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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
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7 **RALPH GONZALES GARCIA,**

8 **Petitioner,**

9 **v.**

10 **KOENIG,**

11 **Respondent.**

CASE NO. 1:20-cv-01698-AWI-HBK (HC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, AND DIRECTION CLERK OF
COURT TO ENTER JUDGMENT AND
CLOSE CASE**

(Doc. No. 10)

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15 Petitioner Ralph Gonzales Garcia is a state prisoner proceeding in propria persona with a
16 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 9, 2021, the magistrate
17 judge assigned to the case issued findings and recommendations to dismiss the petition. Doc. No.
18 10. These findings and recommendations were served on all parties and contained notice that any
19 objections were to be filed within thirty days from the date of service of that order. To date, no
20 objections have been filed.

21 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a
22 de novo review of the case. Having carefully reviewed the entire file, the Court concludes that the
23 magistrate judge's findings and recommendations are supported by the record and proper analysis.

24 In addition, the Court declines to issue a certificate of appealability. A state prisoner
25 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his
26 petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S.
27 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of
28 appealability is 28 U.S.C. § 2253, which provides as follows:

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

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

8 (c)

9 (1) Unless a circuit justice or judge issues a certificate of appealability, an
10 appeal may not be taken to the court of appeals from—

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

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

15 (2) A certificate of appealability may issue under paragraph (1) only if the
16 applicant has made a substantial showing of the denial of a constitutional
17 right.

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

20 If a court denies a petitioner's petition, the court may only issue a certificate of
21 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
22 § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable jurists
23 could debate whether (or, for that matter, agree that) the petition should have been resolved in a
24 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
25 further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.
26 880, 893 & n.4 (1983)).

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

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ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (Doc. No. 10) issued on March 9, 2021, are ADOPTED in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED;
3. The Clerk of Court shall ENTER judgment and CLOSE the file; and
4. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: April 22, 2021



SENIOR DISTRICT JUDGE