

1 questioning the Magistrate Judge’s analysis.

2 In addition, the Court declines to issue a certificate of appealability. A state prisoner
3 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his
4 petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S.
5 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of
6 appealability is 28 U.S.C. § 2253, which provides as follows:

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

10 (b) There shall be no right of appeal from a final order in a proceeding
11 to test the validity of a warrant to remove to another district or place
12 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.

13 (c)

14 (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
18 which the detention complained of arises out of
19 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
22 (1) only if the applicant has made a substantial showing of
23 the 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 If a petition is denied, the court may only issue a certificate of appealability when a
28 petitioner makes a substantial showing of the denial of a constitutional right. § 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 n.4 (1983)).

In the present case, the Court finds that Petitioner has not made the required substantial

1 showing of the denial of a constitutional right to justify the issuance of a certificate of
2 appealability. Reasonable jurists would not find the Court's determination that Petitioner is not
3 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
4 proceed further.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Findings and Recommendation that was filed on January 15, 2021 (Doc. No.
7 26), is ADOPTED in full;
- 8 2. The petition for writ of habeas corpus (Doc. No. 1) is DENIED with prejudice;
- 9 3. The Clerk of Court is DIRECTED to enter judgment and close the file; and
- 10 4. The Court DECLINES to issue a certificate of appealability.

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12 IT IS SO ORDERED.

13 Dated: February 16, 2021


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SENIOR DISTRICT JUDGE