Case 2:21-cv-00129-TLN-DMC Document 8 Filed 08/06/21 Page 1 of 2 1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MICHAEL L. OVERTON, No. 2:21-cv-00129-TLN-DMC 12 Petitioner, **ORDER** 13 v. 14 WARDEN, 15 Respondent. 16 17 Petitioner Michael L. Overton ("Petitioner"), a state prisoner proceeding *pro se*, brings 18 this Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. The matter was referred to a 19 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On May 27, 2021, the Magistrate Judge filed findings and recommendations herein which 21 were served on the parties and which contained notice to the parties that any objections to the 22 findings and recommendations were to be filed within fourteen days. (ECF No. 6.) No timely 23 objections to the findings and recommendations have been filed. 24 The Court has reviewed the file under the applicable legal standards and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis. 25 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. 6), 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 May 27, 2021 (ECF No. 6), are ADOPTED IN FULL;
- 2. This action is DISMISSED without prejudice for lack of prosecution and failure to comply with the Court's rules and Orders;
  - 3. The Court declines to issue a certificate of appealability; and
  - 4. The Clerk of the Court is directed to enter judgment and close this file.

IT IS SO ORDERED.

DATED: August 4, 2021

Troy L. Nunley

United States District Judge