

1 the Magistrate Judge’s Findings and Recommendation is supported by the record and proper
2 analysis.

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

11 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district
12 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.

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

16 (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—

17 (A) the final order in a habeas corpus proceeding in which the detention
18 complained of arises out of process issued by a State court; or

19 (B) the final order in a proceeding under section 2255.

20 (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.

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

23 If a court denies a petitioner’s petition, the court may only issue a certificate of
24 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
25 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
26 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
27 been resolved in a different manner or that the issues presented were ‘adequate to deserve
28 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting

1 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

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

7 Accordingly, the Court orders as follows:

- 8 1. The Findings and Recommendations, filed May 20, 2020 (Doc. No. 4), is
9 **ADOPTED IN FULL**;
- 10 2. The petition for writ of habeas corpus is **DISMISSED**;
- 11 3. The Clerk of Court is **DIRECTED** to **ENTER JUDGMENT** and close the file; and,
- 12 4. The Court **DECLINES** to issue a certificate of appealability.

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IT IS SO ORDERED.

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Dated: September 9, 2020

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SENIOR DISTRICT JUDGE