1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 MATTHEW DRAKE, No. 2:19-cv-01214-TLN-CKD 12 Petitioner, 13 **ORDER** v. 14 SCOTT A. FRAUENHEIM, 15 Respondent. 16 Petitioner Matthew Drake ("Petitioner"), a state prisoner proceeding pro se, has filed an 17 18 Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred 19 to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On March 25, 2021, the magistrate judge filed findings and recommendations herein 21 which were served on all parties and which contained notice to all parties that any objections to 22 the findings and recommendations were to be filed within fourteen days. (ECF No. 20.) Neither 23 party has filed objections to the findings and recommendations. 24 The Court has reviewed the file under the applicable legal standards and finds the findings 25 and recommendations to be supported by the record and by the magistrate judge's analysis. 26 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has 27 considered whether to issue a certificate of appealability. Before Petitioner can appeal this 28 decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). 1

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Where the petition is denied on the merits, a certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000)). For the reasons set forth in the Findings and Recommendations (ECF No. 20), the Court finds that issuance of a certificate of appealability is not warranted in this case.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The Findings and Recommendations filed March 25, 2021 (ECF No. 20), are ADOPTED IN FULL;
 - 2. The Petition for a Writ of Habeas Corpus is DENIED;
 - 3. The Clerk of Court is directed to close this action; and
- 4. The Court declines to issue the certificate of appealability referenced in 28 U.S.C. § 2253.

IT IS SO ORDERED.

DATED: May 3, 2021

Troy L. Nunley

United States District Judge

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