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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUAN MANUEL MONTENEGRO FLORES,

Petitioner,

v.

DAVID BAUGHMAN,

Respondent.

Case No. 1:18-cv-00707-LJO-SAB-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, GRANTING
RESPONDENT’S MOTION TO DISMISS,
DISMISSING FIRST AMENDED PETITION
FOR WRIT OF HABEAS CORPUS,
DIRECTING CLERK OF COURT TO
CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(ECF Nos. 20, 22, 24)

Petitioner is proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 8, 2019, the Magistrate Judge issued Findings and Recommendation that recommended granting Respondent’s motion to dismiss and dismissing the first amended petition for writ of habeas corpus as untimely. (ECF No. 24). 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. On May 28, 2019, the Findings and Recommendation was returned as undeliverable.¹ To date, no objections have been filed, and the time for doing so has passed.

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¹ Absent notice of a party’s change of address, service of documents at the prior address of the party is fully effective. Local Rule 182(f).

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
2 a de novo review of the case. Having carefully reviewed the entire file, the Court concludes that
3 the Findings and Recommendation is supported by the record and proper analysis.

4 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
5 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
6 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
7 whether to issue a 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
17 the detention complained of arises out of process issued by
a State 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 denies habeas relief on procedural grounds without reaching the underlying
24 constitutional claims, the court should issue a certificate of appealability “if jurists of reason
25 would find it debatable whether the petition states a valid claim of the denial of a constitutional
26 right and that jurists of reason would find it debatable whether the district court was correct in its
27 procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000). “Where a plain procedural bar
28 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist

1 could not conclude either that the district court erred in dismissing the petition or that the
2 petitioner should be allowed to proceed further.” Id.

3 In the present case, the Court finds that reasonable jurists would not find the Court’s
4 determination that Petitioner’s federal habeas corpus petition should be dismissed debatable or
5 wrong, or that Petitioner should be allowed to proceed further. Therefore, the Court declines to
6 issue a certificate of appealability.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendation issued on May 8, 2019 (ECF No. 24) is
9 ADOPTED IN FULL;
- 10 2. The motion to dismiss (ECF No. 22) is GRANTED;
- 11 3. The first amended petition for writ of habeas corpus (ECF No. 20) is DISMISSED as
12 untimely;
- 13 4. The Clerk of Court is directed to CLOSE the case; and
- 14 5. The Court DECLINES to issue a certificate of appealability.

15
16 IT IS SO ORDERED.

17 Dated: August 14, 2019

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