

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Archie Cranford,

 Plaintiff,

 v.

Renee Medina,

 Defendants.

No. 1:15-cv-01712-DAD-JLT

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION, DIRECTING CLERK OF COURT
TO ENTER JUDGMENT AND CLOSE CASE,
AND DECLINING TO ISSUE CERTIFICATE
OF APPEALABILITY

(Doc. Nos. 1 & 5)

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 November 17, 2015, the magistrate judge assigned to the case issued findings and recommendations recommending that the petition be dismissed as failing to state a claim cognizable in a federal habeas action, as opposed to a civil rights action. (Doc. No. 5). The findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within twenty-one days from the date of service of that order. On November 30, 2015, petitioner filed objections to the assigned magistrate judge’s findings and recommendations. (Doc. No. 7).

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 entire file, including petitioner’s objections, the court concludes that the magistrate judge’s Findings and Recommendations is

1 supported by the record and proper analysis. Petitioner’s objections present no grounds for
2 questioning the magistrate judge’s analysis.

3 Moreover, the court declines to issue a certificate of appealability in this instance. A state
4 prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s
5 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
6 *Cockrell*, 537 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a
7 certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

8 (a) In a habeas corpus proceeding or a proceeding under section
9 2255 before a district judge, the final order shall be subject to
10 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
12 proceeding to test the validity of a warrant to remove to another
13 district or place for commitment or trial a person charged with a
criminal offense against the United States, or to test the validity of
such person’s detention pending removal proceedings.

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

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

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

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

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

23 If a court denied a petitioner’s petition, the court may only issue a certificate of
24 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
25 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
26 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
27 been resolved in a different manner or that the issues presented were ‘adequate to deserve
28 encouragement to proceed further’.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting

1 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

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

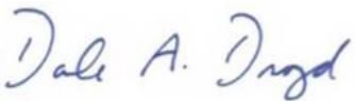
7 Accordingly, based on the foregoing:

- 8 1. The findings and recommendations, filed November 17, 2015 (Doc. No. 5), are
9 **ADOPTED IN FULL**;
- 10 2. The petition for writ of habeas corpus (Doc. No. 1), is **DISMISSED**;
- 11 3. The Clerk of Court is **DIRECTED** to **ENTER JUDGMENT** and close the file; and,
12 4. The Court **DECLINES** to issue a certificate of appealability.

13 This order terminates the action in its entirety.

14 **IT IS SO ORDERED.**

15
16
17 Dated: **January 6, 2016**



DALE A. DROZD
UNITED STATES DISTRICT JUDGE

18
19
20
21
22
23
24
25
26
27
28