



1 a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s  
2 objections, the Court concludes that the Magistrate Judge’s Findings and Recommendation is  
3 supported by the record and proper analysis.

4 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
5 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.  
6 Miller-El v. Cockrell, 537 U.S. 322, 335-336 (2003). The controlling statute in determining  
7 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

8 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district  
9 judge, the final order shall be subject to review, on appeal, by the court of appeals for the  
10 circuit in which the proceeding is held.

11 (b) There shall be no right of appeal from a final order in a proceeding to test the validity  
12 of a warrant to remove to another district or place for commitment or trial a person  
13 charged with a criminal offense against the United States, or to test the validity of such  
14 person's detention pending removal proceedings.

15 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may  
16 not be taken to the court of appeals from--

17 (A) the final order in a habeas corpus proceeding in which the detention  
18 complained of arises out of process issued by a State court; or

19 (B) the final order in a proceeding under section 2255.

20 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has  
21 made a substantial showing of the denial of a constitutional right.

22 (3) The certificate of appealability under paragraph (1) shall indicate which specific issue  
23 or issues satisfy the showing required by paragraph (2).

24 Moreover, the Court declines to issue a certificate of appealability. If a court denied a  
25 petitioner’s petition, the court may only issue a certificate of appealability when a petitioner  
26 makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To  
27 make a substantial showing, the petitioner must establish that “reasonable jurists could debate  
28 whether (or, for that matter, agree that) the petition should have been resolved in a different  
manner or that the issues presented were ‘adequate to deserve encouragement to proceed  
further’.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S.  
880, 893 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial  
showing of the denial of a constitutional right to justify the issuance of a certificate of  
appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to

1 proceed further. Accordingly, the Court DECLINES to issue a certificate of appealability.

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. The Findings and Recommendation, filed February 16, 2011 (Doc. 6), is  
4 ADOPTED IN FULL;
- 5 2. This petition for writ of habeas corpus (Doc. 1), is SUMMARILY DISMISSED;
- 6 3. The Clerk of Court is DIRECTED to ENTER JUDGMENT and close the file;  
7 and,
- 8 4. The Court DECLINES to issue a certificate of appealability.

9 This order terminates the action in its entirety.

10 IT IS SO ORDERED.

11 **Dated:** March 14, 2011

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE