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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LEROY E. KENDALL,  
Petitioner,

v.

CYNTHIA TAMPKINS,  
Respondent.

) Case No.: 1:13-cv-00209-LJO-JLT  
)  
) ORDER ADOPTING FINDINGS AND  
) RECOMMENDATIONS (Doc. 26)  
)  
) ORDER DENYING PETITION FOR WRIT OF  
) HABEAS CORPUS (Doc. 1)  
)  
) ORDER DIRECTING CLERK OF COURT TO  
) ENTER JUDGMENT AND CLOSE CASE  
)  
) ORDER DECLINING TO ISSUE CERTIFICATE  
) OF APPEALABILITY  
)  
)  
)  
)

Petitioner is a state prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 14, 2015, the Magistrate Judge assigned to the case issued Findings and Recommendations to deny the petition on its merits. ([Doc. 26](#)). This Findings and Recommendations was served upon all parties and contained notice that any objections were to be filed within twenty-one days from the date of service of that order. Petitioner filed objections to the Magistrate Judge’s Findings and Recommendations on August 27, 2015 ([Doc. 27](#)), and then filed a

1 supplement to his objection and a second supplement to his objections on September 8, 2015. ([Docs.](#)  
2 [28 & 29](#)).

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de*  
4 *novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections,  
5 the Court concludes that the Magistrate Judge's Findings and Recommendations is supported by the  
6 record and proper analysis. Petitioner's objections present no grounds for questioning the Magistrate  
7 Judge's analysis.

8 Moreover, the Court declines to issue a certificate of appealability. A state prisoner seeking a  
9 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and  
10 an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-336  
11 (2003). The controlling statute in determining whether to issue a certificate of appealability is 28  
12 U.S.C. § 2253, which provides as follows:

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- 14 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,  
15 the final order shall be subject to review, on appeal, by the court of appeals for the circuit  
16 in which the proceeding is held.
- 17 (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a  
18 warrant to remove to another district or place for commitment or trial a person charged  
19 with a criminal offense against the United States, or to test the validity of such person's  
20 detention pending removal proceedings.
- 21 (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not  
22 be taken to the court of appeals from—
- 23 (A) the final order in a habeas corpus proceeding in which the detention  
24 complained of arises out of process issued by a State court; or
- 25 (B) the final order in a proceeding under section 2255.
- 26 (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made  
27 a substantial showing of the denial of a constitutional right.
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(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

If a court denied a petitioner’s petition, the court may only issue a certificate of appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further’.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court **DECLINES** to issue a certificate of appealability.

Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendations, filed August 14, 2015 (Doc. 26), is **ADOPTED IN FULL**;
2. The petition for writ of habeas corpus (Doc. 1), is **DENIED** with prejudice;
3. The Clerk of Court is **DIRECTED** to **ENTER JUDGMENT** and close the file; and,
4. The Court **DECLINES** to issue a certificate of appealability.

This order terminates the action in its entirety.

IT IS SO ORDERED.

Dated: October 30, 2015

/s/ Lawrence J. O’Neill  
UNITED STATES DISTRICT JUDGE