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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY CHARLES WREN,
Petitioner,

v.

WARDEN ROSEMARY NDOH,
Respondent.

No. 2: 19-cv-0251 WBS KJN P

ORDER & FINDINGS &
RECOMMENDATIONS

Introduction

Petitioner is a state prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his 2008 Placer County conviction for driving under the influence of alcohol (count one) and driving with a level of blood alcohol 0.08 percent or greater (count two). (ECF No. 100-5 at 1.) The trial court also found that petitioner had three prior convictions for driving under the influence, committed his present offenses while on bail, had a prior prison term, and that his two 1991 felony convictions for violating California Penal Code § 288(a) counted as strikes under California’s three strikes law. (Id. at 1-2.)

Petitioner was sentenced to 25 years-to-life on count one. (Id. at 2.) The trial court stayed the sentence on the other count and the enhancements. (Id.)

After filing his notice of appeal, petitioner pled no contest to possession of methamphetamine in an unrelated case, for which the second court imposed a concurrent two year

1 sentence and lifted the stay on the enhancement in the instant case for committing the offense on
2 bail, resulting in a minimum term of 27 years. (Id. at 3 n. 2.)

3 This action proceeds on the second amended petition. (ECF No. 67.) The claims raised in
4 the second amended petition are difficult to understand. On November 8, 2019, the undersigned
5 issued an order finding that the second amended petition raised the following claims:

6 1) petitioner's sentence violates the Eighth Amendment; 2) petitioner is entitled to resentencing
7 pursuant to Proposition 36; and 3) petitioner is entitled to resentencing pursuant to Proposition
8 57. (ECF No. 73.) The undersigned ordered respondent to respond to these three claims. (Id.)

9 Pending before the court is respondent's motion to dismiss. (ECF No. 99.) Respondent
10 raises the following arguments: 1) the petition is untimely; 2) petitioner's claims for resentencing
11 pursuant to Propositions 36 and 57 are not exhausted; and 3) petitioner's claims for resentencing
12 pursuant to Propositions 36 and 57 fail to state cognizable federal claims.

13 For the reasons stated herein, the undersigned recommends that respondent's motion be
14 granted.

15 Motion to Substitute Respondent

16 On December 2, 2019, petitioner filed a motion to substitute the Warden of Avenal State
17 Prison (Avenal), Rosemary Dhoh, as respondent based on his transfer to Avenal. (ECF No. 80.)
18 Good cause appearing, petitioner's motion is granted. See Brittingham v. United States, 982 F.2d
19 378, 379 (9th Cir. 1992).

20 Statute of Limitations

21 Title 28 U.S.C. § 2244 mandates a one-year statute of limitations within which an inmate
22 must file a federal habeas corpus petition, subject to tolling provisions and certain exceptions. It
23 states:

24 (d)(1) A 1-year period of limitation shall apply to an application for
25 a writ of habeas corpus by a person in custody pursuant to the
26 judgment of a State court. The limitation period shall run from the
latest of--

27 (A) the date on which the judgment became final by the conclusion
of direct review or the expiration of the time for seeking such review;

28 (B) the date on which the impediment to filing an application created

1 by State action in violation of the Constitution or laws of the United
2 States is removed, if the applicant was prevented from filing by such
State action;

3 (C) the date on which the constitutional right asserted was initially
4 recognized by the Supreme Court, if the right has been newly
5 recognized by the Supreme Court and made retroactively applicable
to cases on collateral review; or

6 (D) the date on which the factual predicate of the claim or claims
7 presented could have been discovered through the exercise of due
diligence.

8 (2) The time during which a properly filed application for State post-
9 conviction or other collateral review with respect to the pertinent
judgment or claim is pending shall not be counted toward any period
of limitation under this subsection.

10 28 U.S.C. § 2244(d).

11 Respondent argues that the statute of limitations in the instant case is calculated pursuant
12 to 28 U.S.C. § 2244(d)(1)(A), i.e., the date petitioner’s conviction became final. The undersigned
13 agrees that the statute of limitations for petitioner’s Eighth Amendment claim is calculated
14 pursuant to 28 U.S.C. § 2244(d)(1)(A). However, the statute of limitations for petitioner’s claims
15 based on Propositions 36 and 57 is calculated pursuant to 28 U.S.C. § 2244(d)(1)(D).

16 “Petitioner’s opportunity to seek resentencing [pursuant to Proposition 36] arose with
17 California’s adoption of Proposition 36 on November 7, 2012.” Fadden v. Vasquez, 2017 WL
18 3720045, at *3 (E.D. Cal. Aug. 29, 2017). “Its provisions became effective the next day.” Id.
19 Pursuant to 28 U.S.C. § 2244(d)(1)(D), petitioner had one year from the effective date of
20 Proposition 36 to file a timely federal petition.

21 Proposition 57 was approved by voters on November 8, 2016, and became effective the
22 next day. Chavez v. Davey, 2019 WL 2062539, at *2 (C.D. Cal. March 2019). Pursuant to 28
23 U.S.C. § 2244(d)(1)(D), petitioner had one year from the effective date of Proposition 57 to file a
24 timely federal petition.

25 Because respondent does not address whether petitioner’s claims pursuant to Propositions
26 36 and 57 are timely pursuant to 28 U.S.C. § 2244(d)(1)(D), the undersigned finds that
27 respondent has not demonstrated that these claims are not timely. Accordingly, the motion to
28 dismiss petitioner’s claims pursuant to Propositions 36 and 57 as untimely should be denied.

1 Turning to petitioner’s Eighth Amendment claim, the California Supreme Court denied
2 review on July 29, 2009. (ECF No. 100-7.) Therefore, petitioner’s conviction was final when the
3 ninety-day period for filing a petition for writ of certiorari expired on October 27, 2009.
4 Velasquez v. Kirkland, 639 F.3d 964, 965 (9th Cir. 2011). The statute of limitations commenced
5 the following day, October 28, 2009. Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001).
6 Respondent argues that the statute of limitations ran on October 27, 2010, and that the instant
7 action, filed January 23, 2019, is not timely.¹ (See ECF No. 1 at 15.)

8 The undersigned finds that petitioner’s Eighth Amendment claim is not timely unless he is
9 entitled to statutory or equitable tolling.²

10 Respondent argues that petitioner is not entitled to statutory tolling pursuant to 28 U.S.C.
11 § 2244(d)(2) because petitioner failed to file any state post-conviction collateral actions
12 challenging the at-issue judgment within the one-year limitation period. Respondent correctly
13 argues that petitioner’s first three state habeas petitions filed and denied before the statute of
14 limitations began to run on October 28, 2009, as discussed herein, do not qualify for statutory
15 tolling. Waldrip v. Hall, 548 F.3d 729, 735 (9th Cir. 2008) (Although the filing of a state habeas
16 petition “would otherwise have tolled the running of the federal limitations period, since it was
17 denied before that period had started to run, it had no effect on the timeliness of the ultimate
18 federal filing.”)

19 Petitioner filed a habeas corpus in the Placer County Superior Court on July 16, 2009,
20 which the court denied on August 13, 2009.³ (ECF Nos. 100-8, 100-9.) Petitioner filed a habeas
21

22 ¹ The undersigned calculates the filing date of this action based on the mailbox rule.

23 ² On direct appeal, petitioner argued that his sentence was unconstitutional. (ECF No. 100-5 at
24 7.) On May 21, 2009, the California Court of Appeal found that petitioner forfeited his claim
25 alleging that his sentence was cruel and/or unusual by failing to raise this issue in the trial court.
26 (Id.) Instead, the California Court of Appeal, “confine[d] [itself] to stating the rigorous criteria
27 for finding a constitutional violation, and making the observation that the defendant does not
28 satisfy them.” (Id. at 8.) The California Court of Appeal found that petitioner’s sentence did not
violate the Eighth Amendment. (Id. at 9, n. 4.)

³ The motion to dismiss lists petitioner’s twenty-seven state court petitions. (ECF No. 99 at 2-
7.) The court appreciates this information.

1 corpus petition in the Placer County Superior Court on August 12, 2009, which the court denied
2 on September 1, 2009. (ECF Nos. 100-10, 100-11.) Petitioner filed a habeas corpus petition in
3 Placer County Superior Court on September 23, 2009, which the court denied on October 16,
4 2009. (ECF Nos. 100-12, 100-13.) Because these petitions were filed and denied before the
5 statute of limitations commenced on October 28, 2009, these petitions do not qualify for statutory
6 tolling.

7 Petitioner did not file his fourth state habeas petition until October 11, 2011, which was
8 nearly one year after the statute of limitations ran on October 27, 2010. (ECF No. 100-14.)
9 Because petitioner did not file his fourth (and later) state habeas petitions until after the statute of
10 limitations ran, respondent correctly argues that petitioner is not entitled to statutory tolling for
11 these state petitions. Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir. 2003) (“section 2244
12 does not permit the re-initiation of the limitations period that has ended before the state petition
13 was filed.”)

14 As observed by respondent, petitioner previously filed federal petitions challenging his
15 2008 Placer County drunk driving conviction, 2:10-cv-1735 MCE EFB P, 2:10-1924 FCD KJN P,
16 2:11-cv-2823 KJM EFB P.⁴ The court dismissed case 10-1735 on February 7, 2011, after
17 petitioner failed to file an opposition to respondent’s motion to dismiss, which argued that
18 petitioner failed to exhaust state court remedies. The court dismissed case 10-1924 on January
19 10, 2011, as duplicative of case 10-1735. The court dismissed case 11-2823 on June 19, 2012, for
20 failing to file an in forma pauperis affidavit. Respondent correctly observes that these federal
21 habeas petitions do not toll the statute of limitations.⁵ Duncan v. Walker, 533 U.S. 167, 181-82
22 (2001) (a pending federal habeas petition does not statutorily toll the statute of limitations).

23 For the reasons discussed above, petitioner is not entitled to statutory tolling as to his
24 Eighth Amendment claim. This claim is barred by the statute of limitations absent equitable

25 _____
26 ⁴ The court may take judicial notice of court records. Mullis v. United States Bank Ct., 828 F.2d
1385 n. 9 (9th Cir. 1987).

27 ⁵ Since the filing of the instant action, petitioner has filed another habeas corpus petition in this
28 court challenging his 2008 Placer County drunk driving conviction, 2:20-cv-499 WBS KJN P.

1 tolling.

2 The limitations period for Section 2254 petitions is subject to equitable tolling in
3 appropriate circumstances. Holland v. Florida, 560 U.S. 631, 645-49 (2010). However,
4 application of the equitable tolling doctrine is the exception rather than the norm. See, e.g.,
5 Waldron-Ramsey v. Pacholke, 556 F.3d 1008, 1011 (9th Cir. 2009) (characterizing the Ninth
6 Circuit’s “application of the doctrine” as “sparing” and a “rarity”); Miles v. Prunty, 187 F.3d
7 1104, 1107 (9th Cir. 1999) (“equitable tolling is unavailable in most cases”).

8 A habeas petitioner may receive equitable tolling only if he “shows ‘(1) that he has been
9 pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and
10 prevented timely filing.” Holland, 560 U.S. at 649 (citation omitted); see also Pace v.
11 DiGuglielmo, 544 U.S. 408, 418 (2005). Both elements must be met. See 544 U.S. at 418
12 (finding that the petitioner was not entitled to equitable tolling, because he had not established the
13 requisite diligence). A petitioner seeking application of the doctrine bears the burden of showing
14 that it should apply. Id.; see also Lawrence v. Florida, 549 U.S. 327, 336 (2007) (to receive
15 equitable tolling, the petitioner must prove the above two requirements).

16 In response to the motion to dismiss, petitioner filed two oppositions. (ECF Nos. 104,
17 107.) In addition to the oppositions, petitioner filed other pleadings after the motion to dismiss
18 was filed. (ECF Nos. 101, 102, 105, 106, 109). None of these pleadings contain a clear argument
19 for equitable tolling as to petitioner’s Eighth Amendment claim.⁶ For these reasons, petitioner is
20 not entitled to equitable tolling as to his Eighth Amendment claim.⁷

21 Accordingly, for the reasons discussed above, the undersigned finds that petitioner’s
22 Eighth Amendment claim is barred by the statute of limitations.

23
24 ⁶ Petitioner’s February 12, 2020 pleading docketed as “Request to Amend Tolling” (ECF No.
25 102), may be raising claims for equitable tolling as to petitioner’s claims pursuant to Propositions
26 36 and 57.

27 ⁷ Petitioner’s pleadings suggest that petitioner is ignorant of the law. However, petitioner’s
28 ignorance of the law is not a basis for equitable tolling. See Rasberry v. Garcia, 448 F.3d 1150,
1154 (9th Cir. 2006) (holding ignorance of the law” and “lack of legal sophistication is not, by
itself, an extraordinary circumstance warranting equitable tolling.”)

1 Are Petitioner’s Claims Pursuant to Propositions 36 and 57 Cognizable?

2 Petitioner argues that he is entitled to resentencing pursuant to Propositions 36 and 57.
3 Respondent moves to dismiss these claims on the grounds that they are not cognizable in federal
4 habeas.

5 Proposition 36 authorizes an inmate currently serving an indeterminate term under the
6 original Three Strikes law to petition the trial court for resentencing in light of the narrowed class
7 of third-strike felonies for which an indeterminate sentence can be imposed. Cal. Penal Code
8 § 1170.126(a), (b).

9 In 2016, California voters approved Proposition 57 which, in pertinent part, requires that
10 “[a]ny person convicted of a nonviolent felony offense and sentenced to state prison shall be
11 eligible for parole consideration after completing the full term for his or her primary offense.”
12 Cal. Const. Art. I, § 32(a)(1). The “full term for the primary offense” is defined as “the longest
13 term of imprisonment imposed by the court for any offense, excluding the imposition of an
14 enhancement, consecutive sentence, or alternative sentence.” *Id.*, § 32(a)(1)(A).

15 “[F]ederal habeas corpus relief does not lie for errors of state law.” Swarthout v. Cooke,
16 562 U.S. 216, 219 (2011) (quoting Estelle v. McGuire, 502 U.S. 62, 67 (1991)). “The habeas
17 statute ‘unambiguously provides that a federal court may issue a writ of habeas corpus to a state
18 prisoner only on the ground that he is in custody in violation of the Constitution or laws or
19 treaties of the United States.’” Swarthout, 562 U.S. at 219 (internal citations omitted). “[I]t is
20 not the province of a federal habeas court to reexamine state-court determinations on state-law
21 questions.” Wilson v. Corcoran, 562 U.S. 1, 5 (2010) (internal citations omitted). A challenge
22 to the provisions of a state sentencing law does not generally state a federal habeas claim. Lewis
23 v. Jeffers, 497 U.S. 764, 780 (1990). Rather, a federal habeas court is bound by the state court’s
24 determination concerning the provisions of state law. See Bradshaw v. Richey, 546 U.S. 74, 76
25 (2005) (quoting Estelle, 502 U.S. at 67-68 (“[A] state court’s interpretation of state law, including
26 one announced on direct appeal of the challenged conviction, binds a federal court sitting in
27 habeas corpus.”)). On federal habeas review, the question “is not whether the state sentencer
28 committed state-law error,” but whether the sentence imposed on the petitioner is “so arbitrary

1 and capricious” as to constitute an independent due process violation. Richmond v. Lewis, 506
2 U.S. 40, 50 (1992).

3 Turning to petitioner’s claim pursuant to Proposition 57, the undersigned first observes
4 that Proposition 57 does not provide a mechanism for prisoners to be resentenced. Rather,
5 Proposition 57 provides for early parole consideration for certain inmates serving indeterminate
6 sentences.

7 Many federal courts have found, based on Nettles v. Grounds, 830 F.3d 922 (9th Cir.
8 2016) (en banc), that a claim seeking parole consideration under California Proposition 57 should
9 be raised in a civil rights complaint, rather than in a habeas petition, because success on such a
10 claim would not necessarily result in a petitioner's immediate release from prison. See Nettles,
11 830 F.3d at 935 (claims for relief that will not necessarily lead to immediate or earlier release
12 from confinement do not fall within the core of habeas corpus.”)

13 As one court has explained,

14 Assuming arguendo that [the petitioner] wants to force prison
15 officials to comply with the parole provisions of Proposition 57,
16 success on his claims will not necessarily lead to immediate or
17 speedier release from custody and therefore falls outside the core of
18 habeas corpus. If he prevails on his claim that he is entitled to relief
19 under Proposition 57, it does not necessarily follow that he will be
20 released from prison on a date sooner than otherwise would occur.
21 This is because Proposition 57 (if it applies to him) only makes him
22 eligible for parole consideration, and does not command his release
23 from prison.

20 Travers v. People of State of California, 2018 WL 707546, at *3 (N.D. Cal. Feb. 5, 2018); see
21 also Johnson v. Federal Court Judges, 2020 WL 758787, at *6 (C.D. Cal. Feb. 14, 2020) (same);
22 Sandoval v. CSP Sacramento Warden, 2019 WL 1438554 at *3 (E.D. Cal. Apr. 1, 2019) (same);
23 Solano v. California Substance Abuse Treatment Facility, 2017 WL 5640920 at *2 (C.D. Cal.
24 Oct. 24, 2017), Report & Recommendations adopted, 2017 WL 5641027 (C.D. Cal. Nov. 21,
25 2017) (same).⁸

26 _____
27 ⁸ Proposition 57 also established new regulations that govern the ability of inmates to earn
28 custody credits to advance their parole dates. Mansour v. CDCR, 2020 WL 1332422 at *3 n. 2
(March 23, 2020). While petitioner does not clearly allege a claim for custody credits pursuant to
Proposition 57, most courts have concluded that this claim falls outside the “core of habeas

1 For the reasons discussed above, the undersigned finds that petitioner’s claim pursuant to
2 Proposition 57 should be dismissed because it is not properly brought in this habeas action. In
3 Nettles, the Ninth Circuit stated that a district court may construe a habeas petition to plead a civil
4 rights claim after notifying the prisoner and obtaining his consent. 830 F.3d at 935-36. For the
5 following reason, the undersigned finds that converting petitioner’s Proposition 57 claim into a
6 federal civil rights action is not appropriate.

7 Federal courts have found that prisoner-plaintiffs failed to allege a cognizable claim under
8 Section 1983 based on alleged violations of Proposition 57 because the crux of their complaints
9 concerned an alleged violation of state law. See, e.g., Stewart v. Borders, 2019 WL 3766557, at
10 *5 (C.D. Cal. Aug. 9, 2019); Russell v. Diaz, 2019 WL 2613592, at *3 (E.D. Cal. June 26, 2019);
11 McCarary v. Kernan, 2017 WL 4539992 (E.D. Cal. Oct. 11, 2017); Herrera v. California State
12 Superior Courts, 2018 WL 400320, at *4 (E.D. Cal. Jan. 12, 2018); Daniels v. California
13 Department of Corrections and Rehabilitation, 2018 WL 489155, at *3 (E.D. Cal. Jan. 19, 2018).
14 Petitioner must decide for himself whether he wants to file a civil rights action based on an
15 alleged violation of Proposition 57 and incur the greater filing fee. The filing fee for a civil rights
16 action is \$400 (with \$50 of that fee reduced if the prisoner proceeds in forma pauperis).

17 Turning to petitioner’s claim pursuant to Proposition 36, this claim is not cognizable
18 because it is a purely state law claim. See Gonzales v. Johnson, 2020 WL 1274994, at *6 (C.D.
19 Cal. March 17, 2020) (dismissing claim based on Proposition 36 on the grounds it is purely state
20 law claim); Sandoval v. CSP Sacramento, 2019 WL 1438554, at *2 (E.D. Cal. Apr. 1, 2019)
21 (rejecting prisoner's claim that state court should have resentenced him under Proposition 36
22 because “alleged error of state sentencing law is not cognizable in a federal habeas proceeding”);
23 Pena Acevedo v. Sec'y of Corr., 2019 WL 2030152, at *5 (C.D. Cal. Mar. 28, 2019) (“[C]ourts
24 within the Ninth Circuit have consistently held that whether an inmate is eligible for resentencing
25 under Proposition 36 is a state-law question that presents no cognizable federal claim on habeas
26 review.”); Foster v. Martel, 2019 WL 1263930, at *9 (C.D. Cal. Jan. 30, 2019) (finding claim that
27 _____
28 corpus” and must be pursued in a civil rights action rather than a habeas action. Id. (citations
omitted).

1 state court erred in determining prisoner was an “unreasonable risk of danger to public safety”
2 under Proposition 36 was not cognizable in federal habeas corpus proceeding).

3 For the reasons discussed above, respondent’s motion to dismiss petitioner’s claims
4 pursuant to Propositions 36 and 57 should be granted.

5 Exhaustion of State Court Remedies

6 Respondent argues that petitioner failed to exhaust state court remedies as to his claims
7 based on Propositions 36 and 57. Respondent argues that petitioner did not raise these claims in
8 any petition filed in the California Supreme Court.

9 Because the undersigned finds that petitioner’s claim pursuant to Proposition 57 is not
10 properly brought in a habeas petition and that petitioner’s claim pursuant to Proposition 36 is not
11 cognizable in federal habeas, the undersigned need not reach the issue of exhaustion. See 28
12 U.S.C. § 2254(b)(2) (an application for a writ of habeas corpus may be denied on the merits,
13 notwithstanding the failure of the applicant to exhaust the remedies available in state court).

14 Third Amended Petition

15 After respondent’s motion to dismiss was fully briefed, petitioner filed a third amended
16 petition. (ECF No. 105.) The third amended petition appears to contain the same three claims
17 raised in the second amended petition. The third amended petition also appears to respond to
18 arguments raised in the motion to dismiss. Accordingly, the undersigned construes petitioner’s
19 third amended petition as further briefing in support of his opposition to the motion to dismiss.

20 Request for Release

21 Petitioner has filed two requests for release from custody pursuant to Rule 9. (ECF Nos.
22 106, 109.) Petitioner appears to argue that he should be released from custody because he will
23 succeed on the merits of his claims.

24 Referencing Rule 9, it appears that petitioner is referring to Federal Rule of Appellate
25 Procedure 9, which authorizes federal criminal defendants to seek appellate review of district
26 court orders regarding release either before or after judgement of conviction. Because Rule 9 is
27 not applicable to the instant action, the undersigned construes petitioner’s requests for relief as
28 requests for release on bail pending resolution of his petition.

1 Assuming district courts have the authority to release habeas petitioner’s on bail prior to
2 the finality of the district court decision, “such pre-decisional release is possible in extraordinary
3 circumstances…” Peterson v. Diaz, 2020 WL 1640008, at *1 (E.D. Cal. Apr. 2, 2020). These
4 extraordinary circumstances are limited to cases involving a high probability of success or
5 extraordinary circumstances. In re Roe, 257 F.3d 1077, 1080 (9th Cir. 2001) (quoting Land v.
6 Deeds, 878 F.2d 318 (9th Cir. 1989)).

7 As discussed above, the undersigned recommends that respondent’s motion to dismiss be
8 granted. Based on these circumstances, petitioner has not demonstrated either a high probability
9 of success or extraordinary circumstances warranting his release on bail. Accordingly,
10 petitioner’s requests for release are denied.⁹

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Petitioner’s motion to substitute the Warden of Avenal State Prison as respondent
13 (ECF No. 80) is granted;
- 14 2. Petitioner’s requests for release pursuant to Rule 9 (ECF Nos. 106, 109), construed as
15 requests for release on bail, are denied.

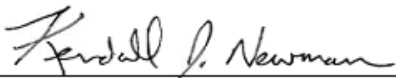
16 IT IS HEREBY RECOMMENDED that respondent’s motion to dismiss (ECF No. 99) be
17 granted.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty** days after
20 being served with these findings and recommendations, any party may file written objections with
21 the court and serve a copy on all parties. Such a document should be captioned “Objections to
22 Magistrate Judge’s Findings and Recommendations.” In his objections petitioner may address
23 whether a certificate of appealability should issue in the event he files an appeal of the judgment
24 in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must
25 issue or deny a certificate of appealability when it enters a final order adverse to the applicant).
26 Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of appealability

27 ⁹ The undersigned denies petitioner’s requests for release on bail by order, as release on bail is
28 not case dispositive. See Peterson v. Diaz, 2020 WL 1640008 at *1 n. 3.

1 “should issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether
2 the district court was correct in its procedural ruling’; and (2) ‘that jurists of reason would find it
3 debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris
4 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
5 (2000)). Any response to the objections shall be served and filed within fourteen days after
6 service of the objections. The parties are advised that failure to file objections within the
7 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
8 F.2d 1153 (9th Cir. 1991).

9 Dated: April 22, 2020

10 
11 KENDALL J. NEWMAN
12 UNITED STATES MAGISTRATE JUDGE

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