



1 findings and recommendations are supported by the record and proper analysis. Accordingly, the  
2 court will adopt the findings and recommendations.

3 As noted, petitioner now seeks to stay this federal habeas proceeding and hold it in  
4 abeyance until he exhausts his claims in state court. (Doc. No. 23.) However, the failure to  
5 exhaust his claims was *not* the basis of the magistrate judge’s recommendation that the petition be  
6 dismissed. It is true that respondent moved to dismiss the petition both for failure to state a  
7 cognizable claim for federal habeas relief *and* for failure to exhaust, the magistrate judge relied  
8 only on the former—*not* on the latter— as the ground for dismissal. (*See* Doc. No. 20 at 3 n.2.)<sup>1</sup>  
9 For the above reasons, petitioner’s motion to stay will be denied.

10 The court must now turn to whether a certificate of appealability should be issued. A  
11 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s  
12 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*  
13 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of  
14 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the  
15 petition should have been resolved in a different manner or that the issues presented were  
16 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484  
17 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). In the present case, the  
18 court finds that reasonable jurists would not find the court’s determination that the petition should  
19 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.  
20 Therefore, the court declines to issue a certificate of appealability.

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24 <sup>1</sup> Moreover and in any event, it appears that petitioner has also failed to satisfy the requirements  
25 for the granting of a stay pending exhaustion. “[S]tay and abeyance [is] available only in limited  
26 circumstances” and only when there is “good cause” for the failure to exhaust, the “unexhausted  
27 claims are potentially meritorious,” and “there is no indication that the petitioner engaged in  
28 intentionally dilatory litigation tactics.” *See Rhines v. Weber*, 544 U.S. 269, 277–78 (2005).  
Here, petitioner has failed to establish “good cause” or that his habeas petition is “potentially  
meritorious” in light of the magistrate judge’s conclusion that his claim is not cognizable in these  
federal habeas proceedings.

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Accordingly:

1. The findings and recommendations issued on April 8, 2020 (Doc. No. 20) are ADOPTED;
2. Respondent’s motion to dismiss (Doc. No. 11) is GRANTED;
3. The petition for writ of habeas corpus is DISMISSED;
4. Petitioner’s motion to stay (Doc. No. 23) is DENIED;
5. The Clerk of Court is DIRECTED to assign a district judge to this case for the purpose of closing the case and then to close the case; and
6. The court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: September 8, 2020

  
UNITED STATES DISTRICT JUDGE