

1 response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. See
2 Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019); Boyd v. Thompson, 147 F.3d 1124,
3 1127 (9th Cir. 1998).

4 **I. Second or Successive Petition**

5 A federal court will not consider a second or successive habeas corpus petition unless the
6 petitioner shows that (1) his claim relies on a new rule of constitutional law, made retroactive by
7 the Supreme Court, that was previously unavailable or (2) the factual predicate for the claim
8 could not have been discovered previously through the exercise of due diligence. See 28 U.S.C.
9 § 2244(b)(2). A district court may not decide whether a second or successive petition meets these
10 requirements; the petitioner must obtain the authorization from the appropriate court of appeals
11 before filing the petition. See 28 U.S.C. § 2244(b)(3)(A); Burton v. Stewart, 549 U.S. 147, 157
12 (2007). The authorization from the appropriate court of appeals is a jurisdictional requirement.
13 See Burton, 549 U.S. at 157.

14 Here, petitioner contends that his custody violates the Constitution. He argues:

15 Kern County on Case #BF134705A used 9 Judges denying me of a
16 presiding Judge, and utilized 8 District Attorneys and 5 Public
17 Defenders, violating my 14th Amendment of the U.S. Constitution
. . . Due process in a mere 14th month long trial, That is 22 Court
Officers, Due Process and Equal Protection of the Law.

18 ECF No. 1 at 1. However, before pursuing a successive habeas corpus petition, he must first
19 obtain authorization to do so from the Ninth Circuit. Because the Ninth Circuit has not
20 authorized petitioner to pursue a second or successive petition, this court lacks jurisdiction over
21 this case. See Burton, 549 U.S. at 157. The court must dismiss the case for lack of jurisdiction.

22 **II. Certificate of Appealability**

23 A petitioner seeking a writ of habeas corpus has no absolute right to appeal a district
24 court’s denial of a petition; he may appeal only in limited circumstances. See 28 U.S.C. § 2253;
25 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). Rule 11 Governing Section 2254 Cases
26 requires a district court to issue or deny a certificate of appealability when entering a final order
27 adverse to a petitioner. See also Ninth Circuit Rule 22-1(a); United States v. Asrar, 116 F.3d
28 1268, 1270 (9th Cir. 1997). Where, as here, the court denies habeas relief on procedural grounds

1 without reaching the underlying constitutional claims, the court should issue a certificate of
2 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
3 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
4 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
5 “Where a plain procedural bar is present and the district court is correct to invoke it to dispose of
6 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the
7 petition or that the petitioner should be allowed to proceed further.” *Id.*

8 Here, reasonable jurists would not find our conclusion debatable or conclude that
9 petitioner should proceed further. Thus, the court should decline to issue a certificate of
10 appealability.

11 **III. Order**

12 The clerk of court is directed to assign this case to a district judge who will review the
13 following findings and recommendations.

14 **IV. Findings and recommendations**

15 We recommend that the court dismiss the petition, ECF No. 1, for lack of jurisdiction and
16 decline to issue a certificate of appealability.

17 Under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the
18 United States District Court, Eastern District of California, I submit these findings and
19 recommendations to the U.S. District Court Judge who will be assigned to the case. Within
20 fourteen days of the service of the findings and recommendations, petitioner may file written
21 objections to the findings and recommendations with the court and serve a copy on all parties.
22 That document must be captioned “Objections to Magistrate Judge’s Findings and
23 Recommendations.” The assigned District Judge will then review the findings and
24 recommendations under 28 U.S.C. § 636(b)(1)(C).

25
26 IT IS SO ORDERED.

27 Dated: September 25, 2019

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UNITED STATES MAGISTRATE JUDGE