

1 petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019);
2 *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

3 Petitioner’s claim, because it concerns a conviction that was finalized more than forty
4 years ago, is time-barred. It was finalized before the Anti-Terrorism and Effective Death Penalty
5 Act of 1996 and, thus, petitioner had until April 24, 1997 to file a petition attacking his 1976
6 conviction. *See Patterson v. Stewart*, 251 F.3d 1243, 1246 (9th Cir. 2001) (“We therefore hold
7 that AEDPA’s one-year grace period for challenging convictions finalized before AEDPA’s
8 enactment date is governed by Rule 6(a) and ended on April 24, 1997 in the absence of statutory
9 tolling.”). Petitioner has not identified any source of statutory tolling, much less a source
10 sufficient to render a more than forty-year old claim timely. Given the age of the claim, I
11 conclude that dismissal without leave to amend is appropriate. Plaintiff may address why tolling
12 should apply, if at all, in his objections to these recommendations.

13 It is ORDERED that:

14 1. The Clerk of Court shall assign a district judge to this action.

15 2. Petitioner’s application to proceed *in forma pauperis*, ECF No. 7, is GRANTED
16 and his application to proceed *in forma pauperis*, ECF No. 5, is DENIED as MOOT.

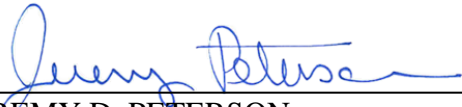
17 Further it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED without
18 leave to amend as time-barred.

19 These findings and recommendations are submitted to the U.S. District Court Judge
20 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
21 Practice for the United States District Court, Eastern District of California. Within fourteen days
22 of service of the findings and recommendations, petitioner may file written objections to the
23 findings and recommendations with the court and serve a copy on all parties. That document
24 must be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
25 District Judge will then review the findings and recommendations under 28 U.S.C.
26 § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: July 28, 2022



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE