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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 ERIC AGEE,

12 Petitioner,

13 v.

14 WARDEN, FCI MENDOTA,

15 Respondent.
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No. 1:22-cv-01424-ADA-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(ECF No. 5)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO
ENTER JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

20 Petitioner Eric Agee is a federal prisoner proceeding *pro se* and *in forma pauperis* with a
21 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a
22 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

23 On November 10, 2022, the assigned Magistrate Judge issued findings and
24 recommendations to dismiss the petition. (ECF No. 5.) Those findings and recommendations
25 were served upon all parties and contained notice that any objections thereto were to be filed
26 within twenty-one (21) days after service. On December 7, 2022, Petitioner filed objections to
27 the findings and recommendations. (ECF No. 6.) Petitioner's objections restate the claims of his
28 complaint and, therefore, present no new grounds for questioning the Magistrate Judge's analysis.

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a
2 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s
3 objections, the Court concludes that the Magistrate Judge’s findings and recommendations are
4 supported by the record and proper analysis.

5 In addition, the Court declines to issue a certificate of appealability. A prisoner seeking a
6 writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition,
7 and an appeal is only allowed in certain circumstances. *See Miller-El v. Cockrell*, 537 U.S. 322,
8 335–36 (2003). Further, a certificate of appealability is required for a successive § 2255 motion
9 that is disguised as a § 2241 petition. *See Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008);
10 *see also Porter v. Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in
11 determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides:

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

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

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

18 (A) the final order in a habeas corpus proceeding in which the
19 detention complained of arises out of process issued by 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) only if the
22 applicant has made a substantial showing of the denial of a constitutional
right.

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

25 If a court denies a petitioner’s petition, the court may only issue a certificate of
26 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
27 *See* 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
28 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have

1 been resolved in a different manner or that the issues presented were ‘adequate to deserve
2 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
3 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

4 In the present case, the Court finds that Petitioner has not made the required substantial
5 showing of the denial of a constitutional right to justify the issuance of a certificate of
6 appealability. Reasonable jurists would not find the Court’s determination that Petitioner is not
7 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
8 proceed further. Thus, the Court declines to issue a certificate of appealability.


9 Accordingly,

- 10 1. The findings and recommendations issued on November 10, 2022 (ECF No. 5), are
11 adopted in full;
- 12 2. The petition for writ of habeas corpus is dismissed with prejudice;
- 13 3. The Clerk of Court is directed to enter judgment and close the case; and
- 14 4. The Court declines to issue a certificate of appealability.

15 This order terminates the action in its entirety.

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18 IT IS SO ORDERED.

19 Dated: May 30, 2023

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UNITED STATES DISTRICT JUDGE