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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

12 PEDRO SOLORIO TORRES, ) 1:04-CV-05804 OWW SMS HC  
13 Petitioner, ) ORDER ADOPTING FINDINGS AND  
14 ) RECOMMENDATION  
15 v. ) [Doc. #21]  
16 ) ORDER DENYING PETITION FOR WRIT  
17 A. A. LAMARQUE, Warden, ) OF HABEAS CORPUS AND DIRECTING  
18 Respondent. ) CLERK OF COURT TO ENTER JUDGMENT  
 ) ORDER DECLINING ISSUANCE OF  
 ) CERTIFICATE OF APPEALABILITY

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

21 On October 16, 2007, the Magistrate Judge issued a [Findings and Recommendation](#) that  
22 recommended the petition for writ of habeas corpus be DENIED WITH PREJUDICE. This Findings  
23 and Recommendation was served on all parties and contained notice that any objections to the  
24 Findings and Recommendation were to be filed within thirty (30) days of the date of service of the  
25 order.

On November 21, 2007, Petitioner filed objections to the Findings and Recommendation. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo*

1 review of the case. Having carefully reviewed the entire file and having considered the objections,  
2 the Court concludes that the Magistrate Judge's Findings and Recommendation is supported by the  
3 record and proper analysis, and there is no need to modify the Findings and Recommendations based  
4 on the points raised in the objections.

5 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a  
6 district court's denial of his petition, and an appeal is only allowed in certain circumstances. Miller-  
7 El v. Cockrell, 123 S.Ct. 1029, 1039 (2003). The controlling statute in determining whether to issue  
8 a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

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

11 (b) There shall be no right of appeal from a final order in a proceeding to test the  
12 validity of a warrant to remove to another district or place for commitment or trial  
a person charged with a criminal offense against the United States, or to test the  
13 validity of such person's detention pending removal proceedings.

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

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

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

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

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

21 If a court denies a petitioner's petition, the court may only issue a certificate of appealability  
22 "if jurists of reason could disagree with the district court's resolution of his constitutional claims or  
23 that jurists could conclude the issues presented are adequate to deserve encouragement to proceed  
24 further." Miller-El, 123 S.Ct. at 1034; Slack v. McDaniel, 529 U.S. 473, 484 (2000). While the  
25 petitioner is not required to prove the merits of his case, he must demonstrate "something more than  
26 the absence of frivolity or the existence of mere good faith on his . . . part." Miller-El, 123 S.Ct. at  
27 1040.

28 In the present case, the Court finds that reasonable jurists would not find the Court's

1 determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or  
2 deserving of encouragement to proceed further. Petitioner has not made the required substantial  
3 showing of the denial of a constitutional right. Accordingly, the Court hereby DECLINES to issue a  
4 certificate of appealability.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The Findings and Recommendation issued October 16, 2007, is ADOPTED IN FULL;  
7 2. The Petition for Writ of Habeas Corpus is DENIED with prejudice;  
8 3. The Clerk of Court is DIRECTED to enter judgment; and  
9 4. The Court DECLINES to issue a certificate of appealability.

10 IT IS SO ORDERED.

11 **Dated: February 4, 2008**

12 **/s/ Oliver W. Wanger**  
13 UNITED STATES DISTRICT JUDGE

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