(HC) Pilman v. Fisher			Ooc. 17
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8	IN THE UNITED ST	TATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA		
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11	GERALD PILMAN,	No. 2:20-CV-1771-WBS-DMC-P	
12	Petitioner,		
13	v.	<u>ORDER</u>	
14	R. FISHER,		
15	Respondent.		
16			
17	Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of		
18	habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States		
19	Magistrate Judge pursuant to Eastern District of California local rules.		
20	On March 12, 2021, the Magistrate Judge filed findings and recommendations		
21	herein which were served on the parties and which contained notice that the parties may file		
22	objections within the time specified therein. The court construes Petitioner's untimely opposition		1
23	to Respondent's motion to dismiss, filed on March 29, 2021, as Petitioner's objections to the		
24	March 12, 2021, findings and recommendations.		
25	In accordance with the provisi	ions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304	·,
26	this court has conducted a <u>de novo</u> review of this case. Having carefully reviewed the entire file,		
27	the court finds the findings and recommendations to be supported by the record and by proper		
28	analysis.		
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Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the s considered whether to issue a certificate of appealability. Before Petitioner can appeal sion, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. Where the petition is denied on the merits, a certificate of appealability may issue under C. § 2253 "only if the applicant has made a substantial showing of the denial of a tional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of bility indicating which issues satisfy the required showing or must state the reasons why ertificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed on ral grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that f reason would find it debatable whether the district court was correct in its procedural and (2) 'that jurists of reason would find it debatable whether the petition states a valid f the denial of a constitutional right." Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons in the Magistrate Judge's findings and recommendations, the court finds that issuance of cate of appealability is not warranted in this case.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The findings and recommendations filed March 12, 2021, are **ADOPTED** in full;
  - 2. Respondent's motion to dismiss, ECF No. 12, is **GRANTED**;
  - 3. The Court **DECLINES** to issue a certificate of appealability; and
  - 4. The Clerk of the Court is **DIRECTED** to enter judgment and close this

file.

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24 Dated: April 27, 2021

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UNITED STATES DISTRICT JUDGE