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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

ALEJANDRO SANCHEZ,

Petitioner,

v.

PEOPLE OF CALIFORNIA,

Respondent.

Case No. 1:17-cv-00723-JLT-HC

ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT  
TO ENTER JUDGMENT AND CLOSE  
CASE

ORDER DECLINING ISSUANCE OF  
CERTIFICATE OF APPEALABILITY

On May 15, 2017, Petitioner filed a federal petition for writ of habeas corpus.<sup>1</sup> He named “People of California” as the respondent in this matter. However, “People of California” is not a proper respondent. On July 12, 2017, the Court issued an order advising Petitioner of his failure to name a proper respondent and granting him an opportunity to amend the petition in order to avoid dismissal of the action. Petitioner was advised that failure to amend the petition to state a proper respondent would result in dismissal for lack of jurisdiction. Over thirty days have now passed and Petitioner has failed to amend the petition or respond in any way. Therefore, the petition will be dismissed.

In addition, the Court declines to issue a certificate of appealability. A state prisoner

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<sup>1</sup> On May 30, 2017, Petitioner consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c). (Doc. No. 7.)

1 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of  
2 his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537  
3 U.S. 322, 335-336 (2003). The controlling statute in determining whether to issue a certificate of  
4 appealability is 28 U.S.C. § 2253, which provides as follows:

5 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district  
6 judge, 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  
9 validity of a warrant to remove to another district or place for commitment or trial a person  
10 charged with a criminal offense against the United States, or to test the validity of such person's  
11 detention pending removal proceedings.

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

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

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

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

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

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

28 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.

1 **ORDER**

2 Accordingly, the Court ORDERS:

- 3 1. The petition for writ of habeas corpus is DISMISSED for lack of jurisdiction;  
4 2. The Clerk of Court is DIRECTED to enter judgment and close the case; and  
5 3. The Court DECLINES to issue a certificate of appealability.

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7 IT IS SO ORDERED.

8 Dated: August 22, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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