

1 Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v.*
2 *Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

3 Petitioner's most strenuous objection to the Report and Recommendation seems to
4 be that it "should have included a reference to *Kennedy v. Mendoza-Martinez*, 372 U.S.
5 144, 168-69 (1963)." (Doc. 23 at 3). However, the Report and Recommendation
6 correctly relies on the controlling Supreme Court authority, *Smith v. Doe*, 538 U.S. 84
7 (2003). And in any event, the Report and Recommendation implicitly addresses the key
8 prongs of the *Mendoza-Martinez* test applicable to this case. See Report and
9 Recommendation at 8-11. A *de novo* review of the record and pertinent authority reveals
10 that explicitly citing *Mendoza-Martinez* would not materially change the analysis in the
11 Report and Recommendation.

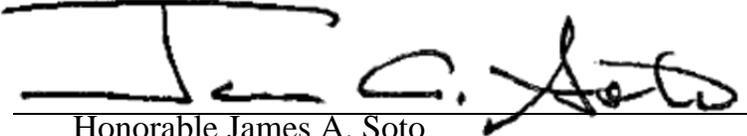
12 Before Petitioner can appeal this Court's judgment, a certificate of appealability
13 must issue. See 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of
14 Appellate Procedure 22(b) requires the district court that rendered a judgment denying
15 the petition made pursuant to 28 U.S.C. §2254 to "either issue a certificate of
16 appealability or state why a certificate should not issue." Additionally, 28 U.S.C.
17 §2253(c)(2) provides that a certificate may issue "only if the applicant has made a
18 substantial showing of the denial of a constitutional right." In the certificate, the court
19 must indicate which specific issues satisfy this showing. See 28 U.S.C. §2253(c)(3). A
20 substantial showing is made when the resolution of an issue of appeal is debatable among
21 reasonable jurists, if courts could resolve the issues differently, or if the issue deserves
22 further proceedings. See *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review
23 of the record in light of the standards for granting a certificate of appealability, the Court
24 concludes that a certificate shall not issue as the resolution of the petition is not debatable
25 among reasonable jurists and does not deserve further proceedings.

26 Accordingly, IT IS HEREBY ORDERED as follows:

27 (1) The Report and Recommendation (Doc. 22) is accepted and adopted.
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- 1 (2) Petitioner's §2254 habeas petition is denied and this case is dismissed with prejudice.
2 (3) A Certificate of Appealability is denied and shall not issue.
3 (4) The Clerk of the Court shall enter judgment and close the file in this case.
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5 Dated this 19th day of February, 2015.
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Honorable James A. Soto
United States District Judge

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