

1 habeas review. (ECF No. 9-1 at 8–12.) Petitioner has filed an Opposition. (ECF No. 11.)
2 For the reasons set forth below, the Court grants Respondent’s Motion to Dismiss,
3 dismisses the Petition, and denies a Certificate of Appealability.

4 **I. FACTUAL AND PROCEDURAL BACKGROUND**

5 On February 27, 1997, a jury convicted Petitioner of first-degree robbery of an
6 inhabited dwelling. (ECF No. 10-2 at 17.) On May 7, 1997, after the trial court found he
7 had two prior felony convictions which constituted strikes under California’s Three Strikes
8 Law, he was sentenced to an indeterminate term of thirty years to life in state prison. (*Id.*)

9 Proposition 57, approved by California voters in 2016, provides that: “Any person
10 convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for
11 parole consideration after completing the full term for his or her primary offense.” Cal.
12 Const. art. I, § 32(a)(1). Under regulations implementing Proposition 57, the Board of
13 Parole Hearings (“Parole Board”) set Petitioner’s parole eligibility date as October 6, 2020,
14 based on the full six-year term for his robbery conviction. (ECF No. 1-2 at 12.)

15 On November 13, 2019, Petitioner was present with counsel at his first parole
16 hearing based on his minimum eligible parole date, which resulted in a seven-year parole
17 denial. (ECF No. 10-2 at 17.) Petitioner was informed he would not be referred for an
18 October 6, 2020, Proposition 57 parole hearing “because he recently had a hearing based
19 on his minimum eligible parole date.” (ECF No. 10-6 at 1.) Although Petitioner was
20 informed he had a right to appeal that decision, he did not do so. (*Id.*)

21 On December 23, 2019, Petitioner filed a habeas petition in the State Superior Court
22 claiming the Parole Board erred in refusing to give him an October 6, 2020, parole hearing
23 pursuant to Proposition 57, and claiming ineffective assistance of counsel for failing to
24 argue for a hearing. (ECF No. 1-2 at 4–5.) The Superior Court denied habeas relief on the
25 basis that robbery of an inhabited dwelling constituted a violent felony under state law;
26 thus, Proposition 57 did not apply, and counsel could not have been ineffective in failing
27 to argue it applied. (*Id.* at 6–7.)

28 On October 16, 2020, Petitioner filed a habeas petition in the State Appellate Court

1 raising the same claim. (ECF No. 10-5 at 1–35.) On October 21, 2020, the State Appellate
2 Court denied the petition, finding that Petitioner had failed to exhaust administrative
3 remedies by not appealing the Parole Board’s decision to refuse a Proposition 57 hearing.
4 (ECF No. 10-6 at 1–3.)

5 Petitioner exhausted his administrative remedies on January 1, 2023. (ECF No. 1-2
6 at 12.) On March 8, 2023, he filed a habeas petition in the State Superior Court, asserting—
7 as he does here—that the California Constitution, as amended by Proposition 57, entitles
8 him and others similarly situated under California’s Three Strikes Law to a parole
9 eligibility hearing after serving the full term for their commitment offense. (ECF No. 10-
10 7 at 1–72; ECF No. 1 at 10–23.) He argues that this provision effectively converts
11 prisoners’ indeterminate life sentences into determinate terms—in his case, a six-year
12 sentence with a parole eligibility date of October 6, 2020. (*Id.*) He contends that the state’s
13 refusal to grant him a parole hearing on that date unlawfully prolonged his incarceration
14 by seven years, demonstrating deliberate indifference to violations of his federal
15 constitutional rights, including: (1) fair parole proceedings under the Fifth Amendment, (2)
16 due process and equal protection under the Fourteenth Amendment, and (3) freedom from
17 cruel and unusual punishment under the Eighth Amendment. (*Id.*)

18 On April 4, 2023, the Superior Court denied relief, once again finding Proposition
19 57 did not apply because Petitioner had been convicted of a violent felony offense. (ECF
20 No. 10-8 at 4.) The Court also noted there was sufficient evidence to deny parole, including
21 that Petitioner “present[ed] a high risk for violence. . . [and] . . . has a history of arrests
22 and convictions for batteries and robberies; in the instant case Petitioner put a gun to the
23 victim’s head and demanded she give Petitioner money orders, which she did.” (*Id.* at 5.)
24 The Court found that “while incarcerated Petitioner failed to avail himself of therapeutic
25 treatment programs to deal with the anger or other significant issues with which Petitioner
26 has long grappled,” had “incurred twenty-one rule violations—including five for violence
27 or violence-related conduct—with the most recent in June 2019, just five months before
28 the hearing . . . [and] . . . showed a lack of insight because he alleges an implausible

1 conspiracy between the judge and district attorney to convict Petitioner of a third strike.”
2 (*Id.*)

3 Petitioner filed a habeas petition in the State Appellate Court on April 20, 2023,
4 which was denied on April 26, 2023. (ECF Nos. 10-2, 10-9.) The Appellate Court stated:
5 “His claims, asserted several years after his parole denial with no adequate explanation of
6 the delay, are barred as untimely.” (ECF No. 10-9 at 2.) The Court also found the claims
7 lacked merit because: “Nothing in Proposition 57 itself restricts the Board’s discretion in
8 setting the next hearing date after an inmate is found unsuitable for parole.” (*Id.*)

9 On May 10, 2023, Petitioner presented his claims in a habeas petition filed in the
10 State Supreme Court, which was summarily denied without a statement of reasons on
11 August 9, 2023. (ECF Nos. 10-10, 10-11.) The instant federal Petition was filed on July
12 15, 2024. (ECF No. 1.)

13 **II. ANALYSIS**

14 Respondent seeks dismissal of the Petition, arguing that: (1) the claims are not
15 cognizable under federal habeas review because they rely solely on the interpretation of
16 state law; (2) the Court lacks subject matter jurisdiction because the claims do not lie at the
17 core of habeas, as success on the merits would not necessarily result in immediate or
18 accelerated release, but merely a new parole hearing; and (3) the Petition is untimely
19 because the one-year statute of limitations expired before it was filed. (ECF No. 9-1 at 8–
20 12.)

21 Petitioner opposes the motion, arguing that he has stated a cognizable federal claim
22 because the California Constitution, as amended by Proposition 57, effectively converted
23 his indeterminate life sentence into a determinate six-year term, entitling him to immediate
24 release after serving 26 years, and that the denial of a Proposition 57 parole hearing
25 unlawfully prolonged his incarceration by seven years, violating the Eighth Amendment’s
26 prohibition on cruel and unusual punishment, depriving him of due process and equal
27 protection under the Fourteenth Amendment, and denying him fair parole proceedings
28 under the Fifth Amendment. (ECF No. 11 at 6–12.) He contends this Court has subject

1 matter jurisdiction in this action because he resides in the Southern District of California,
2 all the events occurred here, and there is complete diversity. (*Id.* at 12–13.) He argues the
3 Petition is timely because the one-year statute of limitations applies only to collateral
4 attacks on state court judgments, not challenges to parole release. (*Id.* at 13–16.)

5 **A. Failure to State a Cognizable Claim**

6 Respondent first contends Petitioner has failed to state a cognizable federal habeas
7 claim because his claims rely entirely on the interpretation of state law. (ECF No. 9-1 at
8 8–9.) To state a federal habeas corpus claim under § 2254, a state prisoner must allege
9 both that he is in custody pursuant to a “judgment of a State court” and that he is in custody
10 in “violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
11 § 2254(a). There is no dispute Petitioner is in custody pursuant to a state court judgment.

12 Respondent correctly asserts that state law errors are not subject to correction under
13 federal habeas review. *See Langford v. Day*, 110 F.3d 1380, 1389 (9th Cir. 1996) (noting
14 that “alleged errors in the application of state law are not cognizable in federal habeas
15 corpus” proceedings); *Sturm v. California Youth Authority*, 395 F.2d 446, 448 (9th Cir.
16 1967) (“[A] state court’s interpretation of its [sentencing] statute does not raise a federal
17 question.”). The United States Supreme Court has held that to the extent California law
18 creates a liberty interest in parole it is a “state interest,” which does not create a federal
19 right to be *released* on parole. *Swarthout v. Cooke*, 562 U.S. 216, 219–21 (2011) (citing
20 *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 16 (1979)) (stating
21 there is no federal constitutional right to parole release). Nevertheless, the Supreme Court
22 found that the existence of such a liberty interest would allow state prisoners deemed
23 unsuitable for parole to bring a federal habeas claim alleging that they were denied an
24 opportunity to be heard and a statement of reasons for the denial, and, if successful, would
25 be entitled to a new parole hearing. *Cooke*, 562 U.S. at 220–21; *see also Miller v. Oregon*
26 *Bd. of Parole and Post-Prison Supervision*, 642 F.3d 711, 716 (9th Cir. 2011) (“The
27 Supreme Court held in *Cooke* that in the context of parole eligibility decisions the due
28

1 process right is *procedural*, and entitles a prisoner to nothing more than a fair hearing and
2 a statement of reasons for a parole board’s decision.”).

3 The district courts are divided on whether Proposition 57 creates a liberty interest
4 under state law that triggers federal procedural protections, and the Ninth Circuit has not
5 addressed the issue. *See, e.g., Atuatasi v. Montgomery*, No.: 22cv1469-JO (NLS), 2023
6 WL 3668528, at *3, (S.D. Cal. May 25, 2023) (collecting cases). The Court need not
7 resolve whether the Petition asserts a federal constitutional claim based on the denial of a
8 Proposition 57 parole hearing, as opposed to merely raising a state law claim, because, as
9 set forth below, it must be dismissed as untimely and for failing to invoke the Court’s
10 habeas jurisdiction.

11 **B. Habeas Jurisdiction**

12 Respondent argues that Petitioner has not established this Court’s subject matter
13 jurisdiction under 28 U.S.C. § 2254 because success on his claims would not necessarily
14 lead to immediate or speedier release, but only in another parole hearing. (ECF No. 9-1 at
15 10–11.) Petitioner maintains that Proposition 57 modified his sentence from an
16 indeterminate life term to a determinate term of six years, and he is entitled to be released
17 on parole because he has been imprisoned for over 26 years on a six-year sentence. (ECF
18 No. 11 at 12–13.)

19 Proposition 57 provides that “[a]ny person convicted of a nonviolent felony offense
20 and sentenced to state prison shall be eligible for parole consideration after completing the
21 full term for his or her primary offense,” but does not guarantee *release* after the expiration
22 of the full term. *See* Cal. Const. art. I, § 32(a)(1). Thus, even if Petitioner prevails on his
23 claim that the denial of an October 6, 2020, Proposition 57 parole eligibility hearing
24 violated his federal constitutional rights—following the seven-year parole denial at his
25 initial life sentence parole eligibility hearing on November 13, 2019—he would only
26 become eligible for parole *consideration* under Proposition 57, which does not necessarily
27 entitle him to an *earlier* release from prison. *Id.*; *see also Atuatasi*, 2023 WL 3668528, at
28 *2 (finding that because Proposition 57 merely provides eligibility for parole consideration,

1 not release, “many courts in this circuit have consistently held that the possibility of parole
2 under Proposition 57 does not state a legitimate habeas corpus claim.”) (collecting cases).

3 “[W]hen a prisoner’s claim would not ‘necessarily spell speedier release,’ that claim
4 does not lie at ‘the core of habeas corpus,’ and may be brought, if at all, under [42 U.S.C.]
5 § 1983.” *Skinner v. Switzer*, 562 U.S. 521, 535 n.13 (2011) (quoting *Wilkinson v. Dotson*,
6 544 U.S. 74, 82 (2005)); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (“[W]hen a state
7 prisoner is challenging the very fact or duration of his physical imprisonment, and the relief
8 he seeks is a determination that he is entitled to immediate release or a speedier release
9 from that imprisonment, his sole federal remedy is a writ of habeas corpus.”); *Nettles v.*
10 *Grounds*, 830 F.3d 922, 927–31 (9th Cir. 2016) (en banc) (holding that claims which would
11 result in immediate release if successful fall within the core of habeas corpus, whereas
12 claims which would not necessarily affect the length of time to be served fall outside the
13 core of habeas corpus and must be brought under § 1983); *see also Borstad v. Hartley*, 668
14 F. App’x 696, 697 (9th Cir. 2016) (holding that success on petitioners’ constitutional
15 claims based on lengthening of intervals between parole hearings “would not necessarily
16 result in a shortening of their sentences” and therefore no jurisdiction to grant habeas
17 relief).

18 As the Ninth Circuit has noted, even where a prisoner could show entitlement to a
19 parole hearing, the parole board would still need to consider “all relevant, reliable
20 information” to determine “suitability for parole.” *Nettles*, 830 F.3d at 935. The parole
21 board could then deny parole “on the basis of any of the grounds presently available to it.”
22 *Id.* Petitioner claims he should have been given a new parole eligibility hearing in October
23 2020 despite being found unsuitable for parole eleven months earlier at his November 2019
24 hearing, and argues he is entitled to immediate release because Proposition 57 converted
25 his indeterminate life sentence to a determinate sentence of six years. However, he has not
26 shown he would necessarily have been released on parole at a new hearing, as Proposition
27 57 grants eligibility for parole *consideration* and success on his claim would not
28 *necessarily* lead to release. Thus, even if Petitioner succeeded on his claims and this Court

1 found him eligible for nonviolent parole consideration under Proposition 57, his claims
2 would still fall outside the core of habeas corpus, as such an outcome “would not
3 necessarily lead to his immediate or earlier release from confinement.” *Id.* Petitioner’s
4 claims do not lie in the Court’s federal habeas subject matter jurisdiction and must be
5 brought, if at all, in a civil rights action pursuant to 42 U.S.C. § 1983. *Id.* at 934–35.

6 The Supreme Court has recognized that federal habeas petitions can be read to plead
7 causes of action under the Civil Rights Acts for “deprivation of constitutional rights by
8 prison officials.” *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971), *superseded by statute*
9 *on other grounds as stated in Woodford v. Ngo*, 548 U.S. 81, 84 (2006); *Devereaux v.*
10 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (noting that title 42 U.S.C. § 1983 “creates a
11 private right of action against individuals who, acting under color of state law, violate
12 federal constitutional or statutory rights.”) A district court may construe an incorrectly
13 filed habeas petition as a 42 U.S.C. § 1983 action “[i]f the complaint is amenable to
14 conversion on its face, meaning that it names the correct defendants and seeks the correct
15 relief.” *Nettles*, 830 F.3d at 936. To do so, however, the Court must notify and obtain
16 “informed consent from the prisoner” and “may recharacterize the petition so long as it
17 warns the *pro se* litigant of the consequences of the conversion and provides an opportunity
18 for the litigant to withdraw or amend his or her complaint.” *Id.*

19 Here, the Court declines to convert Petitioner’s habeas Petition to a civil rights
20 complaint, as doing so would expose Petitioner to the provisions of the Prisoner Litigation
21 Reform Act (PLRA), “which installed a variety of measures ‘designed to filter out the bad
22 claims [filed by prisoners] and facilitate consideration of the good.’” *Bruce v. Samuels*,
23 577 U.S. 82, 85 (2016) (quoting *Coleman v. Tollefson*, 575 U.S. 532, 535 (2015)). For
24 example, a civil rights complaint which is dismissed as malicious, frivolous, or for failure
25 to state a claim would count as a “strike” under 28 U.S.C. § 1915(g), which is not true for
26 habeas cases. *Id.* at 86. In addition, while the filing fee for a habeas petition is five dollars,
27 which Petitioner paid in this case, a § 1983 action requires a civil filing fee of \$405—
28 comprising a \$350 statutory and a \$55 administrative fee—though the administrative fee

1 does not apply to persons granted leave to proceed *in forma pauperis* (IFP). *See* 28 U.S.C.
2 § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
3 (eff. Dec. 1, 2023)). The PLRA provides that the civil filing fee be collected even if the
4 Petitioner qualifies to proceed *in forma pauperis* and must be paid regardless of whether
5 the action is ultimately dismissed, which “also applies to costs awarded against prisoners
6 when they are judgment losers.” *Bruce*, 577 U.S. at 85–86. A prisoner willing to pay a
7 five-dollar filing fee might not want to proceed with a civil rights complaint for which at
8 least \$350 of the \$405 filing fee would be deducted from his inmate account. Thus, the
9 Court will not convert the habeas Petition into a civil rights complaint.

10 Accordingly, Respondent’s motion to dismiss the Petition for lack of habeas
11 jurisdiction is granted.

12 **C. Timeliness**

13 Finally, Respondent argues that the Petition is untimely. (ECF No. 9-1 at 11–12.)
14 Petitioner argues the one-year statute of limitations does not apply to challenges to parole
15 denials, only state court judgments. (ECF No. 11 at 14.)

16 A one-year statute of limitations applies to petitions for writ of habeas corpus filed
17 by a state prisoner who is challenging his state court conviction or sentence in federal court,
18 and begins to run “from the latest of” the following:

19 (A) the date on which the judgment became final by the conclusion of
20 direct review or the expiration of the time for seeking such review;

21 (B) the date on which the impediment to filing an application created
22 by State action in violation of the Constitution or laws of the United States is
23 removed, if the applicant was prevented from filing by such State action;

24 (C) the date on which the constitutional right asserted was initially
25 recognized by the Supreme Court, if the right has been newly recognized by
26 the Supreme Court and made retroactively applicable to cases on collateral
27 review; or

28 (D) the date on which the factual predicate of the claim or claims
presented could have been discovered through the exercise of due diligence.

1 28 U.S.C. § 2244(d)(1).

2 The Ninth Circuit has held that 28 U.S.C. § 2244(d)(1)(D) applies to claims
3 challenging the decision of the California Parole Board to deny parole, and that the start
4 date for the one-year limitations period is the day after administrative remedies are
5 exhausted. *Redd v. McGrath*, 343 F.3d 1077, 1082 (9th Cir. 2003). Petitioner exhausted
6 his administrative remedies on January 1, 2023, when the Parole Board denied his appeal
7 of the decision to deny him a Proposition 57 parole hearing. (ECF No. 1-2 at 12.) The
8 one-year statute of limitations began to run the next day, January 2, 2023. *Redd*, 343 F.3d
9 at 1082. Absent tolling, the limitations period was set to expire on January 1, 2024. The
10 instant Petition was constructively filed over six months later, on July 11, 2024, the day it
11 was handed to prison authorities for mailing to the Court. (See ECF No. 1 at 26); *Anthony*
12 *v. Cambra*, 236 F.3d 568, 574–75 (9th Cir. 2000). Thus, unless the limitations period was
13 subject to adequate tolling, the Petition is untimely.

14 **1. Statutory Tolling**

15 Under 28 U.S.C. § 2244(d)(2), “[t]he time during which a properly filed application
16 for State post-conviction or other collateral review . . . is pending shall not be counted
17 toward any period of limitation under this subsection.” After exhausting his administrative
18 remedies on January 1, 2023, Petitioner filed a habeas petition in the San Diego Superior
19 Court on March 8, 2023, raising the claims presented here. (ECF No. 10-7.) Thus, the
20 365-day limitations period ran for 65 days from January 2, 2023, until it was statutorily
21 tolled on March 8, 2023. The period remained tolled until April 4, 2023, when the State
22 Superior Court denied the petition (ECF No. 10-8), leaving 300 days remaining on the one-
23 year statute of limitations. Petitioner filed a habeas petition in the State Appellate Court
24 raising the same claims on April 20, 2023. (ECF No. 10-2.) It was denied on April 26,
25 2023, as “untimely” and because “[n]othing in Proposition 57 itself restricts the Board’s
26 discretion in setting the next hearing date after an inmate is found unsuitable for parole.”
27 (ECF No. 10-9 at 2.)

28 “[A]n application is pending as long as the ordinary state collateral review process

1 is ‘in continuance’—*i.e.*, ‘until the completion of’ that process.” *Carey v. Saffold*, 536 U.S.
2 214, 219–20 (2002). Tolling continues “during the interim between a writ being denied at
3 one court level and a new petition being filed at the next higher court level as long as the
4 petition at the next level is filed within a reasonable period of time.” *Porter v. Ollison*, 620
5 F.3d 952, 958 (9th Cir. 2010). However, when a state court petition is found to be untimely,
6 it is not “properly filed” as defined in 28 U.S.C. § 2244(d)(2) and is not entitled to
7 statutory tolling, either for the period it was pending or for the time between filings. *Pace*
8 *v. DiGuglielmo*, 544 U.S. 408, 417 (2005). An untimely state habeas petition “must be
9 treated as improperly filed, or as though it never existed, for purposes of section 2244(d).”
10 *Lakey v. Hickman*, 633 F.3d 782, 786 (9th Cir. 2011). Thus, because the Appellate Court
11 denied the petition as untimely, Petitioner is not entitled to any statutory tolling for either
12 the habeas petition filed in the Appellate Court or the gap between the Superior Court’s
13 denial of the petition and the filing of the Appellate Court petition.

14 Accordingly, the limitations period ran for an additional 35 days from the April 5,
15 2023, denial of the State Superior Court petition until May 10, 2023, when Petitioner filed
16 a State Supreme Court habeas petition and statutory tolling could have begun again. (ECF
17 No. 10-10.) At that time 265 days remained on the limitations period. The State Supreme
18 Court petition was summarily denied without a statement of reasons on August 9, 2023.
19 (ECF No. 10-11.) The Court need not determine whether the limitations period was tolled
20 while the State Supreme Court habeas petition was pending or during the gap between the
21 State Appellate Court denial and the filing of the State Supreme Court petition. Even
22 allowing for tolling during those periods, only 265 days remained when the limitations
23 period began running again on August 10, 2023, the day after the State Supreme Court
24 denied the petition, and it ran for 335 days until the instant federal Petition was
25 constructively filed on July 11, 2024. Thus, even with the maximum statutory tolling
26 available, the Petition was filed 70 days after the limitations period expired, and it is
27 untimely unless equitable tolling applies.
28

1 **2. Equitable Tolling**

2 The statute of limitations under AEDPA “is subject to equitable tolling in
3 appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “To be entitled to
4 equitable tolling, [Petitioner] must show ‘(1) that he has been pursuing his rights diligently,
5 and (2) that some extraordinary circumstance stood in his way’ and prevented timely
6 filing.” *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007) (quoting *Pace*, 544 U.S. at
7 418). Equitable tolling is “unavailable in most cases,” and “the threshold necessary to
8 trigger equitable tolling [under AEDPA] is very high, lest the exceptions swallow the rule.”
9 *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002). A petitioner must show that the
10 extraordinary circumstances caused his untimeliness. *Spitsyn v. Moore*, 345 F.3d 796, 799
11 (9th Cir. 2003).

12 Petitioner does not argue he is entitled to equitable tolling, nor does he identify any
13 extraordinary circumstances explaining his delay in filing his federal Petition. Rather, he
14 argues the Petition is timely because the one-year statute of limitations only applies to
15 collateral attacks on state court judgments, not challenges to parole release. (ECF No. 11
16 at 13–16.) As noted, the Ninth Circuit has determined that the one-year statute of
17 limitations applies to challenges to state parole proceedings. *See Redd*, 343 F.3d at 1082.

18 Accordingly, the Court grants Respondent’s motion to dismiss the Petition as
19 untimely.

20 **III. CONCLUSION**

21 For the foregoing reasons, the Court **GRANTS** the Motion to Dismiss (ECF No. 9)
22 and **DISMISSES** the Petition for failure to present a claim within the Court’s subject
23 matter habeas jurisdiction and as untimely.

24 In addition, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in
25 the United States District Courts, “[t]he district court must issue or deny a certificate of
26 appealability when it enters a final order adverse to the applicant.” “A certificate of
27 appealability should issue if ‘reasonable jurists could debate whether’ (1) the district
28 court’s assessment of the claim was debatable or wrong; or (2) the issue presented is

1 ‘adequate to deserve encouragement to proceed further.’” *Shoemaker v. Taylor*, 730 F.3d
2 778, 790 (9th Cir. 2013) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Here, the
3 Court concludes that Petitioner has not made the required showing and therefore **DENIES**
4 a certificate of appealability.

5 The Clerk of Court will enter a final judgment of dismissal and close the case.

6 **IT IS SO ORDERED.**

7
8 **DATED: March 10, 2025**

9 
10 **Hon. Cynthia Bashant, Chief Judge**
11 **United States District Court**