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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GERARDO CASTILLO-CHAVEZ,

 Petitioner,

 v.

B.M. TRATE,

 Respondent.

No. 1:23-cv-00413-JLT-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 5)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS AND DIRECTING
CLERK OF COURT TO ENTER JUDGMENT
AND CLOSE CASE
ORDER DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

Gerardo Castillo-Chavez is a federal prisoner proceeding with appointed counsel and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The Court conducted a preliminary review of the petition and recommended the petition be dismissed for lack of jurisdiction. (Doc. 5.) Petitioner filed objections to the Findings and Recommendation on April 25, 2023. (Doc. 9.) Thereafter, pursuant to General Order 563, the matter was referred to the Federal Defender’s Office, and on April 25, 2023, attorney Verna Wefald was appointed as Petitioner’s counsel. (Docs. 6, 8.) The Court stayed the Findings and Recommendations and granted counsel leave to supplement the petition. (Doc. 6.)

On June 22, 2023, the Supreme Court issued its opinion in *Jones v. Hendrix*, 599 U.S.

1 ____ , ____ S. Ct. ____ , 2023 WL 4110233 (2023). In *Jones*, the Supreme Court held that the
2 savings clause in 28 U.S.C. § 2255(e) “does not permit a prisoner asserting an intervening change
3 in statutory interpretation to circumvent AEDPA's restrictions on second or successive § 2255
4 motions by filing a § 2241 petition.” *Id.*, at *5. In light of the Supreme Court’s decision, on June
5 26, 2023, Counsel for Petitioner filed a notice advising the Court that Counsel would not be
6 submitting further briefing. (Doc. 12 at 3.) On June 28, 2023, the Magistrate Judge vacated the
7 stay of the Findings and Recommendation and submitted them to this Court pursuant to 28 U.S.C.
8 § 636(b)(1)(B).

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 Findings and Recommendations are supported by the
12 record and proper analysis.

13 In addition, the Court declines to issue a certificate of appealability. A prisoner seeking a
14 writ of habeas corpus has no absolute entitlement to appeal a district court’s denial of his petition,
15 and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-
16 336 (2003). A certificate of appealability is required for a successive § 2255 motion that is
17 disguised as a § 2241 petition. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008); *Porter v.*
18 *Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in determining whether to
19 issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

20 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
21 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.

22 (b) There shall be no right of appeal from a final order in a proceeding to test
23 the validity of a warrant to remove to another district or place for commitment or
24 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.

25 (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—

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

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

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

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

6 If a court denies a petitioner’s petition, the court may only issue a certificate of
7 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
8 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
9 “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
10 been resolved in a different manner or that the issues presented were ‘adequate to deserve
11 encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
12 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

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

18 **ORDERS:**

- 19 1. The Findings and Recommendations issued on March 27, 2023, (Doc. 5), are
20 **ADOPTED IN FULL.**
- 21 2. The petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE.**
- 22 3. The Clerk of Court is directed to enter judgment and close the case.
- 23 4. The Court declines to issue a certificate of appealability.

24 This order terminates the action in its entirety.

25 IT IS SO ORDERED.

26 Dated: June 30, 2023

27 
28 UNITED STATES DISTRICT JUDGE