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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY KHONG,

 Petitioner,

 v.

SCOTT FRAUENHEIM,

 Respondent.

No. 2:18-cv-0580 KJM DB P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 10, 2019, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Under Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has considered whether to issue a certificate of appealability. Before petitioner can appeal this

1 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
2 Where the petition is denied on the merits, a certificate of appealability may issue under
3 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
4 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
5 appealability indicating which issues satisfy the required showing or must state the reasons why
6 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
7 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
8 jurists of reason would find it debatable whether the district court was correct in its procedural
9 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
10 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
11 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons
12 set forth in the magistrate judge’s findings and recommendations, the court finds that issuance of
13 a certificate of appealability is not warranted in this case.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The findings and recommendations filed June 10, 2019, are adopted in full;
- 16 2. Petitioner’s petition for a writ of habeas corpus is denied; and
- 17 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
18 § 2253.

19 DATED: September 7, 2020.

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22 CHIEF UNITED STATES DISTRICT JUDGE
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