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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN JACOBSON,  
  
                                Petitioner,  
  
                v.  
  
CESAR SARAY,  
  
                                Respondent.

No. 1:20-cv-01465-DAD-SAB (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
RESPONDENT’S MOTION TO DISMISS,  
AND DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS

(Doc. Nos. 8, 21)

Petitioner Jonathan Jacobson is proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

On May 25, 2021, the assigned magistrate judge issued findings and recommendations, recommending that respondent’s motion to dismiss be granted and that the pending petition be dismissed for lack of jurisdiction. (Doc. No. 21.) The pending findings and recommendations were served on petitioner with notice that any objections thereto were to be filed within thirty (30) days of service. (*Id.* at 5.) On June 18, 2021, petitioner filed a statement of non-opposition to the magistrate judge’s recommendation that his petition be dismissed for lack of jurisdiction. (Doc. No. 22.)

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
2 *de novo* review of this case. Having carefully reviewed the entire file, the court concludes that  
3 the findings and recommendations are supported by the record and proper analysis.

4 In addition, having concluded that the pending petition must be dismissed, the court now  
5 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of  
6 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an  
7 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36  
8 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds  
9 without reaching the underlying constitutional claims, the court should issue a certificate of  
10 appealability “if jurists of reason would find it debatable whether the petition states a valid claim  
11 of the denial of a constitutional right and that jurists of reason would find it debatable whether the  
12 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
13 In the present case, the court finds that reasonable jurists would not find the court's determination  
14 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to  
15 proceed further. Therefore, the court declines to issue a certificate of appealability.

16 Accordingly,

- 17 1. The findings and recommendations issued on May 25, 2021 (Doc. No. 21.) are  
18 adopted in full;
- 19 2. Respondent's motion to dismiss (Doc. No. 8) is granted;
- 20 3. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;
- 21 4. The court declines to issue a certificate of appealability; and
- 22 5. The Clerk of the Court is directed to close this case.

23 IT IS SO ORDERED.

24 Dated: July 8, 2021

25   
UNITED STATES DISTRICT JUDGE