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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JABORIE BROWN,  
  
                    Petitioner,  
  
          v.  
  
WARDEN OF U.S.P. ATWATER,  
  
                    Respondent.

Case No. 1:20-cv-00233-AWI-SAB-HC  
  
ORDER ADOPTING FINDINGS AND  
RECOMMENDATION, GRANTING  
RESPONDENT’S MOTION TO DISMISS,  
DISMISSING PETITION AND  
SUPPLEMENTAL PETITIONS FOR WRIT  
OF HABEAS CORPUS, DIRECTING  
CLERK OF COURT TO CLOSE CASE,  
AND DECLINING TO ISSUE A  
CERTIFICATE OF APPEALABILITY  
  
(ECF Nos. 1, 14, 22, 23, 25)

Petitioner is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 1, 2021, the Magistrate Judge issued Findings and Recommendation recommending that Respondent’s motion to dismiss be granted and the petition and supplemental petitions for writ of habeas corpus be dismissed for lack of jurisdiction as Petitioner failed to satisfy the criteria to bring a § 2241 petition pursuant to the escape hatch of 28 U.S.C. § 2255(e). (ECF No. 25). The Findings and Recommendation was served the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the Findings and Recommendation. To date, no objections have been filed, and the time for doing so has passed.

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 “Where a petition purportedly brought under § 2241 is merely a ‘disguised’ § 2255  
5 motion, the petitioner cannot appeal from the denial of that petition without a [certificate of  
6 appealability].” Harrison, 519 F.3d at 958. The controlling statute in determining whether to  
7 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 A court should issue a certificate of appealability if “reasonable jurists could debate  
24 whether (or, for that matter, agree that) the petition should have been resolved in a different  
25 manner or that the issues presented were ‘adequate to deserve encouragement to proceed  
26 further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.  
27 880, 893 & n.4 (1983)). In the present case, the Court finds that reasonable jurists would not find  
28 the Court’s determination that Petitioner’s petition should be dismissed debatable or wrong, or

1 that Petitioner should be allowed to proceed further. Therefore, the Court declines to issue a  
2 certificate of appealability.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendation issued on June 1, 2021 (ECF No. 25) is  
5 ADOPTED IN FULL;
- 6 2. Respondent's motion to dismiss (ECF No. 23) is GRANTED;
- 7 3. The petition and supplemental petitions for writ of habeas corpus (ECF Nos. 1, 14,  
8 22) are DISMISSED;
- 9 4. The Clerk of Court is directed to CLOSE the case; and
- 10 5. The Court DECLINES to issue a certificate of appealability.

11 IT IS SO ORDERED.

12 Dated: July 26, 2021

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15 SENIOR DISTRICT JUDGE  
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