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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	ZANE HUBBARD,	No. 1:19-cv-00337-DAD-JDP (HC)
12	Plaintiff,	
13	v.	ORDER ADOPTING FINDINGS AND
14	DAVID BAUGHMAN; and XAVIER	RECOMMENDATIONS, DISMISSING PETITION FOR LACK OF JURISDICTION
15	BECERRA, Attorney General of the State of California,	AND DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY
16	Defendants.	(Doc. No. 12)
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19	Petitioner Zane Hubbard is a state prisoner proceeding pro se with a petition for writ of	
20	habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States	
21	Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.	
22	On September 25, 2019, the assigned magistrate judge issued findings and	
23	recommendations, recommending dismissal of the habeas petition for lack of jurisdiction because	
24	petitioner does not therein challenge the lawfulness of his confinement. (Doc. No. 12.) Those	
25	findings and recommendations were served upon all parties and contained notice that any	
26	objections thereto were to be filed within fourteen (14) days from the date of service of that order.	
27	No objections have been filed and the time in which to do so has now passed.	
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In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

Having found that petitioner is not entitled to habeas relief, the court now turns to whether a certificate of appealability should issue. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, as an appeal is only allowed under certain circumstances. 28 U.S.C. § 2253; *Miller-El v. Cockrell*, 537 U.S. 322, 335-336 (2003). In addition, Rule 11 of the Rules Governing Section 2254 Cases requires that a district court issue or deny a certificate of appealability when entering a final order adverse to a petitioner. *See also* Ninth Circuit Rule 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). If, as here, a court denies a petition for a writ of habeas corpus, the court may only issue a certificate of appealability when "the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

In the present case, the court concludes 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 wrong or debatable, and they would not conclude that petitioner is deserving of encouragement to proceed further. Therefore, the court declines to issue a certificate of appealability.

Accordingly:

- 1. The findings and recommendations filed on September 25, 2019, (Doc. No. 12), are adopted in full;
- 2. The petition for writ of habeas corpus, (Doc. No. 1), is dismissed with prejudice for lack of jurisdiction;

1	3. The Clerk of Court is directed to enter judgment and close the file; and	
2	4. The court declines to issue a certificate of appealability.	
3	IT IS SO ORDERED.	
4	Dated: December 2, 2019 Dale A. Dryd	
5	UNITED STATES DISTRICT JUDGE	
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