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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NOE RAMON LOPEZ,  Petitioner,  v.  F. JACQUEZ,  Respondent.	) 1:09-CV-01451 AWI JMD HC ) ) AMENDED ORDER DENYING PETITION ) FOR WRIT OF HABEAS CORPUS ) ) ORDER ADOPTING FINDINGS AND ) RECOMMENDATIONS [Doc. 17] ) ) ORDER DIRECTING CLERK OF COURT TO ) ENTER JUDGEMENT ) ) ORDER DECLINING TO ISSUE ) CERTIFICATE OF APPEALABILITY
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Noe Ramon Lopez (hereinafter “Petitioner”) is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.<sup>1</sup>

The Magistrate Judge issued a [Findings and Recommendations](#) on July 1, 2010, recommending that the petition for writ of habeas corpus be DENIED with prejudice. The Magistrate Judge further recommended that the Clerk of Court be DIRECTED to enter judgment. The Findings and Recommendations was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. On July 19, 2010, Petitioner filed [objections](#) to the Findings and Recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the record and having considered Petitioner’s objections, the Court concludes that Petitioner’s objections are unpersuasive. Additionally, the

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<sup>1</sup>The Court amends its previous order (Court Doc. 16) to correct an error in Petitioner’s name that had been contained in that order.

1 Court finds that the Magistrate Judge's Findings and Recommendations is supported by the record  
2 and contains the proper analysis.

3 The Court notes that a state prisoner seeking a writ of habeas corpus has no absolute  
4 entitlement to appeal a district court's denial of his petition, and an appeal is only allowed in certain  
5 circumstances. *Miller-El v. Cockrell*, 123 S.Ct. 1029, 1039 (2003). The controlling statute in  
6 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides that a  
7 circuit judge or judge may issue a certificate of appealability where "the applicant has made a  
8 substantial showing of the denial of a constitutional right." Where the court denies a habeas petition,  
9 the court may only issue a certificate of appealability "if jurists of reason could disagree with the  
10 district court's resolution of his constitutional claims or that jurists could conclude the issues  
11 presented are adequate to deserve encouragement to proceed further." *Miller-El*, 123 S.Ct. at 1034;  
12 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the petitioner is not required to prove the  
13 merits of his case, he must demonstrate "something more than the absence of frivolity or the  
14 existence of mere good faith on his . . . part." *Miller-El*, 123 S.Ct. at 1040. In the present case, the  
15 Court finds that reasonable jurists would not find the Court's determination that Petitioner is not  
16 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed  
17 further. Petitioner has not made the required substantial showing of the denial of a constitutional  
18 right. Consequently, the Court hereby DECLINES to issue a certificate of appealability.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The Findings and Recommendations issued July 1, 2010, is ADOPTED IN FULL;
- 21 2. The Petition for Writ of Habeas Corpus is DENIED with prejudice;
- 22 3. The Clerk of Court is DIRECTED to enter judgment; and
- 23 4. The Court declines to issue a certificate of appealability. IT IS SO ORDERED.

24 Dated: August 26, 2010

  
25 CHIEF UNITED STATES DISTRICT JUDGE