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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   HOSEA SWOPES,   No. 1:21-cv-00062-DAD-JLT (HC)

12   Petitioner,

13   v.   ORDER ADOPTING FINDINGS AND
                                                RECOMMENDATIONS AND DISMISSING
14   A. CIOLLI,   PETITION

15   Respondent.   (Doc. No. 9)

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18   Petitioner Hosea Swopes is a federal prisoner proceeding *pro se* and *in forma pauperis*

19   with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. No. 1.) The matter

20   was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local

21   Rule 302.

22   On March 15, 2021, the assigned magistrate judge issued findings and recommendations,

23   recommending that the pending petition be dismissed for lack of jurisdiction because petitioner

24   challenges the validity and constitutionality of his sentence imposed by the United States District

25   Court for the Eastern District of Missouri, and does not assert a claim of actual innocence or

26   demonstrate that he never had an unobstructed procedural opportunity to present his claims such

27   that relief under 28 U.S.C. § 2241 may be sought. (Doc. No. 9 at 4, 6.) Further, the magistrate

28   judge noted that recharacterization and transfer of the pending petition to the Eastern District of

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Missouri would not be in the interest of justice because the petition would be an unauthorized second or successive 28 U.S.C. § 2255 motion. (*Id.* at 6.) The pending findings and recommendations were served on all parties with notice that any objections thereto were to be filed within twenty-one (21) days of service. (*Id*. at 3.) The time to file objections has since passed and no objections have been filed.

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

The plain language of 28 U.S.C. § 2253(c)(1) does not require a certificate of appealability because this is an appeal from an order denying a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, not a final order in a habeas proceeding in which the detention complained of arises out of process issued by a State court. *Forde v. U.S. Parole Commission*, 114 F.3d 878 (9th Cir. 1997); *see Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008) (plain language of 28 U.S.C. § 2253(c)(1) does not require federal prisoners bringing section 2241 petitions to obtain a certificate of appealability to appeal, unless the section 2241 petition is a section 2255 petition in disguise"); *Ojo v. INS*, 106 F.3d 680, 681-682 (5th Cir. 1997); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). Therefore, no certificate of appealability will be issued.

Accordingly,

1.   The findings and recommendations issued on March 15, 2021 (Doc. No. 9) are adopted in full;

2.   The petition for writ of habeas corpus is dismissed;

3.   No certificate of appealability will issue because none is required; and

4.   The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **May 3, 2021**   _____

UNITED STATES DISTRICT JUDGE

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