

1 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
3 judge, the final order shall be subject to review, on appeal, by the court of appeals for the
4 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
6 validity of a warrant to remove to another district or place for commitment or trial a
7 person charged with a criminal offense against the United States, or to test the validity of
8 such person's detention pending removal proceedings.

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

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

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

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

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

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

24 In the present case, the Court finds that Petitioner has not made the required substantial
25 showing of the denial of a constitutional right to justify the issuance of a certificate of
26 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not
27 entitled to relief from judgment debatable, wrong, or deserving of encouragement to proceed
28 further. Petitioner argues he should be granted relief from default pursuant to Rule 55(c), but
default judgment was not entered in this action. Further, he fails to show excusable neglect or
good cause justifying relief from judgment. Moreover, the Court reviewed the arguments
advanced in the objections and found them to be meritless.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Accordingly, the Court **DECLINES** to issue a certificate of appealability with respect to Petitioner’s appeal of the order denying relief from judgment. The Court **DIRECTS** the Clerk of Court to serve a copy of this order on the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: September 22, 2018

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE