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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE PEREZ,
Petitioner,
v.
JOE A. LIZARRAGO,
Respondents.

No. 2:14-cv-1357 JAM DAD P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 29, 2014, the assigned Magistrate Judge issued findings and recommendations, recommending that petitioner’s application for a writ of habeas corpus be dismissed without prejudice as second or successive. (Doc. No. 8) On November 10, 2014, the court adopted the findings and recommendations in full and declined to issue a certificate of appealability. (Doc. No. 9) The court entered judgment on the same day. (Doc. No. 10) Pending before the court is petitioner’s motion for reconsideration.

In his motion for reconsideration, petitioner asks the court to reconsider its decision to not issue a certificate of appealability in this case. Petitioner contends that the court stated in its order that he had not filed objections to the findings and recommendations addressing whether a certificate of appealability should issue. Petitioner contends, however, that he did in fact file a

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1 request for a certificate of appealability. He has attached to his motion a copy of his mail log to
2 demonstrate he timely filed his request. (Pet'r's Mot. for Recons. at 1 & Attach.)

3 Petitioner's motion fails to show that he is entitled to relief. As an initial matter,
4 according to the mail log petitioner attached to his motion for reconsideration, petitioner did not
5 send his request for certifiability to this court. Rather, he sent it to the Ninth Circuit Court of
6 Appeals in San Francisco. In any event, a certificate of appealability should be granted for any
7 issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved
8 differently by a different court, or is "adequate to deserve encouragement to proceed further."
9 Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S.
10 880, 893 (1983)). Petitioner has made no such showing in his motion for reconsideration, and
11 therefore, he is not entitled to relief.

12 Accordingly, IT IS HEREBY ORDERED that petitioner's motion for reconsideration
13 (Doc. No. 11) is denied.

14 DATED: June 9, 2015

15 /s/ John A. Mendez

16 UNITED STATES DISTRICT COURT JUDGE
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