



1 Pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the undersigned has reviewed  
2 this case *de novo* and finds the pending findings and recommendations to be supported by the  
3 record and proper analysis and will adopt the findings and recommendations in large part.  
4 Because petitioner had a habeas petition pending before this court (No. 1:20-cv-00836-NONE-  
5 JDP) when he filed the instant petition, this petition is treated as a motion to amend the earlier  
6 petition. *Woods v. Carey*, 525 F.3d 886 (9th Cir. 2008). The claim alleged in this action is not  
7 cognizable; therefore, the motion to amend will be denied and the petition will be dismissed.

8 The court must now turn to whether a certificate of appealability should be issued. A  
9 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's  
10 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*  
11 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of  
12 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the  
13 petition should have been resolved in a different manner or that the issues presented were  
14 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484  
15 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). In the present case, the  
16 court finds that reasonable jurists would not find the court's determination that the petition should  
17 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.  
18 Therefore, the court declines to issue a certificate of appealability.

19 Accordingly, the court ORDERS as follows:

- 20 1. The findings and recommendations issued on August 21, 2020 (Doc. No. 5) are  
21 ADOPTED as follows;
- 22 2. The petition in this action will be treated as a constructive MOTION TO AMEND for the  
23 reasons stated above, and the motion to amend is DENIED;
- 24 3. Because the motion to amend is denied, the petition for writ of habeas corpus (Doc. No. 1)  
25 is DISMISSED;
- 26 4. The court DECLINES to issue a certificate of appealability; and

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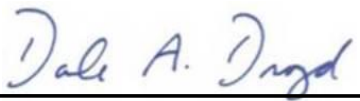
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5. The Clerk of Court is DIRECTED to assign a district judge to this case for the purposes of closure and to close this case.

IT IS SO ORDERED.

Dated: December 8, 2020

  
UNITED STATES DISTRICT JUDGE