



1 Petition—Petitioner argues: (1) the assigned magistrate judge is biased, (2) Respondent did not  
2 file previous state habeas petitions raising the judicial bias claim as a “tactic” relevant to  
3 Respondent’s procedural default argument, (3) the magistrate judge failed to consider Petitioner’s  
4 Equal Protection argument, and (4) the magistrate judge failed to take judicial notice *sua sponte*  
5 “with regard to Petitioner’s acquittal” of a previous gun possession charge. (*See generally* Docs  
6 55, 58.)

7 As an initial matter, Petitioner fails to provide evidence of bias. For example, Petitioner  
8 fails to explain how his previous habeas petitions, or failure to *sua sponte* take judicial notice of  
9 certain information, undermine the magistrate judge’s finding as to the merits of his judicial bias  
10 claim stated in the Petition.

11 With the equal protection claim, Petitioner argues that he is “being treated differently  
12 because he is African American and indigent.” (Doc. 55 at 12-13.) Notably, however, though the  
13 Third Amended Petition generally references deprivation of “equal protection of the laws” as part  
14 of his judicial bias claim, the Petition does not include any specific argument as to disparate  
15 treatment based on race or economic status, and Petitioner did not allege that similarly situated  
16 individuals were treated differently in any manner. *See Boardman v. Inslee*, 978 F.3d 1092, 1117  
17 (9th Cir. 2000) (“To prevail on [his] equal-protection claim, [Petitioner] ‘must [first] show that a  
18 class that is similarly situated has been treated disparately.’”). Rather, Petitioner claims he was  
19 “deprived of Equal Protection of the laws and Due Process of the law as he was denied his  
20 constitutional right to a ‘fair impartial trial before a fair impartial and disinterested judge,’ due to  
21 Judge Cardoza’s unconstitutional failure to recuse herself from Petitioner’s trial proceedings, on  
22 the basis of ‘her (Judge Cardoza) [sic] participation during the accusatory process of Petitioner’s  
23 underlying case was of critical import that require’s [sic] recusal.” (Doc. 42 at 22). The  
24 magistrate judge properly considered this argument pursuant to clearly established law, and found  
25 Petitioner failed to show that his due process right to a fair and impartial trial in front of an  
26 impartial judge were violated because Judge Cardoza, as the presiding trial judge, previously  
27 signed a search warrant in a separate matter authorizing a search of Petitioner’s property. (Doc.  
28 54 at 9-13.) These objections, along with the restatement of arguments previously made in his

1 Third Amended Petition and reply, do not show any legal error by the magistrate judge, and the  
2 objections are overruled.

3 According to 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de novo* review of the case.  
4 Having carefully reviewed the entire file, including Petitioner’s objections, the Court concludes  
5 that Findings and Recommendations are supported by the record and proper analysis.

6 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal, rather  
7 an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
8 (2003); 28 U.S.C. § 2253. If a court denies a habeas petition on the merits, the court may only  
9 issue a certificate of appealability “if jurists of reason could disagree with the district court’s  
10 resolution of [the petitioner’s] constitutional claims or that jurists could conclude the issues  
11 presented are adequate to deserve encouragement to proceed further.” *Miller-El*, 537 U.S. at 327;  
12 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Though the petitioner is not required to prove the  
13 merits of his case, he must demonstrate “something more than the absence of frivolity or the  
14 existence of mere good faith on his . . . part.” *Miller-El*, 537 U.S. at 338.

15 The Court finds that reasonable jurists would not find the Court’s determination that the  
16 petition should be denied debatable or wrong, or that the issues presented are deserving of  
17 encouragement to proceed further. Petitioner has not made the required substantial showing of the  
18 denial of a constitutional right. Therefore, the Court declines to issue a certificate of appealability  
19 Based upon the foregoing, the Court **ORDERS**:

- 20 1. The Findings and Recommendations issued on October 19, 2023 (Doc. 54) are  
21 **ADOPTED** in full.
- 22 2. Petitioner’s Motion for Summary Judgment (Doc. 50) is **DENIED**.
- 23 3. The Third Amended Petition for writ of habeas corpus (Doc. 42) is **DENIED**.
- 24 4. Petitioner’s requests for judicial notice (Docs. 52, 53) are **DENIED**.
- 25 5. The Court declines to issue a certificate of appealability.
- 26 6. Petitioner’s motion for sanctions (Doc. 62) is **DENIED** as moot.

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7. The Clerk of the Court is directed to terminate any pending motions/deadlines and **CLOSE** the case.

IT IS SO ORDERED.

Dated: **December 20, 2023**

  
UNITED STATES DISTRICT JUDGE