

1 for purposes of exhausting his unexhausted claim or, in the alternative, to dismiss his unexhausted
2 claim and proceed with his exhausted claims only. (*Id.*) Petitioner did not timely respond to the
3 order to show cause.

4 Accordingly, on August 11, 2020, the assigned magistrate judge issued findings and
5 recommendations recommending that the petition be dismissed for petitioner’s failure to exhaust
6 one of his claims. (Doc. No. 4.) On August 31, 2020, in an apparent attempt to respond to the
7 show cause order which he appended, petitioner filed a first amended complaint that included the
8 same claims as those asserted in his original petition, including his unexhausted claim. (Doc. No.
9 5.)

10 Petitioner has still not filed any objections to the magistrate judge’s findings and
11 recommendations despite being given the opportunity to do so, and his belatedly filed first
12 amended petition did not cure or properly address the deficiencies raised in the order to show
13 cause.²

14 Pursuant to 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the undersigned has reviewed
15 this case *de novo* and finds the pending findings and recommendations to be supported by the
16 record and proper analysis and will adopt the findings and recommendations.

17 The court must now turn to whether a certificate of appealability should be issued. A
18 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court’s
19 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
20 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
21 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
22 petition should have been resolved in a different manner or that the issues presented were

23 ² Petitioner references more than once in his amended petition having discussed the unexhausted
24 claim with his public defender, who he says decided not to raise that issue on direct appeal. (Doc.
25 No. 5 at 10, 12.) Even if the court infers that this information was petitioner’s attempt to address
26 his failure to exhaust that claim for relief, or to provide good cause for not having exhausted
27 state-level review, the information he provides in that regard is insufficient. A petitioner must
28 “seek *full relief* first from the state courts, thus giving those courts the first opportunity to review
all claims of constitutional error.” *Dixon v. Baker*, 847 F.3d 714, 718 (9th Cir. 2017) (emphasis
added) (quoting *Rose v. Lundy*, 455 U.S. 509, 518–19 (1982)). Petitioner has only explained why
this claim was not raised on direct appeal.

1 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484
2 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). In the present case, the
3 court finds that reasonable jurists would not find the court's determination that the petition should
4 be dismissed debatable or wrong, or that petitioner should be allowed to proceed further.
5 Therefore, the court declines to issue a certificate of appealability.

6 Accordingly, the court ORDERS as follows:

- 7 1. The findings and recommendations issued on August 11, 2020 (Doc. No. 4) are
8 ADOPTED in full;
- 9 2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED;
- 10 3. The court DECLINES to issue a certificate of appealability; and
- 11 4. The Clerk of Court is DIRECTED to assign a district judge to this case for the purposes of
12 closure and to close this case.

13 IT IS SO ORDERED.

14 Dated: December 8, 2020

15 
16 _____
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28