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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANDREW P. SHOLTES,  
  
Petitioner,  
  
v.  
  
RICHARD V. SPENCER, Secretary of  
the Navy,  
  
Respondent.

Case No.: 18cv1330-MMA (BLM)

**ORDER RE: MOTION FOR  
CERTIFICATE OF  
APPEALABILITY**

[Doc. No. 6]

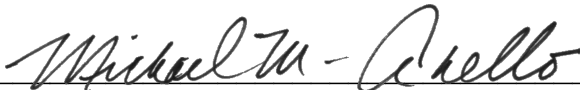
Petitioner Andrew P. Sholtes filed a petition for writ of habeas corpus pursuant to Title 28, United States Code, section 2241, challenging the conviction and sentence imposed by the United States Navy as the result of a contested general court-martial proceeding. *See* Doc. No. 1. On June 29, 2018, the Court summarily dismissed the petition and entered judgment accordingly. *See* Doc. Nos. 4, 5. Petitioner now moves for a certificate of appealability in order to pursue his claims for relief on appeal. *See* Doc. No. 6. However, Title 28, section 2253, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), does not require that Petitioner receive a certificate of appealability in order to appeal. *See Forde v. United States Parole Comm'n*, 114 F.3d 878, 879 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(1)).

1 Section 2253 requires a petitioner to obtain a certificate of appealability only if his  
2 appeal involves process issued by a state court, i.e., proceedings under Section 2254, or  
3 appeals from final orders in proceedings under Section 2255. *See Harrison v. Ollison*,  
4 519 F.3d 952, 958 (9th Cir. 2008) (“The plain language of § 2253(c)(1) does not require a  
5 petitioner to obtain a COA in order to appeal the denial of a § 2241 petition.”). No  
6 certificate of appealability is required because Petitioner seeks to take an appeal from a  
7 final order denying a Section 2241 petition. *See Witham v. United States*, 355 F.3d 501,  
8 504 (6th Cir. 2004) (“[T]he statutory language imposing the certificate-of-appealability  
9 requirement clearly does not extend to cases where, as in court-martial cases, detention  
10 arose out of federal process but the proceeding is not under § 2255.”).

11 Accordingly, the Court **DENIES** Petitioner’s motion as unnecessary.

12 **IT IS SO ORDERED.**

13 DATE: July 31, 2018



14 HON. MICHAEL M. ANELLO

15 United States District Judge  
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