



1 objections, the Court concludes that the Magistrate Judge’s Findings and Recommendation is  
2 supported by the record and proper analysis. Petitioner's objections present no grounds for  
3 questioning the Magistrate Judge's analysis.

4 In addition, the Court declines to issue a certificate of appealability. A state prisoner  
5 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of  
6 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537  
7 U.S. 322, 335-336 (2003). A successive petition under 28 U.S.C. § 2255 that is disguised as a §  
8 2241 petition required a certificate of appealability. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th  
9 Cir. 2008); *Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in  
10 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as  
11 follows:

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

14 (b) There shall be no right of appeal from a final order in a proceeding to test the  
15 validity of a warrant to remove to another district or place for commitment or trial a person  
16 charged with a criminal offense against the United States, or to test the validity of such person's  
detention pending removal proceedings.

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

18 (A) the final order in a habeas corpus proceeding in which the detention  
19 complained of arises out of process issued by 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) only if the applicant has  
made a substantial showing of the denial of a constitutional right.

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

24 If a court denies a petitioner’s petition, the court may only issue a certificate of  
25 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.  
26 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that  
27 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have  
28

1 been resolved in a different manner or that the issues presented were ‘adequate to deserve  
2 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting  
3 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

4 In the present case, the Court finds that Petitioner has not made the required substantial  
5 showing of the denial of a constitutional right to justify the issuance of a certificate of  
6 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not  
7 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to  
8 proceed further. Thus, the Court **DECLINES** to issue a certificate of appealability.

9 Accordingly, the Court orders as follows:

- 10 1. The Findings and Recommendations, filed October 28, 2019 (Doc. No. 15), is  
11 **ADOPTED IN FULL**;
- 12 2. The petition for writ of habeas corpus is **DISMISSED**;
- 13 3. The Clerk of Court is **DIRECTED** to **ENTER JUDGMENT** and close the file; and,
- 14 4. The Court **DECLINES** to issue a certificate of appealability.

15 This order terminates the action in its entirety.

16 **IT IS SO ORDERED.**

17 Dated: April 17, 2020

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19 **SENIOR DISTRICT JUDGE**