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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 KAREEM LAMAR BROWN,

10 Petitioner,

11 v.

12 AMY MILLER, Warden,

13 Respondent.
14

Case No. 1:12-cv-01787-AWI-MJS (HC)

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

15 On November 1, 2012, Petitioner filed a petition for writ of habeas corpus. Doc. 1. The
16 Magistrate Judge conducted an initial screening and ordered an answer by the State. Doc. 5. The
17 State answered. Doc. 15. Petitioner filed a traverse. Doc. 26. The Magistrate Judge issued a
18 findings and recommendations, recommending denial of the petition. Doc. 30. Petitioner filed
19 objections to the findings and recommendations. Doc. 37. On March 25, 2015, this Court
20 considered the objections and adopted in full the findings and recommendations, denying the
21 petition and declining to issue a certificate of appealability. Doc. 38. Petitioner filed a motion for
22 certificate of appealability. Doc. 40. This Court denied that motion. Doc. 48. The Ninth Circuit
23 Court of Appeals then denied Petitioner's next request for a certificate of appealability. Doc. 49.

24 On October 24, 2016, Petitioner moved to reopen the judgment pursuant to Federal Rule
25 of Civil Procedure 60(b). Doc. The Court denied that motion, finding that none of the bases for
26 relief set forth in Rule 60(b) were presented. Doc. 51. In denying that motion, the Court did not
27 issue a certificate of appealability. Petitioner then filed an appeal to the Ninth Circuit Court of
28 Appeals. The Ninth Circuit Court of Appeals has remanded the matter "for the limited purpose of

1 granting or denying a certificate of appealability..." Doc. 55 (citing, *inter alia*, *Lynch v.*
2 *Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (requiring a COA to appeal denial of a motion for
3 relief under Rule 60(b)). This Court will decline to issue a certificate of appealability.

4 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
5 district court's denial of his petition, but may only appeal in certain circumstances. *Miller-El v.*
6 *Cockrell*, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
7 certificate of appealability is 28 U.S.C. § 2253, which provides:

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

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

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

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

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

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

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

24 If a court issues a final order in a federal habeas proceeding, the court may only issue a
25 certificate of appealability "if jurists of reason could disagree with the district court's resolution
26 of his constitutional claims or that jurists could conclude the issues presented are adequate to
27 deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529
28 U.S. 473, 484 (2000). Petitioner presented no basis for relief from judgment; he merely

1 reiterated his original claims that were already addressed by the Court. After review of
2 Petitioner's motion and the record, the Court had no reason to believe that its prior decision was
3 erroneous. Reasonable jurists could not disagree with the Court's denial of the motion for relief
4 from judgment in this case.

5 **ORDER**

6 The Court hereby DECLINES to issue a certificate of appealability.

7
8 IT IS SO ORDERED.

9 Dated: May 25, 2017



10 SENIOR DISTRICT JUDGE