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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	LARRY JERMAINE MILES,	No. 1:19-cv-00824-DAD-EPG (HC)
12	Petitioner,	
13	v.	ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, DISMISSING
14	PEOPLE OF THE STATE OF CALIFORNIA,	PETITION WITHOUT PREJUDICE FOR FAILURE TO EXHAUST AND DECLINING
15	Respondent.	TO ISSUE A CERTIFICATE OF APPEALABILITY
16 17		(Doc. Nos. 10, 12)
18	Petitioner Larry Jermaine Miles is a state prisoner proceeding pro se with a petition for	
19	writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States	
20	Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.	
21	On September 25, 2019, the assigned magistrate judge issued findings and	
22	recommendations, recommending dismissal of the pending petition due to petitioner's failure to	
23	exhaust his claims by first presenting them to the highest state court. (Doc. No. 12.) The findings	
24	and recommendations were served on petitioner with notice that any objections thereto were to be	
25	filed within thirty (30) days of the service of the findings and recommendations. No objections	
26	were filed and the time for doing so has passed.	
27	In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a	
28	de novo review of the case. Having carefully reviewed the entire file, the court concludes that the	
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magistrate judge's findings and recommendations are supported by the record and proper
analysis.

3 In addition, having concluded that the pending petition must be dismissed, the court now 4 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of 5 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an 6 appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537 U.S. 322, 335-36 7 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds 8 without reaching the underlying constitutional claims, the court should issue a certificate of 9 appealability "if jurists of reason would find it debatable whether the petition states a valid claim 10 of the denial of a constitutional right and that jurists of reason would find it debatable whether the 11 district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). 12 "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of 13 the case, a reasonable jurist could not conclude either that the district court erred in dismissing the 14 petition or that the petitioner should be allowed to proceed further." Id. In the present case, the 15 court finds that reasonable jurists would not find the court's determination that the petition should 16 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further. 17 Therefore, the court declines to issue a certificate of appealability. 18 Accordingly: 19 1. The findings and recommendations issued on September 25, 2019 (Doc. No. 12) 20 are adopted in full; 21 2. The first amended petition for writ of habeas corpus (Doc. No. 10) is dismissed 22 without prejudice due to petitioner's failure to first present his claims to the 23 highest state court; 24 3. The court declines to issue a certificate of appealability; and 25 4. The Clerk of Court is directed to close this case. 26 IT IS SO ORDERED. 27 **December 16, 2019** Dated: UNITED STATES DISTR 28 2