

1 Accordingly, on November 11, 2023, the assigned magistrate judge issued findings and
2 recommendations recommending that this action be dismissed, without prejudice, due to
3 petitioner’s failure to comply with the court’s orders and failure to prosecute this action. (Doc.
4 No. 5.) The findings and recommendations were served upon petitioner and contained notice that
5 any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 2.) To date,
6 petitioner has not filed any objections and the time in which to do so has passed.²

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
9 pending findings and recommendations are supported by the record and proper analysis.

10 Having concluded that the pending petition must be dismissed, the court also declines to
11 issue a certificate of appealability. A petitioner seeking writ of habeas corpus has no absolute
12 right to appeal; he may appeal only in limited circumstances. *See* 28 U.S.C. § 2253; *Miller-El v.*
13 *Cockrell*, 537 U.S. 322, 335-36 (2003). If a court denies a petitioner’s petition, the court may
14 only issue a certificate of appealability when a petitioner makes a substantial showing of the
15 denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Where, as here, the court denies habeas
16 relief on procedural grounds without reaching the underlying constitutional claims, the court
17 should issue a certificate of appealability “if jurists of reason would find it debatable whether the
18 petition states a valid claim of the denial of a constitutional right and that jurists of reason would
19 find it debatable whether the district court was correct in its procedural ruling.” *Slack v.*
20 *McDaniel*, 529 U.S. 473, 484 (2000). In the present case, the court finds that reasonable jurists
21 would not find the court’s determination that the pending petition must be dismissed to be
22 debatable or wrong. Thus, the court declines to issue a certificate of appealability.

23 Accordingly,

- 24 1. The findings and recommendations issued on November 11, 2023 (Doc. No. 5) are
25 adopted in full;
- 26 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;

27 ² The service copy of the findings and recommendations, which was mailed to petitioner at his
28 address of record, was again returned to the court as “undeliverable, unclaimed.”

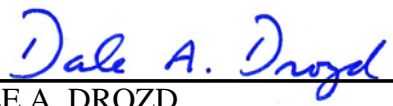
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The court declines to issue a certificate of appealability; and

4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: December 21, 2023



DALE A. DROZD
UNITED STATES DISTRICT JUDGE