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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENNETH A. JACKSON,
Petitioner,
v.
ROBERT NEUSCHMID,
Respondent.

Case No. 1:19-cv-00357-LJO-SAB-HC
ORDER ADOPTING FINDINGS AND
RECOMMENDATION, GRANTING
RESPONDENT’S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS WITHOUT PREJUDICE,
DIRECTING CLERK OF COURT TO
CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(ECF Nos. 12, 20)

Petitioner, proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 20, 2019,¹ the Magistrate Judge issued Findings and Recommendation that recommended granting Respondent’s motion to dismiss and dismissing the petition without prejudice based on Younger v. Harris, 401 U.S. 37 (1971). (ECF No. 20). Petitioner filed timely objections. (ECF No. 22).

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

¹ The Findings and Recommendation was signed on August 19, 2019, but it was not entered on the docket until August 20, 2019.

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 August 20, 2019 (ECF No. 20) is
3 ADOPTED;
- 4 2. Respondent's motion to dismiss (ECF No. 12) is GRANTED;
- 5 3. The petition for writ of habeas corpus is DISMISSED WITHOUT PREJUDICE
6 pursuant to Younger v. Harris, 401 U.S. 37 (1971);
- 7 4. The Clerk of Court is DIRECTED to CLOSE the case; and
- 8 5. The Court DECLINES to issue a certificate of appealability.

9
10 IT IS SO ORDERED.

11 Dated: October 8, 2019

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