1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 LAMONT J. HOWARD, No. 1:20-cv-00933-NONE-JLT (HC) 12 Petitioner. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS. DISMISSING 13 PETITION, DIRECTING THE CLERK OF COURT TO ASSIGN DISTRICT JUDGE FOR v. 14 PURPOSE OF CLOSING CASE AND THEN CLOSE THE CASE. AND DECLINING TO 15 CATES, Warden, ISSUE CERTIFICATE OF APPEALABILITY 16 Respondent. (Doc. No. 11) 17 18 Petitioner is a state prisoner proceeding in forma pauperis with a petition for writ of 19 habeas corpus pursuant to 28 U.S.C. § 2254. On August 11, 2020, the magistrate judge assigned 20 to the case issued findings and recommendations to dismiss the petition. (Doc. No. 11.) The 21 findings and recommendations were served upon all parties and contained notice that any 22 objections thereto were to be filed within twenty-one days from the date of service of that order. 23 To date, no party has filed objections. In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a 24 de novo review of the case. Having carefully reviewed the entire file, the court concludes that the 25 26 pending findings and recommendations are supported by the record and proper analysis. 27 In addition, the court declines to issue a certificate of appealability. A state prisoner

seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of

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1 his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 2 U.S. 322, 335–36 (2003). If a court denies the petition, the court may only issue a certificate of 3 appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 4 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that 5 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have 6 been resolved in a different manner or that the issues presented were 'adequate to deserve 7 encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting 8 Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). 9 In the present case, the court finds that petitioner has not made the required substantial 10 showing of the denial of a constitutional right to justify the issuance of a certificate of 11 appealability. Reasonable jurists would not find the court's determination that petitioner is not 12 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to 13 proceed further. Thus, the court DECLINES to issue a certificate of appealability. 14 Accordingly, the court orders as follows: 1. The findings and recommendations, filed August 11, 2020 (Doc. No. 11), are 15 16 ADOPTED IN FULL; 17 2. The petition for writ of habeas corpus is DISMISSED; 3. 18 The Clerk of Court is DIRECTED to assign a district judge to this case for the 19 purpose of closing the case and then to close the case; and, 20 4. The court DECLINES to issue a certificate of appealability. 21 IT IS SO ORDERED. 22 Dated: September 14, 2020 23 24 25

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