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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

<p>KEISHAN HERBERT ENIX,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>ANDRE MATEVOUSIAN, Warden,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No.: 1:15-cv-01363-AWI-JLT</p> <p>ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (Doc. 7)</p> <p>ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (Doc. 1)</p> <p>ORDER DIRECTING CLERK OF COURT TO ENTER JUDGMENT AND CLOSE CASE</p> <p>ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY</p>
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Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On September 21, 2015, the Magistrate Judge assigned to the case issued Findings and Recommendations to dismiss the petition for lack of habeas corpus jurisdiction. (Doc. 7). This Findings and Recommendation (“F&R”) 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. To date, none of the parties has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b), this Court has reviewed the case. Having carefully reviewed the entire file, the Court concludes that the F&R is supported by the record and proper analysis. As explained in the F&R, Petitioner has not shown that he fits within the 28 U.S.C. § 2255 escape hatch. Harrison v. Ollison, 519 F.3d 952, 956 (9th Cir. 2008)

1 Moreover, the Court declines to issue a certificate of appealability. A successive petition under
2 § 2255 that is disguised as a § 2241 petition requires a certificate of appealability. Harrison, 519 F.3d
3 at 958. The controlling statute in determining whether to issue a certificate of appealability is 28
4 U.S.C. § 2253, which provides as follows:

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

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

(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—

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

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

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

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

19 If a court denied a petitioner's petition, the court may only issue a certificate of appealability
20 when a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §
21 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could
22 debate whether (or, for that matter, agree that) the petition should have been resolved in a different
23 manner or that the issues presented were 'adequate to deserve encouragement to proceed further'."
24 Slack v. McDaniel, 529 U.S. 473, 484 (2000) (*quoting* Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

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

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendations, filed September 21, 2015 (Doc. 7), is ADOPTED
5 IN FULL;
- 6 2. The petition for writ of habeas corpus (Doc. 1) is DISMISSED;
- 7 3. The Clerk of Court is DIRECTED to ENTER JUDGMENT and close the file; and,
- 8 4. The Court DECLINES to issue a certificate of appealability.

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10 IT IS SO ORDERED.

11 Dated: December 3, 2015


12 SENIOR DISTRICT JUDGE

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