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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL B. WILLIAMS,	)	1:11-cv-00049-SKO-HC
	)	
Petitioner,	)	ORDER DENYING PETITIONER'S
	)	MOTION FOR RECONSIDERATION
	)	(Docs. 11, 6)
v.	)	
	)	
PAM AHLIN, Executive Director	)	
of the Coalinga State	)	
Hospital,	)	
	)	
Respondent.	)	
	)	
	)	

Petitioner is a civil detainee who proceeded pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on January 18, 2011 (doc. 4).

On February 4, 2011, the Court dismissed the petition because it did not state a claim that would entitle Petitioner to

1 relief in a proceeding pursuant to 28 U.S.C. § 2254. Pending  
2 before the Court is Petitioner's motion for reconsideration of  
3 the dismissal of his petition, filed on February 17, 2011.  
4 Plaintiff states that he is proceeding pursuant to 28 U.S.C.  
5 § 2241, which he contends confers jurisdiction over the petition.

6 I. Jurisdiction to Consider the Motion for Reconsideration

7 On February 11, 2011, after the judgment of dismissal was  
8 entered but before the motion for reconsideration was filed,  
9 Petitioner filed a notice of appeal.<sup>1</sup>

10 A motion for reconsideration is generally treated as a  
11 motion to alter or amend judgment under Fed. R. Civ. P. 59(e) if  
12 it is filed within the time limit set by Rule 59(e). United  
13 States v. Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992).  
14 Otherwise, it is treated as a motion pursuant to Fed. R. Civ. P.  
15 60(b) for relief from a judgment or order. American Ironworks &  
16 Erectors, Inc. v. North American Const. Corp., 248 F.3d 892, 989-  
17 99 (9th Cir. 2001).

18 A motion to alter or amend a judgment pursuant to Fed. R.  
19 Civ. P. 59(e) "must be filed no later than 28 days after the  
20 entry of the judgment." Fed. R. Civ. P. 59(e). Depending on the  
21 grounds for the motion, a motion for relief from a judgment  
22 pursuant to Rule 60(b) must be filed within a reasonable time or  
23 within a year. Fed. R. Civ. P. 60(c). Petitioner's motion was  
24 filed thirteen (13) days after the judgment of dismissal was  
25 entered. It is therefore timely under either category of  
26

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27 <sup>1</sup>Petitioner states in his motion for reconsideration that he is  
28 withdrawing his notice of appeal because the order of the Magistrate Judge is  
not appealable.

1 motions.

2 Fed. R. App. P. 4, which sets time limits for filing a  
3 notice of appeal, provides that if a party files either a Rule  
4 59(e) motion or a Rule 60(b) motion no later than twenty-eight  
5 (28) days after judgment, the time to file an appeal runs for all  
6 parties from the entry of the order disposing of the motion.  
7 Fed. R. App. P. 4(a)(4)(A)(iv), (vi). Either motion thus tolls  
8 the time for filing an appeal.

9 Here, the motion was filed after Petitioner filed his notice  
10 of appeal. However, it is established that a district court  
11 retains subject matter jurisdiction to rule on a tolling motion  
12 even though a notice of appeal has been previously filed.  
13 Tripati v. Henman, 845 F.2d 205, 206 (9th Cir. 1988).

14 The Court concludes that it has jurisdiction to consider  
15 Petitioner's motion for reconsideration.

16 II. Motion for Reconsideration

17 A. Motion pursuant to Rule 59(e)

18 In an abundance of caution, the Court will consider the  
19 motion under both Rules 59(e) and 60(b). See, United States v.  
20 Westlands Water Dist., 134 F.Supp.2d 1111, 1130 (E.D. Cal. 2001).

21 Petitioner does not appear to state grounds sufficient to  
22 warrant relief pursuant to Fed. R. Civ. P. 59(e), which is  
23 appropriate when there are highly unusual circumstances, the  
24 district court is presented with newly discovered evidence, the  
25 district court committed clear error, or a change in controlling  
26 law intervenes. School Dist. No. 1J, Multnomah County, Oregon v.  
27 Acands, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993). To avoid being  
28 frivolous, such a motion must provide a valid ground for

1 reconsideration. See, MCIC Indemnity Corp. v. Weisman, 803 F.2d  
2 500, 505 (9th Cir. 1986). Here, there is no claim of new  
3 evidence, highly unusual circumstances, or a change in  
4 controlling law. Further, Petitioner has not demonstrated clear  
5 error.

6 In the petition, Petitioner, a patient and civil detainee  
7 who is involuntarily confined at the Coalinga State Hospital,  
8 sued the hospital and two individual supervisors for monetary,  
9 declaratory, and injunctive relief, including wages and overtime  
10 compensation for labor that Petitioner alleged he was forced to  
11 perform in the hospital. (Pet. 1, 4.) Petitioner sought to have  
12 the Court certify his lawsuit as a class action. (Pet. 25.)  
13 Petitioner alleged that his rights under the Thirteenth Amendment  
14 were violated, and he further proceeded under the Fair Labor  
15 Standards Act, 29 U.S.C. § 201. (Pet. 4, 8.)

16 The Court concluded that Petitioner's allegations concerned  
17 his conditions of confinement, and not the legality or duration  
18 of his confinement. Thus, the petition was dismissed as not  
19 stating a claim warranting relief under 28 U.S.C. § 2254.

20 Petitioner argues that he proceeded pursuant to 28 U.S.C.  
21 § 2241, and that § 2241 confers upon this Court jurisdiction over  
22 his petition.

23 Title 28 U.S.C. § 2241 provides in pertinent part:

24 (c) The writ of habeas corpus shall not extend to  
25 a prisoner unless-

26 1) He is in custody under or by color of  
27 the authority of the United States or is committed  
for trial before some court thereof; or

28 2) He is in custody for an act done or omitted  
in pursuance of an Act of Congress, or an order,

1 process, judgment or decree of a court or judge of  
2 the United States; or

3 3) He is in custody in violation of the Constitution  
4 or laws or treaties of the United States; or

5 4) He, being a citizen of a foreign state and  
6 domiciled therein is in custody for an act done or  
7 omitted under any alleged right, title, authority,  
8 privilege, protection, or exemption claimed under  
9 the commission, order, or sanction of any foreign  
10 state, or under color thereof, the validity and  
11 effect of which depend upon the law of nations; or

12 5) It is necessary to bring him into court  
13 to testify or for trial.

14 28 U.S.C. § 2241(c).

15 The only possible category for the claim or claims of  
16 Petitioner is pursuant to § 2241(c) because Petitioner is not  
17 confined under federal process, a citizen of a foreign state, or  
18 needed for purposes of testimony or trial.

19 Petitioner alleges that the court which entered the judgment  
20 in question was the San Francisco Superior Court. (Pet. 1.)  
21 Petitioner also alleges that he need not exhaust his  
22 administrative remedies because a detainee who is civilly  
23 committed pursuant to California's Sexually Violent Predators Act  
24 (Cal. Welf. & Inst. Code, § 6600 et seq.) after completing a  
25 prison term need not exhaust administrative remedies. (Pet. 5.)  
26 Although Petitioner does not directly allege the basis for his  
27 confinement, it thus appears that Petitioner has been  
28 involuntarily committed as a sexually violent predator after  
completing a prison term.

A review of California's statutes shows that the procedures  
for commitment of an allegedly violent, sexual predator include  
evaluation of the prisoner by experts, referral of the matter to

1 a county attorney to file a petition for commitment in the  
2 superior court of the county where the prisoner was convicted,  
3 consideration by the court of the petition, trial by the court or  
4 jury, and commitment pursuant to the superior court's order of  
5 commitment. Cal. Welf. & Inst. Code §§ 6601(d) and (h), 6601.5,  
6 6603-6604.1, 6602.

7 Title 28 U.S.C. § 2254(a) extends subject matter  
8 jurisdiction to the federal courts over applications on behalf of  
9 persons in custody pursuant to state court judgments on the  
10 ground that the custody is in violation of the Constitution,  
11 laws, or treaties of the United States. 28 U.S.C. § 2254(a).

12 Custody stemming from an involuntary civil commitment is  
13 sufficient to constitute "custody" for purposes of 28 U.S.C.  
14 § 2254. Duncan v. Walker, 533 U.S. 167, 176 (2001). Further, it  
15 is established in this circuit that a state civil detainee under  
16 an involuntary civil commitment scheme appropriately uses a  
17 § 2254 habeas petition to challenge the legality of a term of  
18 confinement. Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1139-40  
19 (9th Cir. 2005).

20 Additionally, a person detained as a result of a state court  
21 judgment who files a federal habeas petition must proceed  
22 pursuant to § 2254. In White v. Lambert, 370 F.3d 1002, 1009-10  
23 (9th Cir. 2004), overruled on other grounds in Hayward v.  
24 Marshall, 603 F.3d 546 (2010), a state prisoner challenged an  
25 administrative decision of prison authorities concerning transfer  
26 of the prisoner to a private prison. The prisoner argued that he  
27 could proceed pursuant to § 2241. The court held that a  
28 petitioner who at the time the petition is filed is in custody

1 pursuant to a state court judgment must proceed pursuant to  
2 § 2254 instead of § 2241 even if the challenge is to an allegedly  
3 unconstitutional administrative decision of prison authorities.  
4 White v. Lambert, 370 F.3d 1002, 1009-10 (9th Cir. 2004). In the  
5 course of a review of the pertinent case authority and the  
6 legislative history of the habeas statutes, the court described  
7 the interaction between § 2254 and § 2241 as follows:

8       The plain text of the two statutes, 28 U.S.C. § 2241  
9       and 28 U.S.C. § 2254, both appear to apply to White's  
10       petition. Section 2241 confers jurisdiction on a  
11       district court to issue a writ of habeas corpus when  
12       a federal or state prisoner establishes that he "is in  
13       custody in violation of the Constitution or laws  
14       or treaties of the United States." 28 U.S.C. §§ 2241(a)  
15       and (c)(3). The relevant sub-section of 28 U.S.C. § 2254  
16       confers jurisdiction on a district court to issue  
17       "a writ of habeas corpus in behalf of a person in  
18       custody pursuant to the judgment of a State court...  
19       on the ground that he is in custody in violation  
20       of the Constitution or laws or treaties of the  
21       United States." 28 U.S.C. § 2254(a) (emphasis added).

22       Although the text of either statute would appear  
23       to confer jurisdiction, a proper understanding  
24       of the interaction between 28 U.S.C. § 2241 and  
25       28 U.S.C. § 2254 leads us to the conclusion that  
26       they apply in different situations. Section 2254  
27       is properly understood as "in effect implement[ing]  
28       the general grant of habeas corpus authority found  
29       in § 2241, as long as the person is in custody  
30       pursuant to the judgment of a state court, and  
31       not in state custody for some other reason, such  
32       as pre-conviction custody, custody awaiting  
33       extradition, or other forms of custody that are  
34       possible without a conviction." (Citations omitted.)

35       White v. Lambert, 370 F.3d 1002, 1005-06. The court concluded  
36       that § 2254 limits § 2241 with respect to state prisoners and  
37       that § 2254 "is the exclusive avenue for a state court prisoner  
38       to challenge the constitutionality of his detention...." White  
39       v. Lambert, 370 F.3d 1002, 1006-07.

40       ///

1 Here, because Petitioner was in custody pursuant to a state  
2 court judgment at the time he filed his petition, Petitioner must  
3 proceed pursuant to 28 U.S.C. § 2254. Thus, the Magistrate Judge  
4 did not erroneously assume that Petitioner was proceeding  
5 pursuant to 28 U.S.C. § 2254.

6 A petitioner proceeding pursuant to § 2254 can raise only  
7 challenges to the legality or duration of his confinement; he  
8 cannot raise complaints concerning conditions of confinement.  
9 Instead, the petitioner must raise such claims in an action  
10 pursuant to 42 U.S.C. § 1983. 28 U.S.C. § 2254(a); Badea v. Cox,  
11 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez,  
12 411 U.S. 475, 485, 499 (1973)); McCarthy v. Bronson, 500 U.S.  
13 136, 141-42 (1991); Advisory Committee Notes to Habeas Rule 1.

14 Petitioner sought damages and other relief relating to wages  
15 for work performed during confinement. His suit relates to  
16 conditions of confinement. Thus, the Magistrate Judge did not  
17 clearly err in dismissing the petition for failure to state a  
18 claim entitling Petitioner to habeas corpus relief.

19 The Court concludes that Petitioner is not entitled to  
20 relief pursuant to Rule 59(e) with respect to the Court's  
21 determination that Petitioner is proceeding pursuant to § 2254  
22 and that he failed to state claims cognizable in such a  
23 proceeding.

24 B. Rule 60

25 Fed. R. Civ. P. 60 applies to habeas proceedings only to the  
26 extent that application is not inconsistent with the applicable  
27 federal statutes and rules. Gonzalez v. Crosby, 545 U.S. 524,  
28

1 529 (2005) (challenge to dismissal of a § 2254 petition for  
2 untimeliness). Although successive petitions are limited by  
3 statute, it is appropriate to consider a Rule 60(b) motion as  
4 such in a § 2254 proceeding where a petitioner uses the vehicle  
5 not to allege a claim or to attack the substance of the federal  
6 court's resolution of a claim on the merits, but rather to  
7 challenge a ruling that precluded a merits determination and  
8 thereby to raise some defect in the integrity of the federal  
9 habeas proceedings, such as failure to exhaust, procedural  
10 default, or statute of limitations. Id. at 532, 538.

11 Here, Petitioner challenges the Court's determination that  
12 Petitioner's claim or claims are not cognizable in a habeas  
13 proceeding pursuant to § 2254. The Court will assume that Rule  
14 60(b) is appropriately applied in Petitioner's case.

15 Federal Rule of Civil Procedure 60(b) governs the  
16 reconsideration of final orders of the district court. The rule  
17 permits a district court to relieve a party from a final order or  
18 judgment on various grounds, including 1) mistake, inadvertence,  
19 surprise, or excusable neglect; 2) newly discovered evidence;  
20 3) fraud or misconduct by an opposing party; 4) a void judgment;  
21 5) a satisfied judgment; or 6) any other reason that justifies  
22 relief from the judgment. Fed. R. Civ. P. 60(b). The motion for  
23 reconsideration must be made within a reasonable time, and with  
24 respect to the first three grounds, no more than a year after the  
25 entry of the judgment, order, or proceeding. Fed. R. Civ. P.  
26 60(c). Motions to reconsider are committed to the discretion of  
27 the trial court. Combs v. Nick Garin Trucking, 825 F.2d 437, 441  
28

1 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir.  
2 1983) (en banc). To succeed, a party must set forth facts or law  
3 of a strongly convincing nature to induce the Court to reverse  
4 its prior decision. See, e.g., Kern-Tulare Water Dist. v. City  
5 of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in  
6 part and rev'd in part on other grounds, 828 F.2d 514 (9th Cir.  
7 1987), cert. denied, 486 U.S. 1015 (1988). The Ninth Circuit has  
8 stated that "[c]lause 60(b)(6) is residual and 'must be read as  
9 being exclusive of the preceding clauses.'" LaFarge Conseils et  
10 Etudes, S.A. v. Kaiser Cement, 791 F.2d 1334, 1338 (9th Cir.  
11 1986) (quoting Corex Corp. v. United States, 638 F.2d 119 (9th  
12 Cir. 1981)). Accordingly, "the clause is reserved for  
13 'extraordinary circumstances.'" Id.

14 Further, when filing a motion for reconsideration, Local  
15 Rule 230(j) requires a party to show the "what new or different  
16 facts or circumstances are claimed to exist which did not exist  
17 or were not shown upon such prior motion, or what other grounds  
18 exist for the motion," as well as "why the facts or circumstances  
19 were not shown at the time of the prior motion."

20 Here, Petitioner has not established any basis for relief  
21 pursuant to Fed. R. Civ. P. 60(b) with respect to the Court's  
22 treatment of the petition as a petition pursuant to § 2254 or its  
23 conclusion that Petitioner's claims were not cognizable in a  
24 proceeding pursuant to § 2254.

### 25 C. Supplemental Jurisdiction

26  
27 Petitioner argues that this Court has supplemental  
28 jurisdiction pursuant to 28 U.S.C. § 1367. However, § 1367

1 applies only in cases in which the district court has original  
2 jurisdiction; if the Court does not have original jurisdiction  
3 over the petition, then it cannot have supplemental jurisdiction.  
4 § 1367(a); Herman Family Revocable Trust v. Teddy Bear, 254 F.3d  
5 802, 805 (9th Cir. 2001). Here, the Court's analysis of the  
6 jurisdictional limits of § 2254 demonstrates that this Court does  
7 not have original jurisdiction pursuant to § 2254. Accordingly,  
8 it does not have supplemental jurisdiction.

9 D. Magistrate Judge Jurisdiction

10 Petitioner argues that the Magistrate Judge erred in  
11 entering a final order because the Respondent did not consent in  
12 writing. Petitioner appears to be arguing that the judgment was  
13 void for lack of jurisdiction.

14 On January 18, 2011, Petitioner filed a form in which he  
15 stated he voluntarily consented to the jurisdiction of the  
16 Magistrate Judge to conduct all further proceedings in his case.  
17 (Doc. 4.) The form was signed and dated January 17, 2011. The  
18 consent form advised Petitioner that the Magistrate Judge had  
19 been randomly assigned, and that without the written consent of  
20 the parties presently appearing pursuant to 28 U.S.C. § 636(c),  
21 the Magistrate Judge could not conduct all proceedings and enter  
22 judgment in the case with direct review by the Ninth Circuit  
23 Court of Appeals if an appeal were filed. (Id.)

24 The petition was dismissed during the initial screening  
25 stage pursuant to the Court's obligation to examine and dismiss a  
26 petition if it plainly appears that the petitioner is not  
27 entitled to relief. See, Rules Governing Section 2254 Cases in  
28

1 the United States District Courts (Habeas Rules), Rule 4. The  
2 docket reflects that at the time of the dismissal, the named  
3 respondent had not appeared in the action.

4 A final judgment is "void" for purposes of Rule 60(b)(4)  
5 only if the court that considered it lacked jurisdiction over the  
6 subject matter of the dispute or over the parties to be bound, or  
7 acted in a manner inconsistent with due process of law. United  
8 States v. Berke, 170 F.3d 882, 883 (9th Cir. 1999).

9 Title 28 U.S.C. § 636(c) provides:

10 (c) Notwithstanding any provision of law  
11 to the contrary-

12 (1) Upon the consent of the parties,  
13 a full-time United States magistrate judge  
14 or a part-time United States magistrate judge  
15 who serves as a full-time judicial officer  
16 may conduct any or all proceedings in a jury  
17 or nonjury civil matter and order the entry  
18 of judgment in the case, when specially designated  
19 to exercise such jurisdiction by the district  
20 court or courts he serves.

21 Fed. R. Civ. P. 73 permits Magistrate Judges to conduct  
22 civil actions or proceedings, including trials, where all parties  
23 jointly or separately file a statement of consent. Fed. R. Civ.  
24 P. 73(a)-(b).

25 Rule 301 of the Local Rules of the United States District  
26 Court for the Eastern District of California (Local Rules)  
27 provides:

28 Upon the consent of all appearing parties, the  
Magistrate Judges are specially designated to  
conduct any and all proceedings in any civil action,

1 including the conduct of jury or nonjury trials,  
2 and to order the entry of final judgments, in  
3 accordance with Fed. R. Civ. P. 73 and 28 U.S.C.  
4 § 636(a) and (c).

5 In Neals v. Norwood, 59 F.3d 530 (5th Cir. 1995), the  
6 plaintiff sued pursuant to 42 U.S.C. § 1983 for the failure of  
7 prison officials to protect him. The plaintiff consented to the  
8 jurisdiction of the Magistrate Judge to conduct the proceeding by  
9 submitting a signed consent form. The court held an evidentiary  
10 hearing and dismissed the complaint because the evidence showed  
11 only negligence, which was insufficient to support the  
12 plaintiff's § 1983 claim. On appeal, the plaintiff apparently  
13 contended that the Magistrate Judge lacked the authority to  
14 dismiss the case because the other parties to the case had not  
15 consented. The court reviewed § 636(c) and stated:

16 When a magistrate judge enters judgment pursuant  
17 to this statute, absence of the appropriate consent  
18 and reference or special designation order results  
19 in a lack of jurisdiction (or at least fundamental  
20 error that may be complained of for the first time  
21 of appeal). Mendes Jr. Int'l Co. v. M/V Sokai Maru,  
22 978 F.2d 920, 924 (5th Cir.1992). The record does not  
23 contain a consent from the defendants. However,  
24 because they had not been served, they were not  
25 parties to this action at the time the magistrate  
26 entered judgment. Therefore, lack of written consent  
27 from the defendants did not deprive the  
28 magistrate judge of jurisdiction in this matter.

Neals v. Norwood, 59 F.3d 530, 532.

The cases cited by Petitioner involve facts that are  
different from those in the instant case. In Aldritch v. Bowen,

1 130 F.3d 1364, 1364-65 (9th Cir. 1997), there was no written  
2 consent of any party. In Nasca v. Peoplesoft, 160 F.3d 578-79  
3 (9th Cir. 1998), there was no written consent; the court held  
4 that consent must be explicit and cannot be inferred from the  
5 parties' failure to object. In Holbert v. Idaho Power Co., 195  
6 F.3d 452 (9th Cir. 1999), there was no explicit, written consent  
7 of the parties that had been communicated to the clerk. In Hajek  
8 v. Burlington NRR Co., 186 F.3d 1105 (9th Cir. 1999), the court  
9 found insufficient to constitute consent the statement of one  
10 defendant, who had appeared in the action, that at that  
11 particular time it was not believed that any special procedures  
12 were required or appropriate. The court concluded that waiver of  
13 a right to an Article III judge, failure to object, or estoppel  
14 could not confer jurisdiction in the absence of unequivocal  
15 consent. In each of these cases, there was a defect in the form  
16 of consent. In contrast, here, the Petitioner filed his express,  
17 unequivocal, written consent with the clerk.

18 The Court concludes that Petitioner has not shown that the  
19 Magistrate Judge lacked jurisdiction due to the absence of  
20 consent from the named respondent, who has not appeared in this  
21 action.

22 E. Jurisdiction to Deny Petitioner's Motion for  
23 Injunctive Relief

24 Petitioner contends that the Magistrate Judge lacked  
25 jurisdiction to dismiss as moot Petitioner's motion for  
26 injunctive relief because pursuant to 28 U.S.C. § 636(b)(1)(A), a  
27 District Judge cannot designate a Magistrate Judge to hear and  
28

1 determine a motion for injunctive relief.

2       However, § 636(b)(1)(A) addresses the power of a District  
3 Judge to designate, in the absence of consent, a Magistrate Judge  
4 to “hear and determine” a motion for injunctive relief. In  
5 contrast, in the present case, Petitioner consented to the  
6 Magistrate Judge’s exercise of authority. Where a petitioner has  
7 consented to the Magistrate Judge’s conducting all further  
8 proceedings in Petitioner’s case, the limitations of  
9 § 636(b)(1)(A) do not apply. See, e.g., Irwin v. Mascott, 370  
10 F.3d 924, 929-31 (9th Cir. 2004).

11  
12           F. Certificate of Appealability

13       Petitioner appears to contend (mot. 4:7-17) that the Court  
14 erred in determining that Petitioner was not entitled to a  
15 certificate of appealability because a certificate of  
16 appealability is not required to appeal the denial of a petition  
17 brought under § 2241. See, Forde v. United States Parole  
18 Commission, 114 F.3d 878, 879 (9th Cir. 1997). The plain  
19 language of § 2253(c)(1) does not require a certificate with  
20 respect to an order that is not a final order in a habeas  
21 proceeding in which the detention complained of arises out of  
22 process issued by a state court. Id. However, where the  
23 detention arises out of process issued by a state court, even if  
24 the petition is filed pursuant to 28 U.S.C. § 2241, a certificate  
25 is required by the terms of 28 U.S.C. § 2253(c)(1)(A). Wilson v.  
26 Belleque, 554 F.3d 816, 824-25 (9th Cir. 2009).

27       Here, Petitioner appears to be proceeding pursuant to a  
28 California court’s order or judgment that he be civilly committed

1 as a sexually violent predator. The Court properly considered  
2 and determined whether a certificate of appealability should have  
3 issued and concluded that Petitioner did not meet the standard  
4 requirements for the issuance of a certificate of appealability.  
5 Accordingly, Petitioner has not shown grounds for relief with  
6 respect to the Magistrate Judge's ruling regarding the  
7 certificate of appealability.

8 In summary, because Petitioner has not shown he has valid  
9 grounds for relief, the Court will deny Petitioner's motion for  
10 reconsideration of the order of dismissal and his associated  
11 prayer to vacate the order dismissing his motion for injunctive  
12 relief as moot.<sup>2</sup>

13 III. Disposition

14 Accordingly, it is ORDERED that Petitioner's motion for  
15 reconsideration is DENIED.  
16  
17  
18

19 IT IS SO ORDERED.

20 Dated: April 21, 2011

21 /s/ Sheila K. Oberto  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25

26  
27 <sup>2</sup> It appears that Petitioner's appeal has been docketed in the Court of  
28 Appeals for the Ninth Circuit (doc. 10). Accordingly, this Court will not  
consider Petitioner's request to withdraw his appeal. See, Fed. R. App. P. 42  
(permitting the district court in stated circumstances to dismiss an appeal  
before the appeal is docketed by the Circuit Clerk).