) or using an internet portal
20 (<http://prose.cacd.uscourts.gov/los-angeles>) through which one may also submit requests/
questions.

21 The Clinic in Riverside is located in the George E. Brown Federal Building, 3420
22 Twelfth Street, Room 125, Riverside, CA 92501. The Riverside Clinic hours are Tuesdays and
23 Thursdays, 10:00 a.m. – 2:00 p.m. The Riverside Clinic generally sees visitors on a first come,
first served basis.

24 The Clinic in Santa Ana is located in the Ronald Reagan Federal Building and United
25 States Courthouse, 411 W. 4th Street, Room 1055, Santa Ana, CA 92701. The Santa Ana
26 Clinic hours are Tuesday, 1:00 p.m. - 4:00 p.m., and Thursday, 10:00 a.m. – 12:00 p.m. and 1:30
27 p.m. – 3:30 p.m. All visitors to the Santa Ana Clinic must make an appointment by calling (714)
541-1010 (x222).

28 Much useful information is also available on the Clinic website which is accessible at
<http://court.cacd.uscourts.gov/cacd/ProSe.nsf/>.

1 judicial economy to convert the Petition into a federal civil rights complaint
2 because the case would, at a minimum, require additional court resources to deal
3 with the problems created by the different filing fees, the absence of information
4 called for by the civil rights complaint form utilized in this district (*e.g.*, whether
5 those sued are sued in an individual or official capacity), and the potential service
6 issues relative to individuals whose conduct is alleged to have deprived petitioner
7 of her constitutional rights.

8 IT IS THEREFORE ORDERED that the Motion is denied.

9 IT IS SO ORDERED.

10 DATED: July 10, 2019

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13 HONORABLE JESUS G. BERNAL
14 UNITED STATES DISTRICT JUDGE

15 Presented by:

16 _____
17 /s/
18 Honorable Jacqueline Chooljian
19 United States Magistrate Judge
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