

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Juan Evangelista Castro v. Warden Bryan Birkholz

Castro · No. 2:24-cv-04910-AB-KES · Decided March 21, 2025

OPINION

Juan Evangelista Castro v. Warden Bryan Birkholz

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 JUAN EVANGELISTA CASTRO, Case No. 2:24-cv-04910-AB-KES 12 Petitioner,

ORDER ACCEPTING REPORT AND

13 v. RECOMMENDATION OF U.S.

14 BRYAN BIRKHOLZ, Warden, MAGISTRATE JUDGE

15 Respondent. 16

17 18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (Dkt. 1), the 19 other
records on file herein, and the Report and Recommendation of the United 20 States Magistrate
Judge (Dkt. 23). Further, the Court has engaged in a de novo 21 review of those portions of the
Report and Recommendation to which objections 22 (Dkt. 25, 26) have been made. The Court
accepts the report, findings, and 23 recommendations of the Magistrate Judge. 24 IT IS
THEREFORE ORDERED that Respondent’s motion to dismiss the 25 Petition with prejudice
(Dkt. 14) is GRANTED and Petitioner’s Motion to Expedite 26 (Dkt. 22) is GRANTED IN PART
and DENIED IN PART. 27 // 28 1 As a federal prisoner proceeding under 28 U.S.C. § 2241,
Petitioner is not 2 | required to obtain a certificate of appealability (“COA”) in order to appeal to
the 3 | United States Court of Appeals for the Ninth Circuit in this case. See *Harrison v. 4 |*
Ollison, 519 F.3d 952, 958 (9th Cir. 2008) (holding that the plain language of 28 5 | U.S.C. §
2253(c)(1) does not require federal prisoners bringing § 2241 petitions to 6 | obtain a COA in
order to appeal, unless the § 2241 petition “is merely a ‘disguised’ 7 | § 2255 petition”); see e.g.,
Tomlinson v. Caraway, No. 14-cv-020094-VBF-KK, 8 | 2014 US. Dist. LEXIS 131448 at *2,
2014 WL 4656432 at *1 (C.D. Cal. Sept. 16, 9 | 2014) (adopting report and recommendation and
noting that petitioner in federal 10 | custody was not required to obtain a COA to appeal the denial
of his § 2241 11 | petition). 12 13 | DATED: March 21, 2025 de 14 ANDRE BIROTTE JR.

5 UNITED STATES DISTRICT JUDGE

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