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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 HERMAN LEWIS,

8 Petitioner,

9 v.

10 JEFFREY A. UTTECHT,

11 Respondent.

NO: 4:14-cv-05100-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION, DIRECTING
TRANSFER TO NINTH CIRCUIT
COURT OF APPEALS, AND
DENYING MOTION FOR
APPOINTMENT OF COUNSEL

12 Magistrate Judge Hutton filed a Report and Recommendation on October 23,
13 2014, recommending Mr. Lewis's habeas corpus petition be transferred to the
14 Ninth Circuit Court of Appeals as a second or successive petition. ECF No. 6.
15 Judge Hutton further recommended that Petitioner's Motion for Appointment of
16 Counsel be denied as moot. There being no objections, the Court **ADOPTS** the
17 Report and Recommendation in its entirety.

18 When a second or successive petition is mistakenly submitted to the district
19 court, that court shall refer it to the court of appeals. Ninth Circuit Rule 22-3(a).

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ORDER ADOPTING REPORT AND RECOMMENDATION AND DIRECTING
TRANSFER TO NINTH CIRCUIT COURT OF APPEALS -- 1

1 Accordingly, **IT IS ORDERED** this case is **TRANSFERRED** to the Ninth Circuit
2 Court of Appeals, pursuant to 28 U.S.C. § 1631 and Ninth Circuit Rule 22-3(a).

3 Petitioner is advised this transfer does not of itself constitute compliance
4 with § 2244(b)(3) and Ninth Circuit Rule 22-3; he must still file an application for
5 leave to proceed in the Court of Appeals and make the showing required by §
6 2244(b)(2). Petitioner is directed to consult this statute and Ninth Circuit Rule 22-
7 3 for further information.

8 **IT IS SO ORDERED.** The District Court Executive is directed to transfer
9 this action to the Ninth Circuit Court of Appeals. The District Court Executive is
10 further directed to enter this Order, forward a copy to Petitioner, and close the file.

11 **DATED** this 3rd day of December 2014.

12
13 *s/ Rosanna Malouf Peterson*
14 ROSANNA MALOUF PETERSON
15 Chief United States District Court Judge
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