

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

James Carl Kelly v. Galvin Newsome, et al.

No. 1:25-cv-00085-KES-SAB (HC), United States District Court for the Eastern District of California (April 30,
2025)

OPINION

(HC) Kelly v. Newsome

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 JAMES CARL KELLY, No. 1:25-cv-00085-KES-SAB (HC)

12 Petitioner, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS, DISMISSING

13 v. PETITION FOR WRIT OF HABEAS

CORPUS, DENYING PETITIONER’S

14 GALVIN NEWSOME, et al., MOTION FOR PRELIMINARY

INJUNCTION AND TEMPORARY

15 Respondents. RESTRAINING ORDER, DIRECTING

CLERK OF COURT TO CLOSE CASE, AND

16 DECLINING TO ISSUE A CERTIFICATE OF

APPEALABILITY

17 (Docs. 3, 8) 18 19 Petitioner James Carl Kelly is a state prisoner proceeding pro se with a
petition for writ of 20 habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a
United States 21 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 22
On February 18, 2025, the assigned magistrate judge issued findings and 23 recommendations that
recommended dismissing the petition for lack of jurisdiction and denying 24 petitioner’s motion
for preliminary injunction and temporary restraining order. Doc. 8. The 25 findings and
recommendations were served on petitioner and contained notice that any objections 26 thereto
were to be filed within thirty days after service. To date, no objection shave been filed, 27 and the
time for doing so has passed. 28 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the
Court has conducted a de 1 | novo review of the case. Having carefully reviewed the entire file,
the Court holds the findings 2 | and recommendations to be supported by the record and proper
analysis. 3 Having found that petitioner is not entitled to habeas relief, the Court now turns to 4 |
whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus 5 |

has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is 6 | allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 7 | U.S.C. § 2253. The Court should issue a certificate of appealability if "reasonable jurists could 8 | debate whether (or, for that matter, agree that) the petition should have been resolved in a 9 | different manner or that the issues presented were 'adequate to deserve encouragement to proceed 10 | further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 US. 11 | 880, 893 & n.4 (1983)). 12 In the present case, the Court finds that reasonable jurists would not find the Court's 13 | determination that the petition should be dismissed debatable or wrong, or that petitioner should 14 | be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability. 15 Accordingly: 16 1. The findings and recommendations issued on February 18, 2025, Doc. 8, are 17 ADOPTED in full; 18 2. The petition for writ of habeas corpus is DISMISSED; 19 3. Petitioner's motion for preliminary injunction and temporary restraining order, Doc. 3, 20 is DENIED; 21 4. The Clerk of Court is directed to close the case; and 22 5. The court declines to issue a certificate of appealability. 23 24 95 | IT ISSO ORDERED. _ 26 Dated: _ April 30, 2025 4h 37 UNITED STATES DISTRICT JUDGE 28