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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Ray Maxwell,  
Petitioner,  
v.  
Becky Clay,  
Respondent.

No. CV-16-00393-TUC-JAS

**ORDER**

Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge D. Thomas Ferraro that recommends denying Petitioner's habeas petition filed pursuant to 28 U.S.C. §2241.<sup>1</sup> A review of the record reflects that the parties have not filed any objections to the Report and Recommendation and the time to file objections has expired. As such, the Court will not consider any objections or new evidence.

The Court has reviewed the record and concludes that Magistrate Judge Ferraro's recommendations are not clearly erroneous and they are adopted. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

Before Petitioner can appeal this Court's judgment, a certificate of appealability

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<sup>1</sup> The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

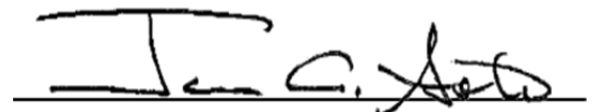
1 must issue. *See* 28 U.S.C. §2253(c); Fed. R. App. P. 22(b)(1); *Harrison v. Ollison*, 519  
2 F.3d 952, 958 (9th Cir. 2008); *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001).  
3 Federal Rule of Appellate Procedure 22(b) requires the district court that rendered a  
4 judgment denying the petition made pursuant to 28 U.S.C. §2254 to “either issue a  
5 certificate of appealability or state why a certificate should not issue.” Additionally, 28  
6 U.S.C. §2253(c)(2) provides that a certificate may issue “only if the applicant has made a  
7 substantial showing of the denial of a constitutional right.” In the certificate, the court  
8 must indicate which specific issues satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A  
9 substantial showing is made when the resolution of an issue of appeal is debatable among  
10 reasonable jurists, if courts could resolve the issues differently, or if the issue deserves  
11 further proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review  
12 of the record in light of the standards for granting a certificate of appealability, the Court  
13 concludes that a certificate shall not issue as the resolution of the petition is not debatable  
14 among reasonable jurists and does not deserve further proceedings.

15 Accordingly, IT IS HEREBY ORDERED as follows:

- 16 (1) Magistrate Judge Ferraro’s Report and Recommendation (Doc. 18) is accepted and  
17 adopted.  
18 (2) The Petition (Doc. 1) is denied due to lack of jurisdiction. This matter is dismissed  
19 with prejudice.  
20 (3) The Clerk of the Court shall enter judgment in this matter and close this case.  
21 (4) The certificate of appealability is denied.

22 Dated this 5th day of June, 2018.

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Honorable James A. Soto  
United States District Judge