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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	TRAVIS JUSTIN CUELLAR,	No. 1:20-cv-00427-AWI-SKO (HC)
12	Petitioner,	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS (Doc. No. 4)
13 14	V.	ORDER SUMMARILY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS
15 16		ORDER DIRECTING CLERK OF COURT TO CLOSE CASE
17 18	PEOPLE OF THE STATE OF CALIFORNIA, Respondent.	ORDER DECLINING TO ISSUE CERTIFICATE OF APPEALABILITY
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20	Petitioner is a state prisoner proceeding in propria persona with a petition for writ of	
21	habeas corpus pursuant to 28 U.S.C. § 2254.	On March 27, 2020, the Magistrate Judge assigned
22	to the case issued Findings and Recommendation to summarily dismiss the petition for failure to	
23	exhaust state remedies. (Doc. No. 4.) This Findings and Recommendation was served upon all	
24	parties and contained notice that any objections were to be filed within twenty-one (21) days from	
25	the date of service of that order. On April 10, 2020, Petitioner filed objections to the Magistrate	
26	Judge's Findings and Recommendations. (Doc. No. 6.)	
27	In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a	
28	de novo review of the case. Having carefully	reviewed the entire file, including Petitioner's

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). The controlling statute in determining whether to issue a certificate of	
8	appealability is 28 U.S.C. § 2253, which provides as follows:	
9 10	(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district 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.	
11	validity of a warrant to remove to another 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.	
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13	(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may	
14	not be taken to the court of appeals from—	
15 16	(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or	
10	(B) the final order in a proceeding under section 2255.	
18	(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.	
19	(3) The certificate of appealability under paragraph (1) shall indicate which specific issue	
20	or issues satisfy the showing required by paragraph (2).	
21	If a court denies a petitioner's petition, the court may only issue a certificate of	
22	appealability when a petitioner makes a substantial showing of the denial of a constitutional right.	
23	28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that	
24	"reasonable jurists could debate whether (or, for that matter, agree that) the petition should have	
25	been resolved in a different manner or that the issues presented were 'adequate to deserve	
26	encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting	
27	Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).	
28	In the present case, the Court finds that Petitioner has not made the required substantial 2	

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. Thus, the Court DECLINES to issue a certificate of appealability.	
5	Accordingly, the Court orders as follows:	
6	1. The Findings and Recommendation, filed March 27, 2020 (Doc. No. 4), is	
7	ADOPTED in full;	
8	2. The petition for writ of habeas corpus is DISMISSED without prejudice;	
9	3. The Clerk of Court is directed to CLOSE the case; and,	
10	4. The Court DECLINES to issue a certificate of appealability.	
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12	IT IS SO ORDERED.	
13	Dated: <u>December 8, 2020</u> SENIOR DISTRICT JUDGE	
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