

1 thorough and well-reasoned Report recommending that the motion be granted. *See* Doc.
2 No. 13.

3 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C.
4 § 636(b)(1), the Court must “make a de novo determination of those portions of the report
5 . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part,
6 the findings or recommendations made by the magistrate [judge].” 28 U.S.C.

7 § 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

8 Objections to the Report and Recommendation were due no later than December 15,
9 2021. Doc. No. 13 at 7. To date, no objections have been filed, and the time for doing so
10 has expired. *See* Docket.

11 The Court finds Judge Crawford has issued an accurate Report and well-reasoned
12 recommendation that the motion to dismiss be granted. Accordingly, the Court
13 **ADOPTS** the Report and Recommendation in its entirety.

14 CERTIFICATE OF APPEALABILITY

15 The federal rules governing habeas cases brought by state prisoners require a
16 district court that dismisses or denies a habeas petition to grant or deny a certificate of
17 appealability in its ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.
18 § 2254. A certificate of appealability is not issued unless there is “a substantial showing
19 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Under this standard, a
20 petitioner must show that reasonable jurists could debate whether the petition should have
21 been resolved in a different manner or that the issues presented were adequate to deserve
22 encouragement to proceed further. *Miller–El v. Cockrell*, 537 U.S. 322, 336 (2003)
23 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). For the reasons set forth in the
24 Report and Recommendation and incorporated herein, the Court finds that this standard
25 has not been met and therefore **DECLINES** to issue a certificate of appealability.

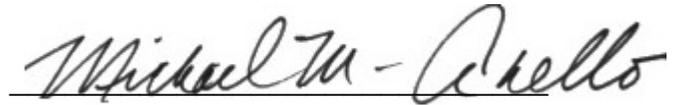
26 CONCLUSION

27 Based on the foregoing, the Court **ADOPTS** the Report and Recommendation in
28 its entirety, **GRANTS** the motion to dismiss, **DENIES** Petitioner’s request to convert the

1 Petition into a § 1983 complaint, and **DISMISSES** the Petition without leave to amend.
2 Dismissal is without prejudice to Petitioner filing a § 1983 complaint. The Court further
3 **DECLINES** to issue a certificate of appealability and **DIRECTS** the Clerk of Court to
4 enter judgment in favor of Respondents and terminate this case.

5 **IT IS SO ORDERED.**

6 Dated: January 10, 2022

7 

8 HON. MICHAEL M. ANELLO
9 United States District Judge

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