

1 to raise a cognizable claim for habeas relief thus Petitioner’s Petition is moot and should
2 be dismissed. *Id.* On December 1, 2021, Petitioner filed an Opposition. (Doc. No. 27.) The
3 Court has reviewed and considered Petitioner and Respondent’s (“Parties”) submissions
4 and the underlying record. For the reasons discussed below, the Court recommends
5 Respondent’s Motion to Dismiss be GRANTED and Petitioner’s Petition DISMISSED
6 without leave to amend.

7 **I. FACTUAL BACKGROUND**

8 Petitioner is currently an inmate at Vista Detention Facility. (Doc. No. 41.) On June
9 15, 2015, in case SCn333477, a jury convicted Petitioner of eleven offenses involving
10 unlawful sexual conduct with a minor, one count of burglary in violation of Penal Code
11 section 459, and one count of witness intimidation in violation of Penal Code section 136.1
12 for attempting to dissuade the victim of his sex offense crimes from testifying at trial. *See*
13 *People v. Rodriguez*, 25 Cal. App. 5th 1100 (2018). Consequently, on November 10, 2016,
14 Petitioner was sentenced to a total of thirteen years and four months in prison with an
15 additional one-year sentence enhancement. (*See* Doc. No. 1, Attachment B.)

16 After his conviction in case SCn333477, Petitioner was charged again through an
17 amended information. (*See* Doc. No. 1, Attachment B.) On January 27, 2017, Petitioner
18 was convicted of several additional felonies as well as several dozen misdemeanors
19 including conspiracy to commit injurious acts and false statements. (*See id.*) The trial court
20 imposed a determinate term of imprisonment to run consecutively with the remaining term
21 of Petitioner’s prior sentence. *See In re Rodriguez*, 66 Cal. App. 5th 952, 958 (2021).

22 On October 21, 2021, Petitioner filed a Notice of Change of Address notifying the
23 Court of Petitioner’s transfer from CDCR to the San Diego County Jail. (Doc. No. 14.) On
24 October 22, 2021 and October 27, 2021, Petitioner subsequently filed two more Notices of
25 Change of Address updating the Court of Petitioner’s new addresses pursuant to his
26 transfers between San Diego County Jail facilities. (Doc. No. 18 and 21.) On February 7,
27 2022, Petitioner filed his fourth Notice of Change Address notifying the Court of
28 Petitioner’s new address at the Vista Detention Facility. (Doc. No. 41.) Currently Petitioner

1 is an inmate at the Vista Detention Center under the jurisdiction of the San Diego Sheriff's
2 Department. *Id.*

3 **II. PROCEDURAL BACKGROUND**

4 On December 1, 2016, following his initial conviction in state court case
5 SCn333477, Petitioner appealed his conviction in the Fourth District California Court of
6 Appeal. *Id.* at 2. In his appeal, Petitioner argued there was insufficient evidence to support
7 his convictions for burglary and witness intimidation. *People v. Rodriguez*, 25 Cal. App.
8 5th 1100, 1103 (2018). The California Court of Appeal affirmed Petitioner's convictions
9 finding there was sufficient evidence to support both his conviction for burglary as well as
10 his conviction for witness intimidation. *Id.* at 1104.

11 Petitioner also appealed his subsequent convictions to the Fourth District California
12 Court of Appeal relating to the amended information filed against him. *In re Rodriguez*, 66
13 Cal. App. 5th 952, 958 (2021). The California Court of Appeal reversed in part and
14 remanded for resentencing. *Id.* (citing *People v. Rodriguez* (Sept. 19, 2018, D071948)
15 [nonpub. opn.]). At resentencing, the trial court imposed a consecutive sentence and
16 announced a single, aggregate term of imprisonment of fourteen years eight months for the
17 two proceedings. *In re Rodriguez*, 66 Cal. App. 5th 952, 958 (2021). This decision was
18 further upheld by the California Court of Appeal in *People v. Rodriguez*, July 17, 2020,
19 D075890 ([nonpub. opn.]). The California Supreme Court denied review of this decision.
20 *People v. Rodriguez* (Sept. 30, 2020, S264130).

21 Petitioner next filed a writ of mandate in Superior Court which the court later
22 construed as a petition for habeas corpus. *In re Rodriguez*, 66 Cal. App. 5th 952, 958
23 (2021). The petition focused on Petitioner's one-year sentence enhancement the trial court
24 initially imposed on him in case SCn333477 pursuant to section 667.5. *Id.* Because section
25 667.5 was later amended in 2019 to limit the application of prison term enhancements
26 applied to certain sexually violent offenses, Petitioner argued he should benefit from the
27 amended statute. *Id.* The trial court denied this petition based on the rationale that the
28 amendment did not apply retroactively to Petitioner. *Id.* at 959.

1 Petitioner filed several additional petitions for writs of habeas corpus relating to his
2 initial sentence enhancement before filing the current Petition in the instant case. For
3 example, Petitioner filed two writs of habeas corpus in the California Court of Appeal. *Id.*
4 at 959. In the first, the California Court of Appeal ordered an issue to show cause returnable
5 in the trial court. *Id.* at 959 (citing *In re Rodriguez* (order to show cause issued Aug. 11,
6 2020, D077717)). The trial court denied relief. *Id.* In the second, the California Court of
7 Appeal issued an order to show cause and ultimately denied the petition on the grounds
8 that Petitioner failed to show the ameliorative amendment to section 667.5 applied
9 retroactively to him. *See In re Rodriguez*, 66 Cal. App. 5th 952, 958 (2021).

10 On May 2, 2019, Petitioner filed his fourth petition for writ of habeas corpus in the
11 Supreme Court of California. (*See* Doc. No. 1 at 79, Attachment J.) Petitioner raised
12 Fourteenth Amendment equal protection and due process claims. *See id.* Petitioner argued
13 his substantive and procedural due process rights were violated when he was (1) denied
14 parole consideration and (2) denied the “right to be heard and provided a statement of
15 reasons for denial of parole.” (*Id.*) On June 11, 2021, Respondent filed an Informal
16 Response as requested by the California Supreme Court, arguing the petition was moot as
17 Petitioner was no longer excluded from nonviolent parole consideration under Proposition
18 57 and noted CDCR’s denial of Petitioner’s parole request was based on subsequent rule
19 violations that altered Petitioner’s earliest possible release date. *See id* at 76, 84-95. On
20 July 14, 2021, the California Supreme Court denied Petitioner’s writ of habeas corpus as
21 moot. *Id.* at 127.

22 On August 9, 2021, Petitioner filed the instant Petition in United States District
23 Court Eastern District of California. (Doc. No. 1 at 1.) On August 13, 2021, the Petition
24 was transferred to the Southern District of California. (Doc. No. 5.)

25 **III. LEGAL STANDARD**

26 The Ninth Circuit will review a motion to dismiss a petition for writ of habeas corpus
27 as a request to dismiss under Rule Four of the Rules Governing section 2254. *See*
28 *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 2001). The Court will review the motion

1 to dismiss pursuant to its authority under Rule Four, which states: “If it plainly appears
2 from the petition and any attached exhibits that the petitioner is not entitled to relief in the
3 district court, the judge must dismiss the petition.” USCS Sec. 2254 Cases R 4.

4 **IV. DISCUSSION**

5 **A. Petitioner’s Claim is Purely a Matter of State Law**

6 Petitioner does not allege a cognizable federal claim, instead he asserts an error of
7 state law. Under federal habeas review, claims of state law error are not cognizable. It is
8 outside the scope of this Court’s review to consider errors of state law. *See Swarthout v.*
9 *Cooke*, 562 U.S. 216, 222 (2011). In *Swarthout*, a California law created a liberty interest
10 in parole. *Id.* at 220. However, the liberty interest was created by the state of California
11 rather than the federal government. *Id.* No right existed under the United States
12 Constitution for a convicted prisoner to be conditionally released before the expiration of
13 a valid sentence. *Id.*

14 Petitioner argued he is entitled to habeas relief because he was excluded from
15 nonviolent parole consideration under California’s Proposition 57.² Here, if a liberty
16 interest was created, it would have been created by the state of California, not by the federal
17 government. Therefore, this Court should not determine whether Proposition 57 should be
18 applicable to Petitioner.

19 Because there is no federal issue or constitutional violation, this Court should not
20 entertain Petitioner’s claim. Hence, the motion to dismiss should be granted.

21 **B. Petitioner’s Claim for Relief Appears To Be Moot**

22 Furthermore, Petitioner’s claim for relief is moot. In order for a state prisoner to be
23 entitled to federal habeas corpus relief, he must be held “in custody in violation of the
24 Constitution or laws or treaties of the United States.” 28 USC § 2254(a). If a petition only
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26 ² Proposition 57 was a California state proposition approved by California voters in
27 November 2016, which allows some non-violent offenders to have early parole
28 consideration if they had served the full term of their primary offense. Proposition 57 has
been implemented into the California Constitution in Article I Section 32.

1 raises a violation of state law, then no federal claim has been presented, and consequently,
2 the petition is subject to dismissal based on failure to state a claim. *O'Bremski*, 915 F.2d at
3 420. Article III of the Constitution "restricts federal courts to the resolution of cases and
4 controversies," *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 732 (2008), and requires
5 that "a justiciable case or controversy ... remain extant at all stages of review". *United*
6 *States v. Juvenile Male*, 131 S.Ct. 2860, 2864 (2011) (per curiam) (internal quotation marks
7 omitted). The Supreme Court has recognized "[a] claim is moot, and the court is divested
8 of its jurisdiction if a case or controversy no longer exists pursuant to Article III of the
9 Constitution." *North Carolina v. Rice*, 404 U.S. 224, 246 (1971). More specifically, in
10 cases involving inmates challenging their institutional confinement, the Ninth Circuit
11 recognizes "once an inmate is removed from the environment in which he is subjected to
12 the challenged policy or practice ... he no longer has a legally cognizable interest in a
13 judicial decision on the merits of his claim." *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir.
14 2012) (quoting *Incumaa v. Ozmint*, 507 F.3d 281, 286-87 (4th Cir. 2007)).

15 Petitioner filed the instant Petition against Respondent "Officer Fisher" when he was
16 housed at Valley State Prison. (Doc. No. 1.) However, Petitioner is no longer under the
17 custody of Respondent. On October 21, 2021, Petitioner filed a Notice of Change of
18 Address notifying the Court of Petitioner's transfer from CDCR to the San Diego County
19 Jail. (Doc. No. 14.) Petitioner subsequently filed two more Notices of Change of Address
20 on October 22, 2021 and October 27, 2021, updating the Court of Petitioner's new
21 addresses pursuant to his transfers between San Diego County Jail facilities. (Doc. No. 18
22 and 21.) On February 7, 2022, Petitioner filed his fourth Notice of Change Address
23 notifying the Court of Petitioner's new address at the Vista Detention Facility. (Doc. No.
24 41.) Currently Petitioner is an inmate at the Vista Detention Center under the jurisdiction
25 of the San Diego Sheriff's Department. *Id.* Thus, Petitioner is under the custody of the
26 County of San Diego, rather than the custody of the named Respondent, CDCR.

27 Petitioner also failed to demonstrate a reasonable expectation or probability he will
28 again be subjected to the CDCR prison conditions from which he seeks habeas relief. Ninth

1 Circuit precedent supports the conclusion that habeas petitions should be considered moot
2 once a prisoner is transferred to a different correctional facility from that which he is
3 seeking habeas relief. *See Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991) (basing
4 this conclusion on the fact that the prisoner’s claim is related to a facility where he is no
5 longer housed).

6 Because Petitioner is no longer under the custody of Respondent but rather under
7 the custody of the San Diego Sheriff’s Department this Court should dismiss Petitioner’s
8 claim as moot.

9 **C. Petitioner’s Claim Also Does Not Fall Within the Core of Habeas Corpus**

10 In addition to the Petitioner’s claim being moot, his claim is not within the core of
11 habeas corpus. Respondent argued even if the Petitioner prevailed on his equal protection
12 and due process claims arising out of his exclusion from nonviolent parole consideration,
13 his success would not necessarily result in a speedier or immediate release from custody.
14 (Doc. No. 20 at 3:13-14.) The Court agrees.

15 A state prisoner has two avenues for relief under federal law: a petition for writ of
16 habeas corpus under 28 U.S.C. section 2254 or a civil rights complaint under 42 U.S.C.
17 section 1983. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) (en banc).
18 However, a petition for writ of habeas corpus is the exclusive avenue for claims advanced
19 by state prisoners that fall within the core of habeas corpus. *See id* at 934. Typically,
20 challenges to the validity of confinement or to particulars affecting its duration fall within
21 the scope of habeas corpus, whereas request for relief turning on circumstances of
22 confinement may be presented in a section 1983 action. *See Muhammad v. Close*, 540 U.S.
23 749, 750 (2004) (per curiam). When determining whether a prisoner’s claim lies in habeas
24 jurisdiction, courts consider whether success on the claim would “necessarily spell speedier
25 release.” *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). More specifically, the Ninth Circuit
26 has concluded that federal habeas jurisdiction only exists where the state prisoner’s sought
27 relief would “necessarily lead to his immediate or earlier release from confinement.”
28 *Nettles*, 830 F.3d at 935.

1 Petitioner argued California’s Proposition 57 allows for his early release pursuant to
2 the California Supreme Court’s decision in *In re Gadlin*, 10 Cal. 5th 915 (Cal. 2020.)³ *Id.*
3 Specifically, Petitioner argued his Fourteenth Amendment rights to substantive due process
4 and equal protection were violated because Petitioner was not treated the same as the
5 petitioner in *Gadlin*, who the court determined was eligible for parole consideration under
6 Proposition 57 because his prior sex offense crimes, though registerable, were considered
7 “nonviolent” per the language of Proposition 57. *See In re Gadlin*, 10 Cal. 5th 915, 920
8 (Cal. 2020). Petitioner argued his prior sex offense crimes are “nonviolent” and thus was
9 entitled to similar relief as the petitioner in *Gadlin* in the form of parole consideration under
10 Proposition 57. (Doc. No. 1 at 16.)

11 However, Petitioner did not argue consideration under Proposition 57 would lead
12 to his immediate or earlier release. He merely asserted he should have been eligible for
13 nonviolent early parole because the defendant in *Gadlin*, a “similarly situated” inmate who
14 sought habeas relief, was granted nonviolent early parole consideration because of
15 California’s newly enacted Proposition 57. (Doc. No. 1 at 16.) Specifically, Petitioner
16 argued that even after the *Gadlin* decision, CDCR continued to exclude him from
17 nonviolent parole consideration because of his past Penal Code section 290 registerable
18 sex offense convictions, in violation of his Fourteenth Amendment rights. (Doc. No. 1 at
19 16-21.) But, even if Petitioner succeeded on his equal protection claim and this Court
20 found him eligible for nonviolent parole consideration under Proposition 57, Petitioner’s
21 claim would still fall outside the core of habeas corpus as such outcome “would not
22 necessarily lead to his immediate or earlier release from confinement.” *Nettles*, 830 F.3d
23 at 935. This is because Proposition 57 grants eligibility to prisoners convicted of nonviolent
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26 ³ In *In re Gadlin*, the California Supreme Court held that “nonviolent offender parole
27 eligibility must be based on an inmate’s current conviction” and further held that the
28 California Department of Corrections and Rehabilitation’s regulations, which excluded
inmates from nonviolent parole consideration due to past or current nonviolent registerable
sex offenses, are inconsistent with the California Constitution and thus invalid.

1 offenses for parole *consideration*. Thus, even if Petitioner were given a parole hearing
2 under Proposition 57, he would not *necessarily* be granted parole and, therefore, would not
3 satisfy the *Nettles* standard. Accordingly, Petitioner’s claims do not lie in federal habeas
4 jurisdiction.

5 Even if Petitioner was successful on his Proposition 57 claim, he would only be
6 eligible for consideration for an earlier parole hearing and would not necessarily be
7 guaranteed immediate release. Thus, Petitioner’s claim does not fall within the core of
8 habeas corpus and therefore does not fall within the jurisdiction of this Court.

9 **D. The Court Should Not Construe the Petition as a Section 1983 Action.**

10 Petitioner’s claim does not fall within the core of habeas corpus, and it further should
11 not be construed by the Court as a civil rights section 1983 action.

12 The Supreme Court has recognized cognizable federal habeas petitions can also be
13 read to plead causes of action under the Civil Rights Acts for “deprivation of constitutional
14 rights by prison officials.” *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971). Further, a
15 district court may construe an incorrectly filed habeas petition as a section 1983 action “[i]f
16 the complaint is amenable to conversion on its face, meaning it names the correct
17 defendants and seeks the correct relief.” *Nettles*, 380 F.3d at 936. To do so, however, the
18 court must notify and obtain “informed consent from the prisoner,” which requires
19 “warning [him or her] of the consequences of conversion and providing an opportunity for
20 the [prisoner] to withdraw or amend his or her complaint.” *Id.*

21 Here, the Court recommends declining to convert Petitioner’s habeas Petition to a
22 civil rights complaint for the following reasons. First, doing so would expose Petitioner to
23 the provisions of the Prisoner litigation Reform Act (PLRA), which installed a variety of
24 measures “designed to filter out the bad claims [filed by prisoners] and facilitate
25 consideration of the good.” *Bruce v. Samuels*, 136 S. Ct. 627, 630 (2016) (citing *Coleman*
26 *v. Tollefson*, 575 U.S. 532, 535 (2015)). The PLRA provisions create financial differences
27 between filing a habeas petition compared to filing a civil rights case. For example, the
28 filing fee for a habeas petition is five dollars, and if leave to proceed in *forma pauperis* is

1 granted, the fee is forgiven. *Saffold v. Hartley*, 2016 U.S. Dist. LEXIS 132636. On the
2 other hand, the PLRA provides that a \$400 civil filing fee be collected even if the Petitioner
3 qualifies to proceed in *forma pauperis*, and regardless of whether his action is ultimately
4 dismissed, which “also applies to costs awarded against prisoners when they are judgment
5 losers.” *Se id*; *Bruce v. Samuels*, 136 S. Ct. 627, 630 (2016); *Williams v. Paramo*, 775 F.3d
6 1182, 1185 (9th Cir. 2015); 28 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d
7 884, 847 (9th Cir. 2002). Thus, a prisoner who might be willing to file a habeas petition for
8 a five – or potentially zero – dollar filing fee might feel otherwise about a civil rights
9 complaint for which the \$400 filing fee would be deducted from income to his account.
10 *Saffold v. Hartley*, 2016 U.S. Dist. LEXIS 132636. Moreover, a civil rights complaint
11 which is dismissed as malicious, frivolous, or for failure to state a claim would count as a
12 “strike” under 28 U.S.C. section 1915(g), which is not true for habeas cases. *Id.*

13 Second, Petitioner has not named a proper civil rights defendant and it is unclear
14 from his petition who he seeks to hold personally responsible for denying his Proposition
15 57 parole hearing. *See, e.g., Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (“The inquiry
16 into causation must be individualized and focus on the duties and responsibilities of each
17 individual defendant whose acts or omissions are alleged to have caused a constitutional
18 deprivation.” (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976))). Here, Petitioner
19 vaguely alleged equal protection and due process violations resulting from his exclusion
20 from Proposition 57 parole consideration while he was an inmate under CDCR custody.
21 (*See* Doc. No. 1 at 16.) All of Petitioner’s allegations in the instant Petition are directed
22 toward the warden of the Valley State Prison, the CDCR facility in which he was previously
23 housed. But, as discussed above, Petitioner is currently an inmate in the Vista Detention
24 Center under the custody of the San Diego Sherriff’s Department. (*See* Doc. No. 1.) Thus,
25 if the instant Petition were construed as a section 1983 action, Petitioner’s claim would fail
26 to name the correct civil rights defendant and fail to contain allegations individualized to
27 the duties and responsibilities of the individual who caused any constitutional deprivation
28 – which under Petitioner’s theory, would be actors of CDCR.

1 Third, even if Petitioner named a proper civil rights defendant, his habeas corpus
2 petition should not be construed as a section 1983 matter because he failed to make a
3 showing of intentional discrimination by a named civil rights defendant. *See McDaniel v.*
4 *Powell*, 2015 U.S. Dist. LEXIS 72622. In a section 1983 claim alleging a violation of equal
5 protection, “a plaintiff must prove that the defendant acted in a discriminatory manner and
6 that the discrimination was intentional.” *Id.* Further, “a plaintiff alleging denial of equal
7 protection under section 1983 must prove purposeful discrimination by demonstrating that
8 he ‘received different treatment from that received by others similarly situated’ ... and that
9 the treatment complained of was under color of state law.” *Van Pool v. San Francisco*, 752
10 F. Supp. 915, 927 (N.D. Cal 1990) (quoting *Andrews v. City of Philadelphia*, 895 F.2d 1469,
11 1478 (3d Cir. 1990); *West v. Atkins*, 487 U.S. 42 (1988)). Here, Petitioner’s justification
12 for his equal protection claim is based on the fact Petitioner Gadlin received early parole
13 consideration under Proposition 57, however, Petitioner failed to show that he and
14 Petitioner Gadlin are similarly situated individuals. Petitioner also failed to show CDCR –
15 and now the San Diego Sheriff’s Department – intentionally discriminated against
16 Petitioner. In fact, the attachments accompanying Petitioner’s Petition demonstrate CDCR
17 had legitimate reasons for withholding parole consideration from Petitioner.⁴ (*See Doc.*
18 *No. 1 Attachment J.*) Similarly, the Petition fails to demonstrate any instances where the
19 Sheriff’s Department intentionally discriminated against Petitioner by excluding him from
20 early parole consideration under Proposition 57.

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22
23 ⁴ Petitioner received a Rules Violations on March 19, 2021, while he was still incarcerated
24 in the CDCR facility. (*See Doc. No. 1 Attachment J.*) As a result of this Rules Violation,
25 among other sanctions, Petitioner received a 90-day credit loss which altered his earliest
26 possible release date from September 29, 2021, to December 28, 2021. (*Id.*) This delayed
27 release date affected Petitioner’s eligibility for parole consideration under Cal. Code Regs.,
28 tit. 15, § 3492, subd. (f)., which created a deadline for CDCR to consider newly eligible
offenders: “offenders who become eligible under *In re Gadlin* and whose parole eligible
date is on or before July 1 shall be referred to the Board by July 1, except for those offenders
whose earliest possible release date is on or before November 1, 2021.”

1 Thus, the Court should decline to convert Petitioner’s habeas corpus claims to
2 section 1983 claims.

3 **E. CONCLUSION**

4 This Court RECOMMENDS that Respondent’s motion to dismiss be GRANTED
5 and the Petition be DISMISSED without leave to amend.⁵

6 This Report and Recommendation is submitted to the United States District Judge
7 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1) and Federal Rule
8 of Civil Procedure 72(b).

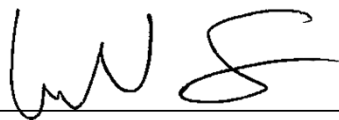
9 IT IS ORDERED that no later than **August 23, 2022**, any party to this action may
10 file written objections with the Court and serve a copy on all parties. The document shall
11 be captioned “Objections to Report and Recommendation.”

12 IT IS FURTHER ORDERED that any reply to the objections shall be filed with the
13 Court and served on all parties no later than **September 6, 2022**. The parties are advised
14 that failure to file objections within the specified time may waive the right to raise those
15 objections on appeal of the Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16 Defendant is ORDERED to serve a copy of this Report and Recommendation no
17 later than three (3) business days from the date of this Order’s issuance.

18 **IT IS SO ORDERED.**

19 DATED: August 9, 2022

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21 _____
22 Hon. William V. Gallo
23 United States Magistrate Judge
24
25

26 ⁵ Because Petitioner’s claim is barred as a matter of law, leave to amend should be denied.
27 *Accord Stephens v. Kunz*, No. CV19-1008-AB(KS), 2019 U.S. Dist. LEXIS 212017, at
28 *10-11 (C.D. Cal. Sept. 18, 2019), report and recommendation adopted, 2019 U.S. Dist.
LEXIS 212014 (C.D. Cal. Dec. 6, 2019) (dismissing prisoner’s Proposition 57 equal
protection claims without leave to amend).