

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAMON GUTIERREZ-PEREZ,
Petitioner,
v.
DAVID BREWER,
Respondent.

No. 2:22-cv-00643-DAD-AC (HC)
ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
HABEAS PETITION
(Doc. Nos. 1, 2, 8)

Petitioner Ramon Gutierrez-Perez is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 7, 2022, the assigned magistrate judge issued findings and recommendations recommending that petitioner’s federal habeas petition be dismissed for lack of jurisdiction because “petitioner does not challenge the legality or duration of his confinement, but instead challenges the conditions of his confinement.” (Doc. No. 8 at 2.) The pending findings and recommendations were served upon petitioner and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.*) To date, petitioner has not filed any objections and the time in which to do so has passed.¹

¹ The service copy of the findings and recommendations was mailed to petitioner at his address of record and was returned to the court as “Undeliverable, Return to Sender, No Longer Here.”

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, the court concludes that the
3 pending findings and recommendations are supported by the record and proper analysis.

4 Having concluded that the pending petition must be dismissed, the court also declines to
5 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
6 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
7 *Cockrell*, 537 U.S. 322, 335-36 (2003). If a court denies a petitioner’s petition, the court may
8 only issue a certificate of appealability when a petitioner makes a substantial showing of the
9 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas
10 relief on procedural grounds without reaching the underlying constitutional claims, the court
11 should issue a certificate of appealability “if jurists of reason would find it debatable whether the
12 petition states a valid claim of the denial of a constitutional right and that jurists of reason would
13 find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
14 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
15 would not find the court’s determination that the pending petition must be dismissed to be
16 debatable or wrong. Thus, the court declines to issue a certificate of appealability.

17 Accordingly,

- 18 1. The findings and recommendations issued on October 7, 2022 (Doc. No. 8) are
19 adopted in full;
- 20 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 21 3. Petitioner’s motion to proceed *in forma pauperis* (Doc. No. 2) is denied as having
22 been rendered moot by this order;
- 23 4. The court declines to issue a certificate of appealability; and
- 24 5. The Clerk of the Court is directed to close this case.

25 IT IS SO ORDERED.

26 Dated: November 17, 2022

27 
28 UNITED STATES DISTRICT JUDGE