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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS ALBERTO ALARCON NAVA,

Petitioner,

v.

UNNAMED,

Respondent.

No. 1:21-cv-00594-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE AND CLOSE
CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 5)

Petitioner Luis Alberto Alarcon Nava is a state prisoner proceeding *pro se* and *in forma pauperis* 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 April 13, 2021, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed. (Doc. No. 5 at 1–2.) Because petitioner already had a habeas petition pending before this court (No. 1:20-cv-01378-HBK) when he filed the instant petition, this petition would normally be construed as a motion to amend the earlier petition. (Doc. No. 5 at 2 (citing *Woods v. Carey*, 525 F.3d 886 (9th Cir. 2008).) However, it

1 appears that petitioner intended to file this new petition with the California Supreme Court and
2 thus, the magistrate judge found that construing the new petition as a motion to amend would be
3 inappropriate. (*See* Doc. No. 1.) Those findings and recommendations were served upon all
4 parties and contained notice that any objections thereto were to be filed within fourteen (14) days
5 after service. (*Id.* at 2.) On May 27, 2021, petitioner filed objections to the findings and
6 recommendations. (Doc. No. 8.) However, those objections provided no basis upon which to
7 call the pending findings and recommendations into question, but in fact provided further support
8 for the conclusion reached by those findings and recommendations.

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

13 In addition, the court declines to issue a certificate of appealability. A state prisoner
14 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
15 his petition, and an appeal is only allowed in certain circumstances. 28 U.S.C. § 2253; *Miller-El*
16 *v. Cockrell*, 537 U.S. 322, 335–36 (2003). If a court denies a petitioner's petition, the court may
17 only issue a certificate of appealability when a petitioner makes a substantial showing of the
18 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the
19 petitioner must establish that "reasonable jurists could debate whether (or, for that matter, agree
20 that) the petition should have been resolved in a different manner or that the issues presented
21 were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473,
22 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). In the present case, the court
23 finds that petitioner has not made the required substantial showing of the denial of a constitutional
24 right to justify the issuance of a certificate of appealability. Reasonable jurists would not find the
25 court's determination that petitioner is not entitled to federal habeas corpus relief debatable,
26 wrong, or deserving of encouragement to proceed further. Thus, the court declines to issue a
27 certificate of appealability.

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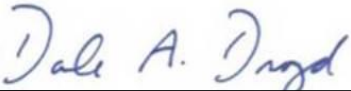
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Accordingly,

1. The findings and recommendations issued on April 13, 2021, (Doc. No. 5), are adopted in full;
2. The petition for writ of habeas corpus, (Doc. No. 1), is dismissed;
3. The clerk of court is directed to assign a district judge to this case for the purpose of closing the case and then to enter judgment and close the case; and
4. The court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: July 14, 2021



UNITED STATES DISTRICT JUDGE