

1 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the
2 Court has considered whether to issue a certificate of appealability. Before Petitioner can appeal
3 this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P.
4 22(b). Where the petition is denied on the merits, a certificate of appealability may issue under
5 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
6 constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of
7 appealability indicating which issues satisfy the required showing or must state the reasons why
8 such a certificate should not issue. See Fed. R. App. P. 22(b). Where the petition is dismissed on
9 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
10 jurists of reason would find it debatable whether the district court was correct in its procedural
11 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
12 claim of the denial of a constitutional right.’” Morris v. Woodford, 229 F.3d 775, 780 (9th Cir.
13 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)). For the reasons
14 set forth in the Magistrate Judge’s findings and recommendations, the Court finds that issuance of
15 a certificate of appealability is not warranted in this case.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The findings and recommendations filed November 17, 2021, are adopted
18 in full;
- 19 2. This action is dismissed without prejudice for lack of prosecution and
20 failure to comply with court rules and orders;
- 21 3. The Court declines to issue a certificate of appealability; and
- 22 4. The Clerk of the Court is directed to enter judgment and close this file.

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24 Dated: December 22, 2021

/s/ John A. Mendez

25 THE HONORABLE JOHN A. MENDEZ
26 UNITED STATES DISTRICT COURT JUDGE
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