

1 In addition, having concluded that the pending petition must be dismissed, the court now
2 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
3 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
4 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
5 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
6 without reaching the underlying constitutional claims, the court should issue a certificate of
7 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
8 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
9 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
10 In the present case, the court finds that reasonable jurists would not find the court's determination
11 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to
12 proceed further. Therefore, the court declines to issue a certificate of appealability.

13 Accordingly,

- 14 1. The findings and recommendations issued on May 3, 2022 (Doc. No. 10) are
15 adopted in full;
- 16 2. This action is dismissed without prejudice;
- 17 3. The court declines to issue the certificate of appealability referenced in 28 U.S.C.
18 § 2253; and
- 19 4. The Clerk of Court is directed to close this action.

20 IT IS SO ORDERED.

21 Dated: September 6, 2022

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24 UNITED STATES DISTRICT JUDGE
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