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FILED

SEP 13 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHARIF A. ELTAWIL,

Petitioner - Appellant,

v.

DAVID PHILLIPS, Warden,

Respondent - Appellee.

No. 23-1676

D.C. No.

8:23-cv-00489-FWS-PVC

Central District of California,
Santa Ana

ORDER

Before: CALLAHAN and M. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.”

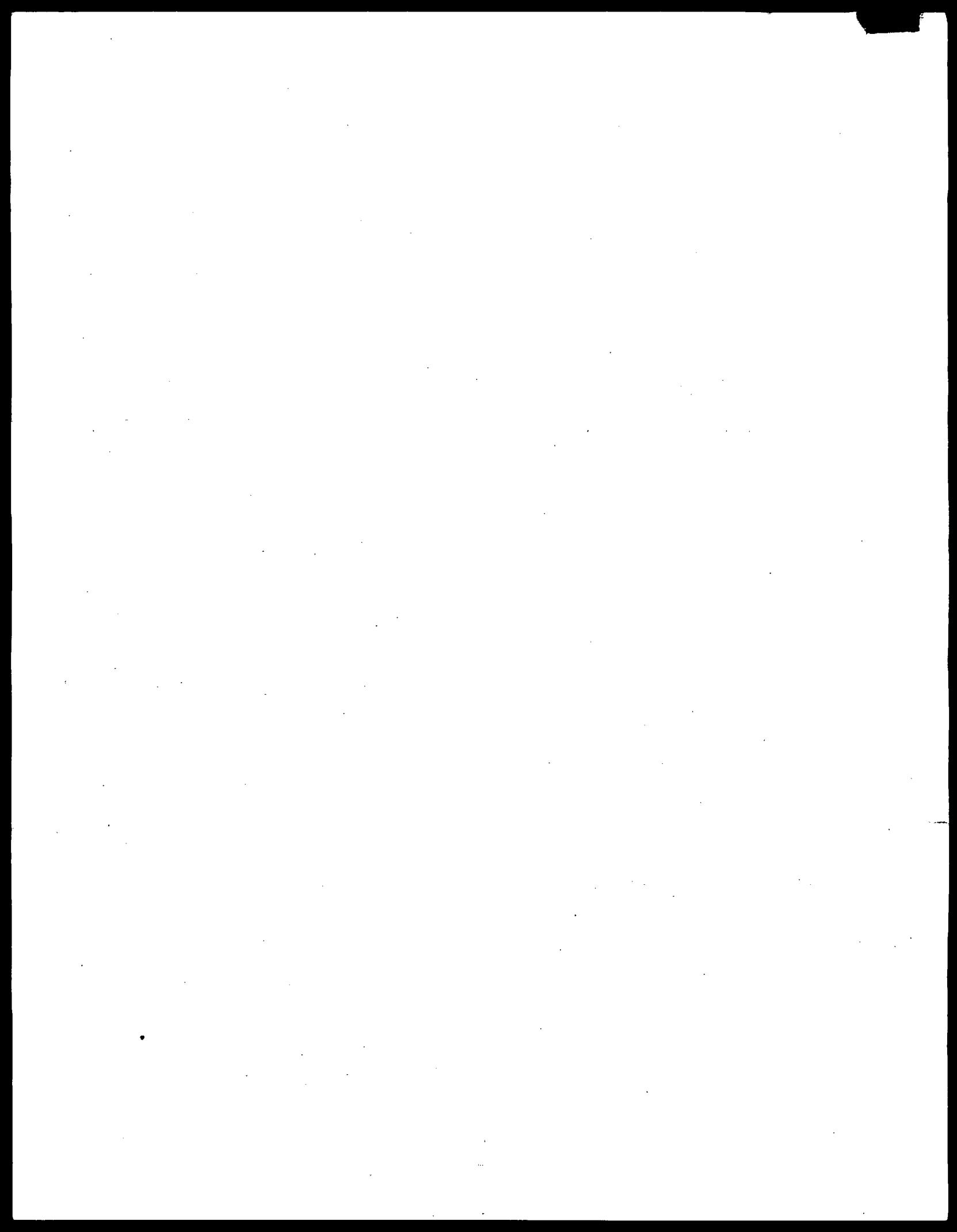
Slack v. McDaniel, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2);

Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARIF AZMI EL TAWIL,

Petitioner,

V.

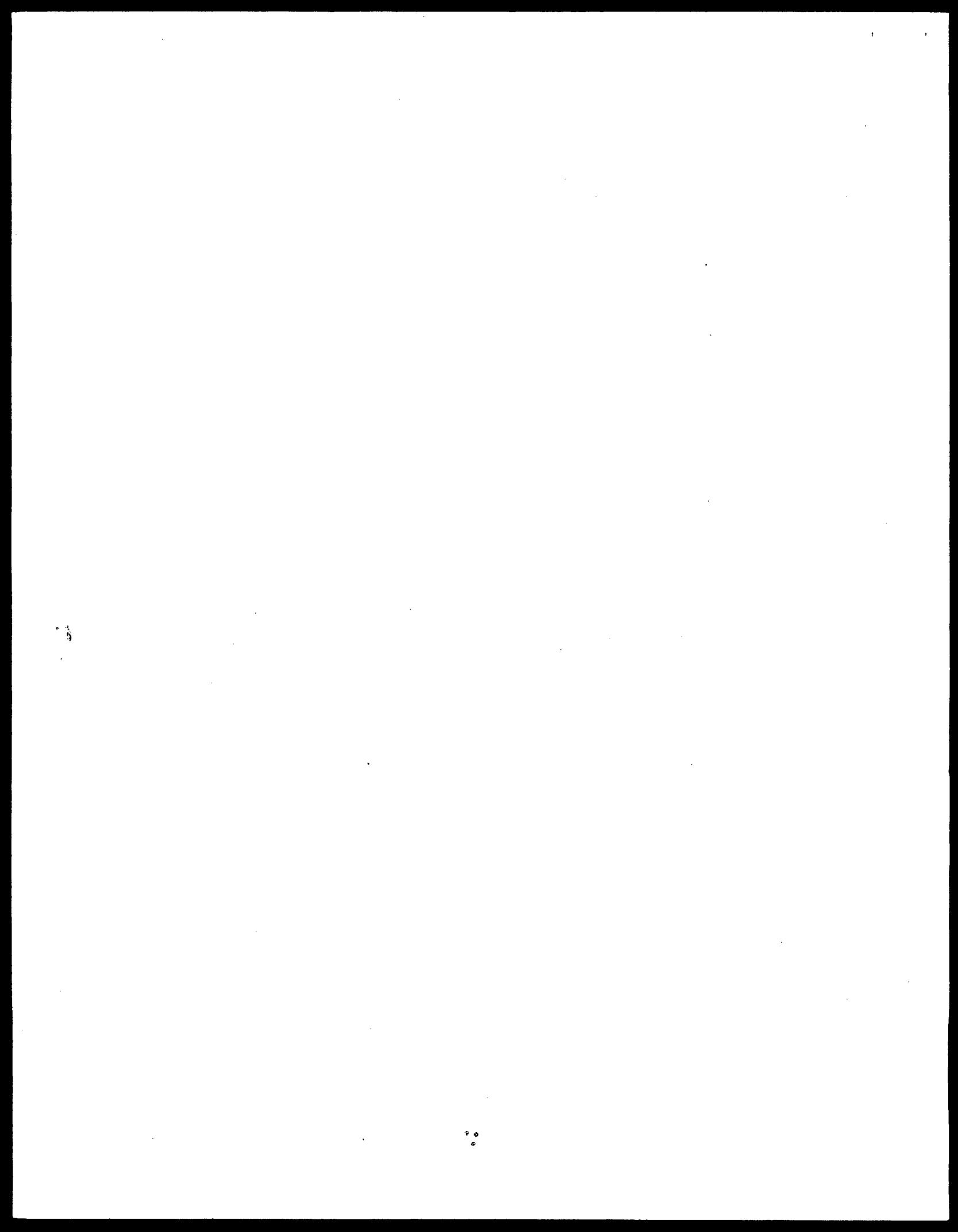
BRYAN D. PHILLIPS, ACTING
WARDEN,

Respondent.

Case No. 8:23-cv-00489-FWS-PVC

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE [11]
AND DENYING PETITION FOR
HABEAS CORPUS [1]**

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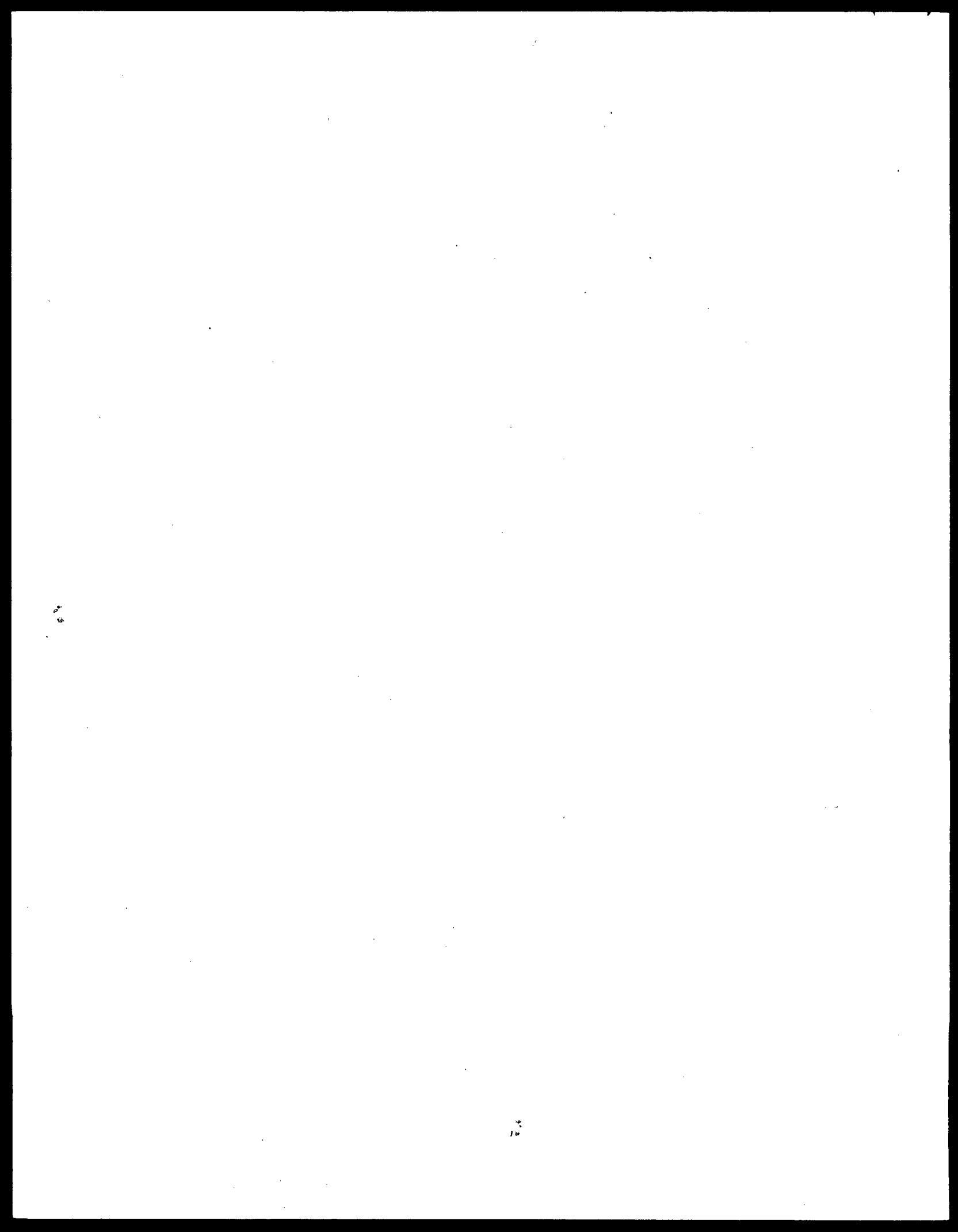
1 **I. Introduction and Relevant Procedural History**

2 Before the Court is the Magistrate Judge's Report and Recommendation issued
3 on May 25, 2023 (the "Report and Recommendation"), (Dkt. 11), regarding the
4 Petition for Habeas Corpus (the "Petition"), (Dkt. 1), filed by Petitioner Sharif Azmi
5 Eltawil ("Petitioner"). Based on the state of the record, as applied to the applicable
6 law, the court adopts the Report and Recommendation issued by the Magistrate Judge,
7 including each of the findings of fact and conclusions of law therein.

8 On March 16, 2023, Petitioner filed the Petition. (Dkt. 1.) On May 25, 2023,
9 the Magistrate Judge issued the Report and Recommendation. (Dkt 11.) On or about
10 June 14, 2023, Plaintiff filed a "Motion Objecting to [the] Magistrate[']s Report and
11 Recommendation" (the "Objections"). (Dkt. 12).

12 **II. Analysis**

13 "8
14 A judge of the court may accept, reject, or modify, in whole or in part, the
15 findings or recommendations made by the magistrate judge." 28 U.S.C
16 § 636(b)(1)(C); *see also* Fed. R. Civ. P. 72(b)(3) (stating "[t]he district judge must
17 determine de novo any part of the magistrate judge's disposition that has been
18 properly objected to," and "[t]he district judge may accept, reject, or modify the
19 recommended disposition; receive further evidence; or return the matter to the
20 magistrate judge with instructions"). Proper objections require "specific written
21 objections to the proposed findings and recommendations" of the magistrate judge.
22 Fed. R. Civ. P. 72(b)(2). "A judge of the court shall make a de novo determination of
23 those portions of the report or specified proposed findings or recommendations to
24 which objection is made." 28 U.S.C. § 636(b)(1)(C); *see also United States v. Reyna-*
25 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) ("The statute makes it clear that the
26 district judge must review the magistrate judge's findings and recommendations de
27 novo if objection is made, but not otherwise."). Where no objection has been made,
28 arguments challenging a finding are deemed waived. *See* 28 U.S.C. § 636(b)(1)(C)
 ("Within fourteen days after being served with a copy, any party may serve and file



1 written objections to such proposed findings and recommendations as provided by
2 rules of court.”). Moreover, “[o]bjections to a R&R are not a vehicle to relitigate the
3 same arguments carefully considered and rejected by the Magistrate Judge.” *Chith v.*
4 *Haynes*, 2021 WL 4744596, at *1 (W.D. Wash. Oct. 12, 2021).

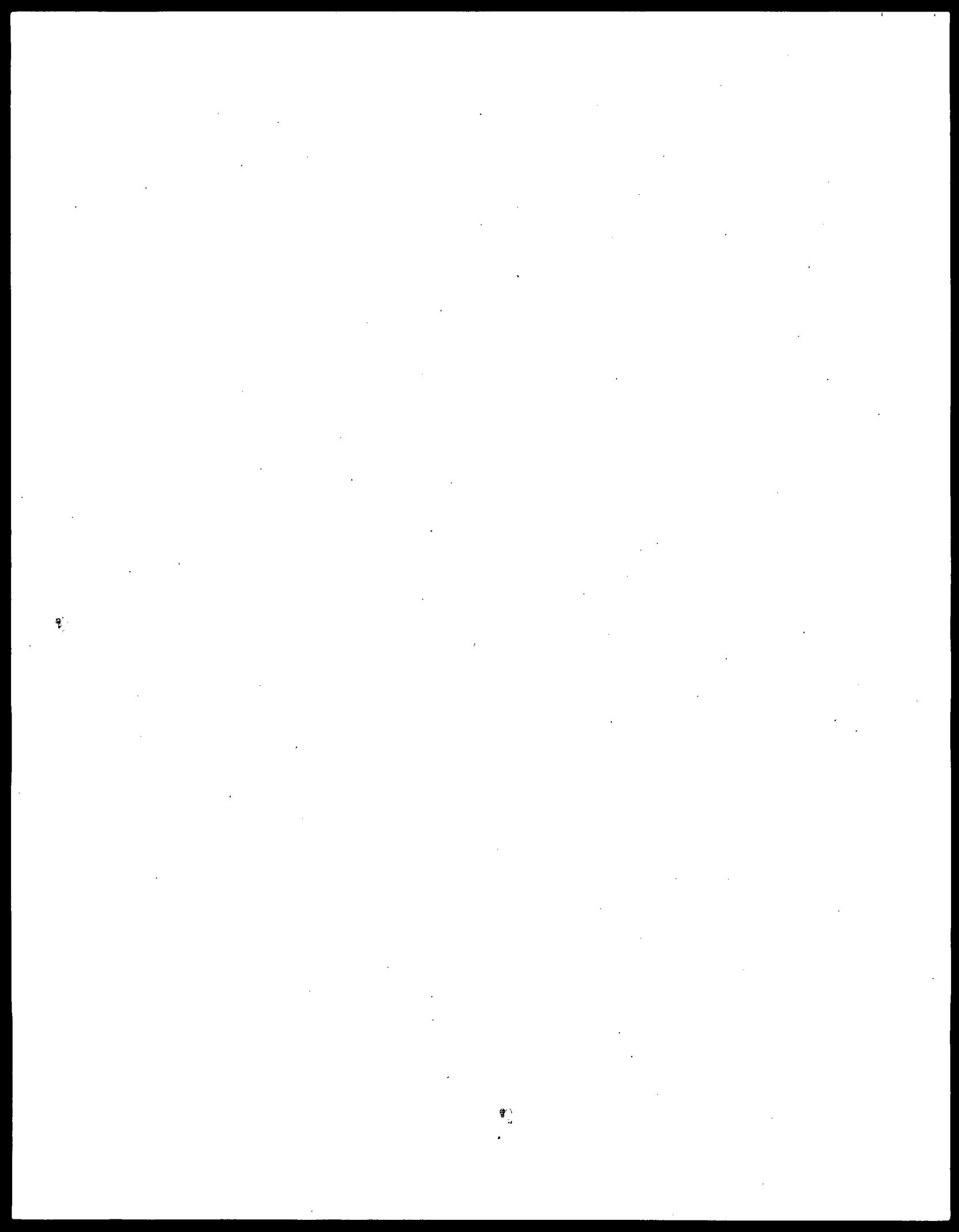
5 In the Report and Recommendation, the Magistrate Judge recommends the
6 “Court issue an Order: (1) accepting and adopting this Report and Recommendation,
7 (2) denying the Petition for Habeas Corpus, and (3) directing that Judgment be entered
8 dismissing this action without prejudice as untimely.” (Dkt. 11 at 10.) In the
9 Objections, Plaintiff makes several assertions, including that “Equitable Tolling
10 should be given affect due to the ‘extraordinary circumstances’ beyond the prisoner’s
11 control.” (Dkt. 12 at 1.)

12 In this case, after conducting a *de novo* review of the Objections, the court
13 agrees with each of the findings of fact and conclusions of law set forth in the Report
14 and Recommendation, including the recommendation that “the AEDPA limitation
15 period expired on December 5, 2007, and Petitioner’s federal habeas petition is
16 untimely.” (Dkt. 11 at 9.) Accordingly, the Objections are **OVERRULED** on their
17 merits.

18 In sum, pursuant to 28 U.S.C. § 636, the Court has reviewed the record,
19 including the Report and Recommendation, the Petition, the Objections, and the other
20 files and records of the case. After conducting a *de novo* determination of the portions
21 of the Report and Recommendation to which the Objections pertain, the Court concurs
22 with and accepts the findings and conclusions of the Magistrate Judge in the Report
23 and Recommendation.

24 III. Conclusion

25 Based on the state of the record, as applied to the applicable law, the Court adopts
26 the Report and Recommendation, including each of the findings of fact and conclusions
27 of law therein. Accordingly, the Court orders the following:



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3 (1) The Petition is denied.

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5 (2) Judgment is entered dismissing this action without prejudice as untimely.

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7 (3) The Clerk is directed to serve copies of this Order and the Judgment

8 herein on Petitioner at his current address of record.

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10 **IT IS SO ORDERED.**

11 Dated: July 10, 2023

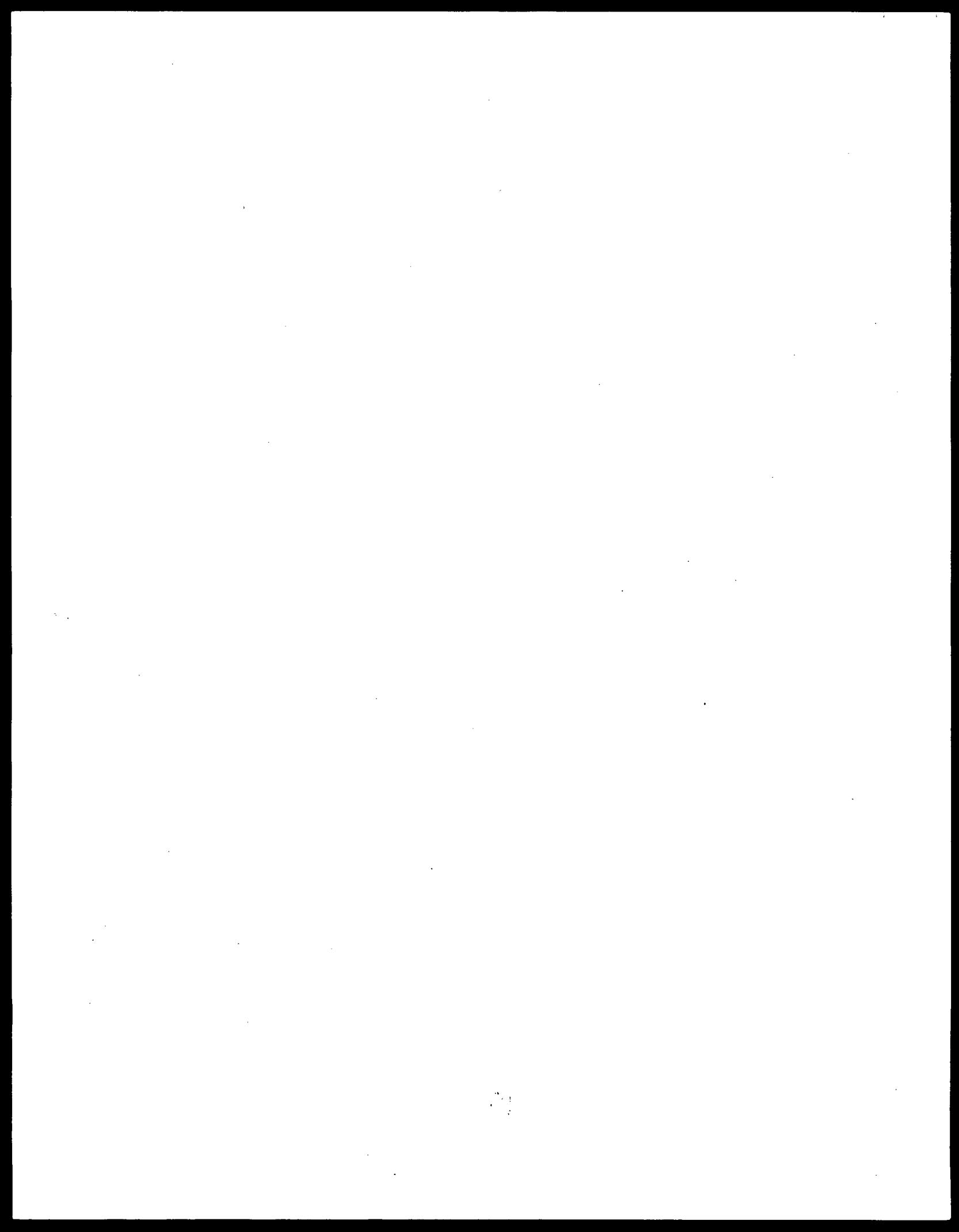


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13 Hon. Fred W. Slaughter
14 UNITED STATES DISTRICT JUDGE

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Sharif A. Eltawil v. David Phillips Judgment Content-Type: text/html

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CENTRAL DISTRICT OF CALIFORNIA

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Case Number: 8:23-cv-00489-FWS-PVC

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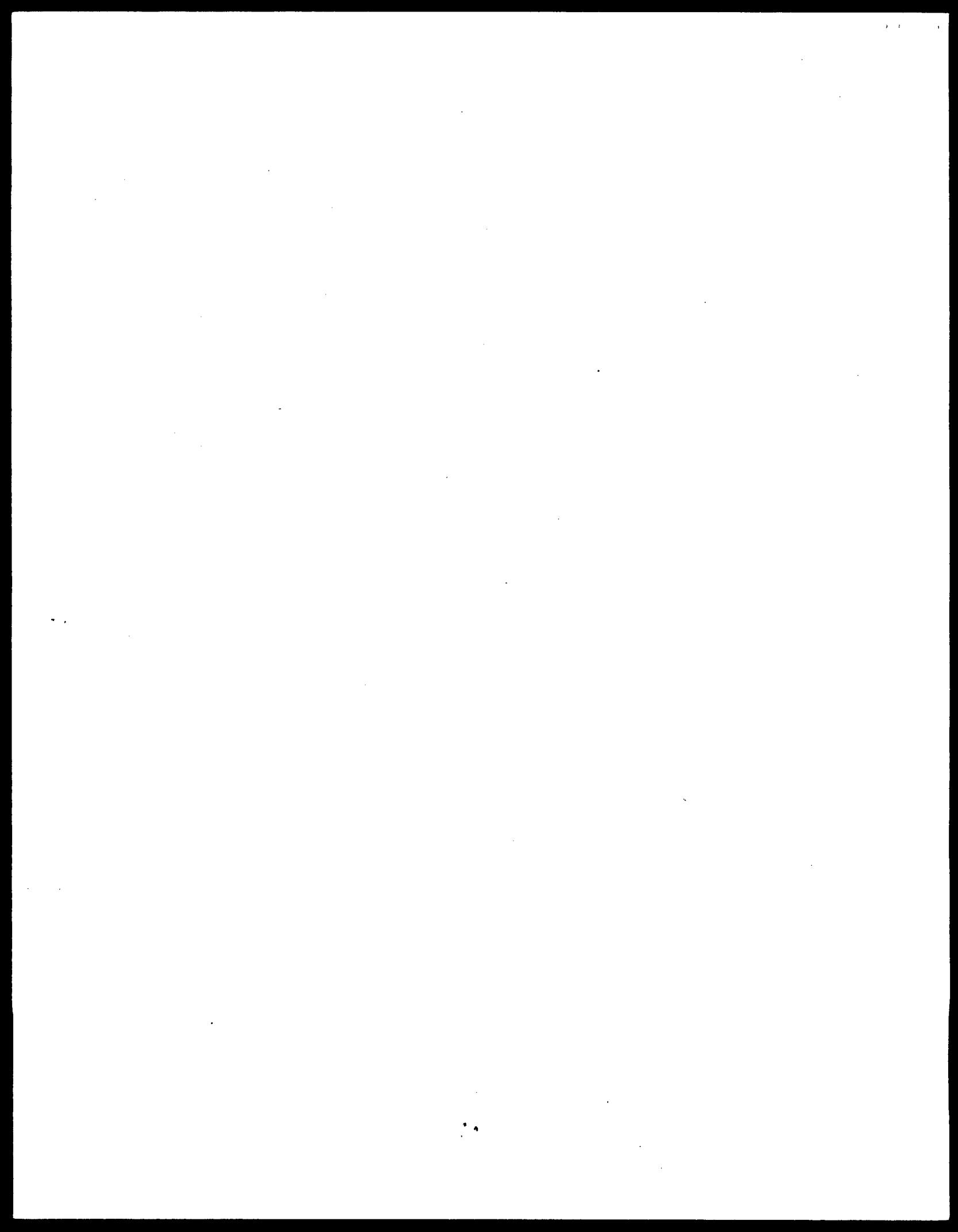
Docket Text:

**JUDGMENT by Judge Fred W. Slaughter, Related to: R&R - Accepting Report and
Recommendations [14]. IT IS HEREBY ADJUDGED that the above-captioned action is
dismissed without prejudice. (MD JS-6, Case Terminated).(hr)**

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Sharif A. Eltawil v. David Phillips Order on Petition for Certificate of Appealability Content-Type:
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Docket Text:

ORDER DENYING CERTIFICATE OF APPEALABILITY by Judge Fred W. Slaughter re
Petition for Writ of Habeas Corpus (2254)[1]. (see document for details) (hr)

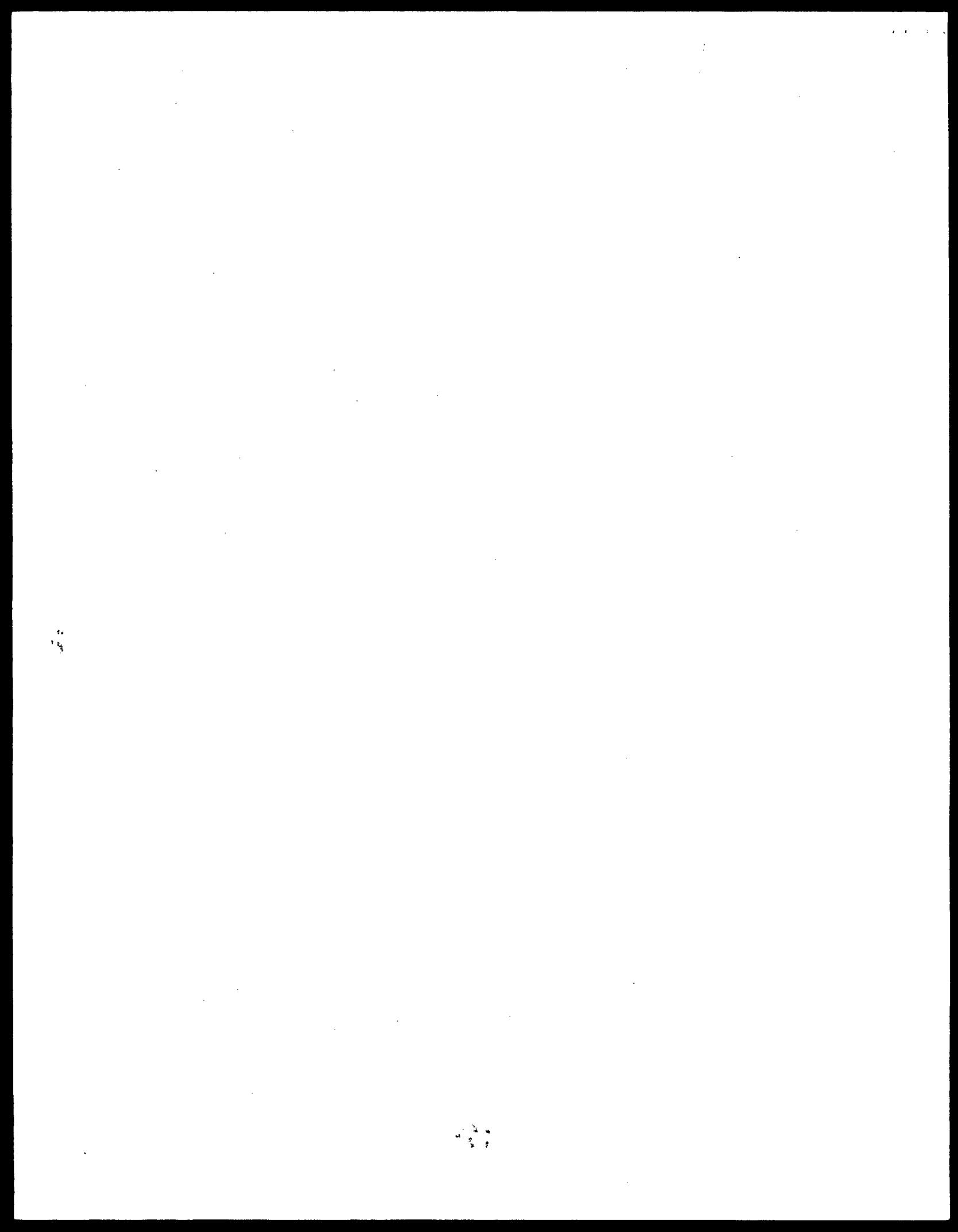
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHARIF AZMI EL TAWIL,

Petitioner,

V_t

BRYAN D. PHILLIPS, Acting Warden,

Respondent.

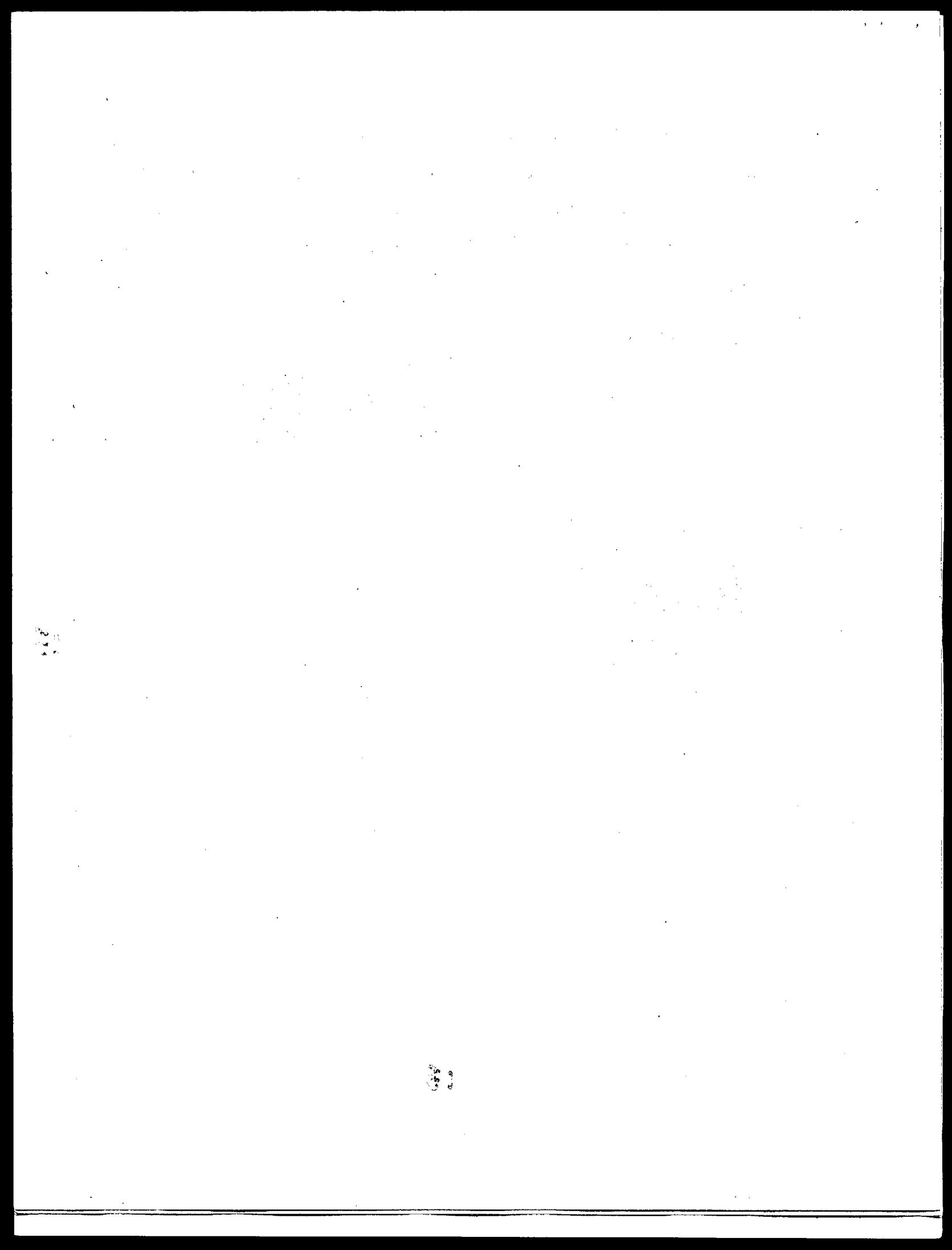
Case No. 8:23-cv-00489-FWS-PVC

ORDER DENYING CERTIFICATE OF APPEALABILITY

By separate Order and Judgment filed concurrently herewith, the Court has determined that habeas relief should be denied and this action should be dismissed without prejudice. Under 28 U.S.C. § 2253(c)(1)(A), an appeal may not be taken from “the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court” unless the appellant first obtains a certificate of appealability (“COA”). Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, this Court must therefore “issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”

Section 2253(c)(2) provides that “[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.”

The Supreme Court has made clear that Section 2253(c)(2) does not bar appellate review



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