



1 magistrate judge's findings and recommendations are supported by the record and proper  
2 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 Dated: December 16, 2019

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UNITED STATES DISTRICT JUDGE