

1 **I. BACKGROUND**

2 Petitioner is serving a fifteen to life sentence for his February 10, 1993 conviction for
3 second degree murder. (Doc. No. 1 at 1-2). The Petition raises two grounds for relief. In ground
4 one, Petitioner claims “A.D.A. confession not found in [California Reporter], Court Orders, WPC
5 in which I looked for under Homicide.” (Doc. No. 1 at 6). In the supporting facts section,
6 Petitioner lists general citations to the California Reporter and WPC numbers. (*Id.*). Elsewhere
7 in the Petition, Petitioner explains that he did not file a state habeas petition with the California
8 Supreme Court containing the grounds raised in the Petition because he “[is] being denied
9 without any signs of help. I wrote down as grounds that I am not in any Cal. Rptr., Court Orders,
10 or WPC # 4677795 or 467779-5.” (*Id.* at 5). In ground two, Petitioner claims “2004 Jamestown
11 pardon/release/parole/medical of former Governor Pete Wilson from request of Salinas Valley
12 State Prison [indecipherable] and my CCI there J. Mee.” (*Id.* at 10).

13 **II. APPLICABLE LAW AND ANALYSIS**

14 Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary
15 review of each petition for writ of habeas corpus. The Court must dismiss a petition “[i]f it
16 plainly appears from the petition . . . that the petitioner is not entitled to relief.” Rule 4 of the
17 Rules Governing § 2254 Cases; *see also Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).
18 The Advisory Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ
19 of habeas corpus, either on its own motion under Rule 4, pursuant to the respondent’s motion to
20 dismiss, or after an answer to the petition has been filed. Courts have “an active role in
21 summarily disposing of facially defective habeas petitions” under Rule 4. *Ross v. Williams*, 896
22 F.3d 958, 968 (9th Cir. 2018) (citation omitted). However, a petition for habeas corpus should
23 not be dismissed without leave to amend unless it appears that no tenable claim for relief can be
24 pleaded were such leave granted. *Jarvis v. Nelson*, 440 F.2d 13, 14 (9th Cir. 1971).

25 **A. Failure to State a Cognizable Claim**

26 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2241(c)(3)
27 provides that the writ of habeas corpus shall not extend to a prisoner unless “[h]e is in custody in
28 violation of the Constitution or laws or treaties of the United States.” The Supreme Court has

1 held that “the essence of habeas corpus is an attack by a person in custody upon the legality of
2 that custody . . .” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). If a prisoner’s claim “would
3 necessarily demonstrate the invalidity of confinement or its duration,” a habeas petition is the
4 appropriate avenue for the claim. *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). In addition, Rule
5 2(c) of the Rules Governing Section 2254 Cases requires that the petition

- 6 (1) Specify all the grounds for relief available to the petitioner;
- 7 (2) State the facts supporting each ground;
- 8 (3) State the relief requested;
- 9 (4) Be printed, typewritten, or legibly handwritten; and
- 9 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign
it for the petitioner under 28 U.S.C. § 2242.

10 Further, 28 U.S.C. § 2242 requires a petitioner to allege the facts concerning the petitioner’s
11 commitment or detention.

12 Here, Petitioner has failed to comply with the aforementioned statutes and rules. Other
13 than conclusory statements, Petitioner has not specified any grounds for relief, any supporting
14 factual allegations, or any relief requested. (*See generally* Doc. No. 1). Moreover, it is clear that
15 relief on Petitioner’s claims would not lead to his immediate or earlier release. *See Nettles v.*
16 *Grounds*, 830 F.3d 922, 935 (9th Cir. 2016) (if a favorable judgment for the petitioner would not
17 “necessarily lead to his immediate or earlier release from confinement,” a habeas claim is not
18 appropriate). Petitioner does not challenge his conviction or sentence. Rather, the gravamen of
19 petition appears to consist entirely of Petitioner seeking assistance from the Court in locating
20 documents related to an “A.D.A. confession case.” (Doc. No. 1 at 6-7). The Court does not
21 dispense legal advice. Petitioner’s “claims” are clearly not cognizable via a petition for writ of
22 habeas corpus.

23 Based on the foregoing, the undersigned recommends Petition be dismissed for failure to
24 state a cognizable claim, as it appears that no tenable claim for relief can be pleaded were such
25 leave granted. In addition, as discussed below, Petitioner concedes he has failed to exhaust
26 administrative remedies.

27 **B. Failure to Exhaust Administrative Remedies**

28 A petitioner in state custody who wishes to proceed on a federal petition for a writ of

1 habeas corpus must exhaust state judicial remedies. *See* 28 U.S.C. § 2254(b)(1). Exhaustion is a
2 “threshold” matter that must be satisfied before the court can consider the merits of each claim.
3 *Day v. McDonough*, 547 U.S. 198, 205 (2006). The exhaustion doctrine is based on comity and
4 permits the state court the initial opportunity to resolve any alleged constitutional deprivations.
5 *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982).
6 To satisfy the exhaustion requirement, petitioner must provide the highest state court with a full
7 and fair opportunity to consider each claim before presenting it to the federal court. *See*
8 *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v. Henry*, 513 U.S. 364, 365 (1995).
9 The burden of proving exhaustion rests with the petitioner. *Darr v. Burford*, 339 U.S. 200, 218
10 (1950) (overruled in part on other grounds by *Fay v. Noia*, 372 U.S. 391 (1963)). A failure to
11 exhaust may only be excused where the petitioner shows that “there is an absence of available
12 State corrective process” or “circumstances exist that render such process ineffective to protect
13 the rights of the applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii).

14 Here, Petitioner concedes that he has not sought review in the California Supreme Court
15 on either “ground for relief.” (Doc. No. 1 at 5-6, 10). Because it appears Petitioner has failed to
16 exhaust his claims, the undersigned recommends the court dismiss the Petition because the
17 purported “grounds for relief” are unexhausted. If Petitioner presented his claims to the
18 California Supreme Court, he should provide proof of this filing to the court in his objections to
19 these findings and recommendations.

20 III. CERTIFICATE OF APPEALABILITY

21 State prisoners in a habeas corpus action under § 2254 do not have an automatic right to
22 appeal a final order. *See* 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36
23 (2003). To appeal, a prisoner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(2);
24 *see also* R. Governing Section 2254 Cases 11 (requires a district court to issue or deny a
25 certificate of appealability when entering a final order adverse to a petitioner); Ninth Circuit Rule
26 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). Where, as here, the court
27 denies habeas relief on procedural grounds without reaching the merits of the underlying
28 constitutional claims, the court should issue a certificate of appealability only “if jurists of reason

1 would find it debatable whether the petition states a valid claim of the denial of a constitutional
2 right and that jurists of reason would find it debatable whether the district court was correct in its
3 procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar
4 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist
5 could not conclude either that the district court erred in dismissing the petition or that the
6 petitioner should be allowed to proceed further.” *Id.* Here, reasonable jurists would not find the
7 undersigned’s conclusion debatable or conclude that petitioner should proceed further. The
8 undersigned therefore recommends that a certificate of appealability not issue

9 Accordingly, it is **ORDERED**:

10 The Clerk of Court is directed shall assign this case to a district judge for the purposes of
11 reviewing these findings and recommendations.

12 Further, it is **RECOMMENDED**:

- 13 1. The Petition (Doc. No. 1) be **DISMISSED WITHOUT PREJUDICE** for failure to state
14 a cognizable claim and failure to exhaust administrative remedies.
- 15 2. Petitioner be denied a certificate of appealability.

16 **NOTICE TO PARTIES**

17 These findings and recommendations will be submitted to the United States district judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
19 **days** after being served with these findings and recommendations, a party may file written
20 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
21 Findings and Recommendations.” Parties are advised that failure to file objections within the
22 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
23 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24 Dated: August 18, 2022

25 
26 HELENA M. BARCH-KUCHTA
27 UNITED STATES MAGISTRATE JUDGE
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