



1 Cockrell, 537 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a  
2 certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

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

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

8 (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—

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

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

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

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

15 If a court denies a petition,<sup>1</sup> the court may only issue a certificate of appealability when the  
16 petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).  
17 To make a substantial showing, the petitioner must establish that “reasonable jurists could debate  
18 whether (or, for that matter, agree that) the petition should have been resolved in a different manner or  
19 that the issues presented were ‘adequate to deserve encouragement to proceed further.’” Slack v.  
20 McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

21 In the present case, the Court finds that Petitioner has not made the required substantial  
22 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.  
23 Specifically, the analysis and reasons set forth in the Court’s order denying the motion for  
24 reconsideration are valid and require denial of same. Petitioner’s motion contained no cognizable  
25 grounds for granting reconsideration under Rule 60(b). Once again, Petitioner’s argument that the  
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28 <sup>1</sup> Because the Court of Appeals is requiring this Court to consider the request for a certificate of appealability from the  
motion for reconsideration of the order denying the petition and declining to issue a certificate of appealability, the Court  
applies the same standard as in the original decision to decline the certificate.

1 petition is not successive merely because he challenges an issue he failed to challenge in the prior  
2 action, is contrary to the law. Reasonable jurists would not find the Court's determination that  
3 Petitioner is not entitled to reconsideration debatable, wrong, or deserving of encouragement to  
4 proceed further. Thus, the Court DECLINES to issue a certificate of appealability.

5 **ORDER**

6 Accordingly, it is HEREBY ORDERED that Petitioner's motion issuance of a certificate of  
7 appealability (Doc. 16), is DENIED.

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9 IT IS SO ORDERED.

10 Dated: June 24, 2015

11 /s/ Jennifer L. Thurston  
12 UNITED STATES MAGISTRATE JUDGE  
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