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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AMADO RAMIREZ ORTIZ,

Petitioner,

v.

JOSIE GASTELO,

Respondent.

Case No. 1:21-cv-00198-AWI-EPG-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(ECF No. 17)

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 21, 2021, the Magistrate Judge issued Findings and Recommendation recommending the petition be denied. (ECF No. 17). The Findings and Recommendation was served on the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the Findings and Recommendation. On June 21, 2021, Petitioner filed timely objections. (ECF No. 18).

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s objections, the Court concludes that the Findings and Recommendation is supported by the record and proper analysis and there is no need to modify the Findings and Recommendation.

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

5 (a) In a habeas corpus proceeding or a proceeding under section
6 2255 before a district judge, the final order shall be subject to
7 review, on appeal, by the court of appeals for the circuit in which
8 the proceeding is held.

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

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

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

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

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

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

27 28 U.S.C. § 2253.

28 If a court denies a habeas petition on the merits, the court may only issue a certificate of
appealability "if jurists of reason could disagree with the district court's resolution of [the
petitioner's] constitutional claims or that jurists could conclude the issues presented are adequate
to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327; Slack v. McDaniel,
529 U.S. 473, 484 (2000). While the petitioner is not required to prove the merits of his case, he
must demonstrate "something more than the absence of frivolity or the existence of mere good
faith on his . . . part." Miller-El, 537 U.S. at 338.

In the present case, the Court finds that reasonable jurists would not find the Court's
determination that Petitioner's federal habeas corpus petition should be denied debatable or

1 wrong, or that the issues presented are deserving of encouragement to proceed further. Therefore,
2 the Court declines to issue a certificate of appealability.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Findings and Recommendation issued on May 21, 2021 (ECF No. 17) is
5 ADOPTED IN FULL;
- 6 2. The petition for writ of habeas corpus is DENIED;
- 7 3. The Clerk of Court is DIRECTED to CLOSE the case; and
- 8 4. The Court DECLINES to issue a certificate of appealability.

9
10 IT IS SO ORDERED.

11 Dated: July 22, 2021



12 SENIOR DISTRICT JUDGE