

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

Reyes v. Cisneros

Reyes · No. 1:22-cv-01490-ADA-SKO (HC) · Decided March 13, 2023

OPINION

(HC) Reyes v. Cisneros

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 OSBALDO REYES, No. 1:22-cv-01490-ADA-SKO (HC)

12 Petitioner, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS

13 (ECF No. 7) 14 v.

ORDER DISMISSING PETITION FOR WRIT

15 OF HABEAS CORPUS

16 ORDER DIRECTING CLERK OF COURT TO

THERESA CISNEROS, ENTER JUDGMENT AND CLOSE CASE

17 Respondent. ORDER DECLINING TO ISSUE

18 CERTIFICATE OF APPEALABILITY

19 20 Petitioner Osbaldo Reyes (“Petitioner”) is a state prisoner proceeding pro se and in forma
21 pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter
22 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and
Local Rule 23 302. 24 On January 17, 2023, the assigned Magistrate Judge issued findings and
25 recommendations to dismiss the petition for lack of jurisdiction. (ECF No. 7.) Those findings
26 and recommendations were served upon all parties and contained notice that any objections
thereto were to be filed within 27 twenty-one days after service. (Id. at 2.) No objections have
been filed, and the deadline to do so 28 has expired. 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 Magistrate Judge’s findings and
recommendations are supported by the record and proper analysis. 4 In addition, the Court
declines to issue a certificate of appealability. A state prisoner 5 seeking a writ of habeas corpus
has no absolute entitlement to appeal a district Court’s denial of 6 his petition, and an appeal is
only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 7 322, 335-336 (2003). The

controlling statute in determining whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows: 9 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a 10 district judge, the final order shall be subject to review, on appeal, by the Court of appeals for the circuit in which the proceeding is held. 11 (b) There shall be no right of appeal from a final order in a proceeding to test 12 the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test 13 the validity of such person's detention pending removal proceedings. 14 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the Court of appeals from— 15 (A) the final order in a habeas corpus proceeding in which the 16 detention complained of arises out of process issued by a State Court; or 17 (B) the final order in a proceeding under section 2255. 18

(2) A certificate of appealability may issue under paragraph (1) only if the 19 applicant has made a substantial showing of the denial of a constitutional right. 20

(3) The certificate of appealability under paragraph (1) shall indicate which 21 specific issue or issues satisfy the showing required by paragraph (2). 22 If a Court denies a petitioner's petition, the Court may only issue a certificate of 23 appealability when a petitioner makes a substantial showing of the denial of a constitutional right. 24 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that 25 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have 26 been resolved in a different manner or that the issues presented were 'adequate to deserve 27 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting 28 1 | *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). 2 In the present case, the Court finds that petitioner has not made the required substantial 3 | showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. 4 | Reasonable jurists would not find the Court's determination that petitioner is not entitled to federal 5 | habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, 6 | the Court declines to issue a certificate of appealability. 7 Accordingly, 8 1. The findings and recommendations issued on January 17, 2023, (ECF No. 7), are 9 adopted in full; 10 2. The petition for writ of habeas corpus is dismissed with prejudice; 11 3. The clerk of Court is directed to enter judgment and close the case; and 12 4. The Court declines to issue a certificate of appealability. 13 This order terminates the action in its entirety. 14 15 16 | IT IS SO ORDERED. 17 Dated: _ March 10, 2023

is UNITED STATES DISTRICT JUDGE

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