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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8 STEVEN CIOTTA,
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10 Petitioner,

11 v.

12 S. FRAUENHEIM,
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14 Respondent.

Case No. 1:15-cv-1849-AWI-EPG-HC

ORDER DECLINING TO ISSUE A
CERTIFICATE OF APPEALABILITY

(ECF No. 61)

15 On June 14, 2017, this Court denied two Rule 60(b) motions for reconsideration in this
16 28 U.S.C. § 2254 proceeding. See Doc. No. 56.

17 On July 5, 2017, Petitioner appealed the Court's denial of his Rule 60(b) motions. See
18 Doc. No. 59. On July 14, 2017, the Ninth Circuit remanded the matter to this Court for the
19 limited purpose of granting or denying a certificate of appealability pursuant to 28 U.S.C. §
20 2253. See Doc. No. 61. The Court will follow the directions of the limited remand.

21 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
22 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
23 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
24 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

25 (a) In a habeas corpus proceeding or a proceeding under section
26 2255 before a district judge, the final order shall be subject to
27 review, on appeal, by the court of appeals for the circuit in which
the proceeding is held.

28 (b) There shall be no right of appeal from a final order in a
proceeding to test the validity of a warrant to remove to another

1 district or place for commitment or trial a person charged with a
2 criminal offense against the United States, or to test the validity of
such person's detention pending removal proceedings.

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

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

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

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

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

12 If a court denies a habeas petition on the merits, the court may only issue a certificate of
13 appealability “if jurists of reason could disagree with the district court’s resolution of [the
14 petitioner’s] constitutional claims or that jurists could conclude the issues presented are adequate
15 to deserve encouragement to proceed further.” Miller-El, 537 U.S. at 327; Slack v. McDaniel,
16 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he
17 must demonstrate “something more than the absence of frivolity or the existence of mere good
18 faith on his . . . part.” Miller-El, 537 U.S. at 338.

19 In the context of a Rule 60(b) motion filed as part of 28 U.S.C. § 2255 petition, the Ninth
20 Circuit has held that a certificate of appealability should issue if the movant shows: (1) jurists of
21 reason would find it debatable whether the district court abused its discretion in denying the Rule
22 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying petition
23 states a valid claim of the denial of a constitutional right. United States v. Winkles, 795 F.3d
24 1134, 1140 (9th Cir. 2015); Rodriguez v. Da Matt Greco, 2017 U.S. Dist. LEXIS 70100, *4-*6
25 (S.D. Cal. May 8, 2017); Sakellaridis v. Davey, 2017 U.S. Dist. LEXIS 8329, *4-*5 (E.D. Cal.
26 Jan. 19, 2017); De Adams v. Hedgpeth, 2016 U.S. Dist. LEXIS 101781, *34-*37 (C.D. Cal. June
27 8, 2016).
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1 In the present case, the Court concludes that jurists of reason would not find it debatable
2 whether this Court abused its discretion in denying the Rule 60(b) motion. Therefore, the Court
3 will not issue a certificate of appealability.
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5 ORDER

6 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability will not issue
7 in this matter.

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9 IT IS SO ORDERED.

10 Dated: July 21, 2017



11 SENIOR DISTRICT JUDGE
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