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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARTURO RODRIGUEZ,

Petitioner,

v.

DAVE DAVEY,

Respondent.

Case No. 1:17-cv-00421-LJO-EPG-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(ECF No. 6)

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 15, 2017, the Magistrate Judge issued Findings and Recommendation that recommended the petition be dismissed because it fails to state a cognizable federal habeas claim. (ECF No. 6). This Findings and Recommendation was served on Petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of that order. To date, Petitioner has filed no objections, and the time for doing so has passed.

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, the Court concludes that the Findings and Recommendation is supported by the record and proper analysis, and there is no need to modify the Findings and Recommendation.

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

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

9 (b) There shall be no right of appeal from a final order in a
10 proceeding to test the validity of a warrant to remove to another
11 district or place for commitment or trial a person charged with a
12 criminal offense against the United States, or to test the validity of
13 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
16 appeals from—

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

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

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

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

27 A court should issue a certificate of appealability if “reasonable jurists could debate
28 whether (or, for that matter, agree that) the petition should have been resolved in a different
29 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
30 further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.
31 880, 893 & n.4 (1983)). In the present case, the Court finds that reasonable jurists would not find
32 the Court's determination that Petitioner's federal habeas corpus petition should be dismissed
33 debatable or wrong, or that the issues presented are deserving of encouragement to proceed
34 further. Therefore, the Court declines to issue a certificate of appealability.

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1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The Findings and Recommendation issued on May 15, 2017 (ECF No. 6) is
3 ADOPTED IN FULL;
- 4 2. The petition for writ of habeas corpus is DISMISSED;
- 5 3. The Clerk of Court is directed to CLOSE the case; and
- 6 4. The Court DECLINES to issue a certificate of appealability.

7
8 IT IS SO ORDERED.

9 Dated: September 6, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE