

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OCT 31 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RAUL ARELLANO,

Petitioner-Appellant,

v.

DANIEL PARAMO, Warden,

Respondent-Appellee.

No. 18-56590

D.C. No.
3:17-cv-00354-WQH-MDD
Southern District of California,
San Diego

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

Appellant's request for an extension of time to file a supplemental motion for reconsideration (Docket Entry No. 18) is granted. The supplemental motion for reconsideration received on July 29, 2019 has been filed.

To the extent appellant's "motion for clerk to do a search for 500 documents sent 8-23-18" seeks relief from this court, the motion (Docket Entry No. 17) is granted in part. A review of this court's dockets does not reflect that this court received the documents described in appellant's motion. In all other respects, the motion appears to be directed to the district court, and is denied.

Appellant's motion for reconsideration (Docket Entry Nos. 18, 19) is denied.

See 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

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JUN 27 2019

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RAUL ARELLANO,

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3:17-cv-00354-WQH-MDD
Southern District of California,
San Diego

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

Appellee's motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 8) is granted. *See* 28 U.S.C. § 2107(a); Fed. R. Civ. P. 4(c)(1)(B) ("the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i)"); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Raul Arellano,

Plaintiff,

Case No.: 17-cv-0354-AJB-AGS

v.

Daniel Paramo, Warden,

Defendants.

**ORDER GRANTING MOTIONS (ECF
Nos. 15, 17, & 21) AND REPORT AND
RECOMMENDATION**

In his latest filings to the Court, plaintiff Raul Arellano makes several requests. First, he asks for an order adjudicating his other motions (ECF No. 21), which is granted. Next, he requests copies of transcripts he says were missing from the lodgments the Court ordered to be sent to him. He specifically requests "R.T. 2A pgs 56-64, R.T. 2B pgs 209-214, R.T. 3C pgs 216-221, R.T. 3D pgs 306-307." (ECF No. 15, at 1.) He also requests a transcript from trial dated June 19, 2009. The Court denies this request as moot because respondent noted in the response that they have already lodged the appropriate documents with the Court and mailed them to Arellano as well. (ECF No. 18, at 1-2.)

Arellano next requests a copy of the order denying petition for writ of habeas corpus by the San Diego County Superior Court. (ECF No. 10, at 2.) The Court grants this request and directs the Clerk's Office to send Arellano a copy Lodgment 9, ECF No. 10-12. Arellano also requests a copy of the instant motion as he was unable to make a copy of it

1 before sending it to the Court. This request is granted and the Clerk's Office is directed to
2 send Arellano a copy of ECF No. 15 and all exhibits.

3 Finally, Arellano has filed a request to amend his petition. Respondent has not
4 objected. The Court recommends that this request be granted and that Arellano have until
5 October 2, 2017, to file his amended petition. The Court also recommends that respondent
6 have until November 6, 2017, to respond to that amended petition or file a motion to
7 dismiss. Finally, the Court recommends that Arellano's traverse or opposition be due
8 November 30, 2017.

9 Dated: August 21, 2017


10 Hon. Andrew G. Schopler
11 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Raul ARELLANO,

Plaintiff,

v.

Daniel PARAMO, Warden,

Defendant.

Case No.: 17-cv-0354-AJB-AGS

ORDER:

**(1) ADOPTING THE REPORT AND
RECOMMENDATION; AND
(Doc. No. 22)**

**(2) GRANTING PLAINTIFF'S
MOTION TO AMEND HIS
PETITION
(Doc. No. 17)**

Pro se plaintiff Raul Arellano requested leave to amend his habeas petition. (Doc. No. 17.) The magistrate judge recommended this Court grant Arellano's amendment motion. (Doc. No. 22.) The parties were not given an objection period because Arellano's motion was unopposed.

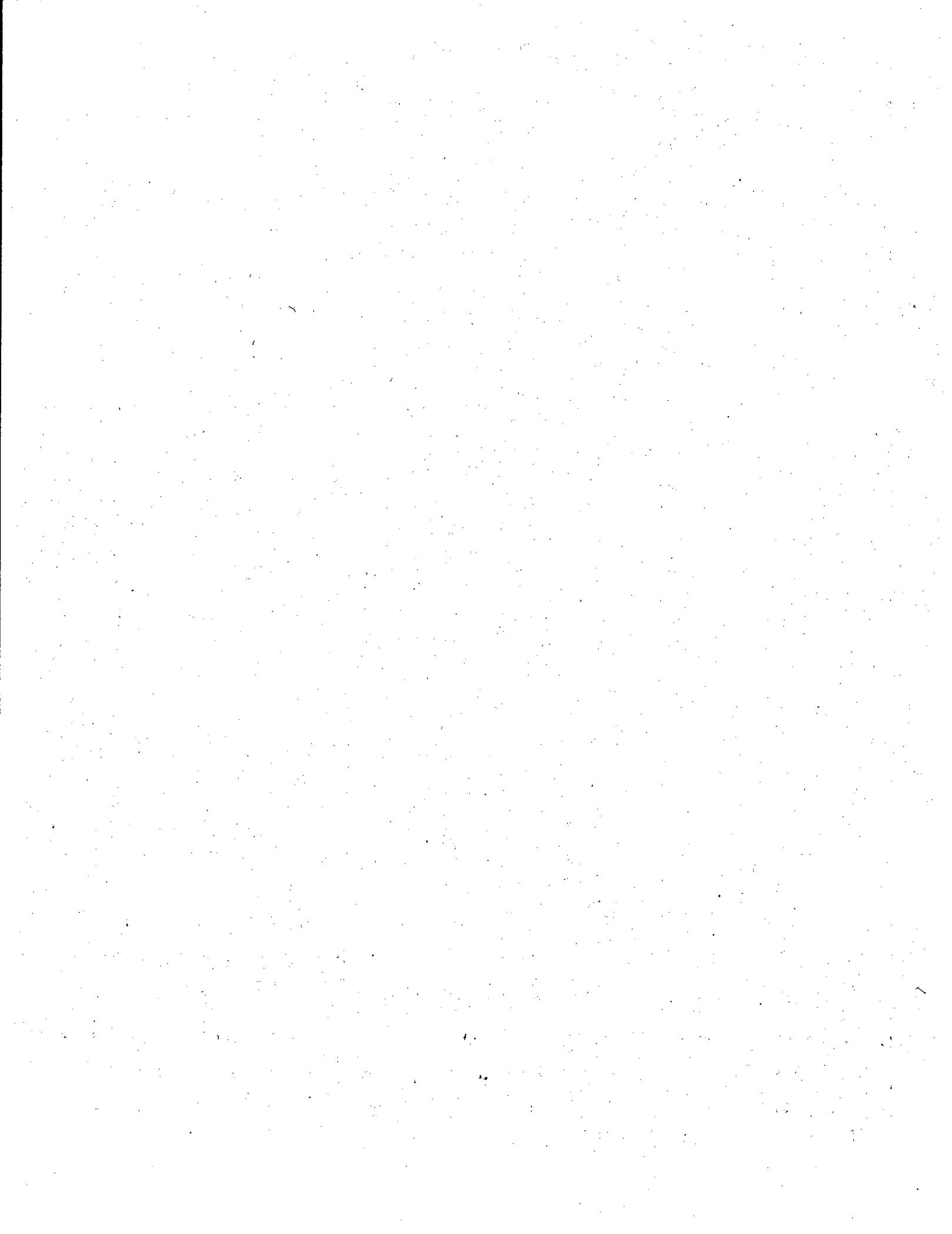
Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district judge's duties in connection with a magistrate judge's R&R. In the absence of objection(s), the Court "need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), Advisory Committee Notes (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 Having reviewed the R&R, the Court finds there is no clear error. Accordingly, the
2 Court hereby: (1) **ADOPTS** the R&R; and (2) **GRANTS** Arellano leave to amend his
3 petition. The amended petition must be filed by October 2, 2017. Respondent may file any
4 motion to dismiss or response by November 6, 2017. Arellano's traverse or opposition is
5 due by November 30, 2017.

6 Dated: August 29, 2017


7 Hon. Anthony J. Battaglia
8 United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAUL ARELLANO,

Petitioner,

Case No.: 17-cv-0354-WQH-MDD

DANIEL PARAMO,

Respondent.

HAYES, Judge:

The matters before the Court are (1) the Motion to Dismiss (ECF No. 33) filed by Respondent Daniel Paramo and (2) the Motion to Appoint Counsel (ECF No. 59) filed by Petitioner Raul Arellano.

I. Background

In 2011, Arellano was convicted of seven counts of lewd acts on a child under the age of 14, violations of California Penal Code § 288(a), and unlawful sexual intercourse with a minor who was more than three years younger than he was, a violation of California Penal Code § 261.5(c), in San Diego County Superior Court case no. SCE27968. Lodgment No. 3 at 114–24. He was sentenced to eighteen years and eight months in prison. *Id.* at 181–83.

1 Arellano appealed his convictions to the California Court of Appeal for the Fourth
2 Appellate District, which affirmed the convictions in an unpublished opinion. Lodgment
3 Nos. 4–7. Arellano filed a petition for review in the California Supreme Court, which the
4 court denied on April 17, 2013 without citation of authority. Lodgment Nos. 8, 9.

5 On March 31, 2014, Arellano constructively filed a petition for writ of habeas corpus
6 in the San Diego Superior Court. Lodgment No. 10.¹ That court denied that petition on
7 June 19, 2014. Lodgment No. 11.

8 On October 6, 2014, Arellano constructively filed a second petition for writ of
9 habeas corpus in the San Diego Superior Court. Lodgment No. 12. This petition did not
10 challenge his state court convictions, but rather a rules violation report for possession of a
11 controlled substance in prison. *Id.* The superior court denied that petition in a written,
12 unpublished opinion on November 17, 2014. Lodgment No. 13.

13 On June 12, 2015, Arellano constructively filed his third petition for writ of habeas
14 corpus in the San Diego Superior Court. Lodgment No. 14. Arellano’s third petition filed
15 in state court also did not challenge his state court convictions, but rather concerned the
16 prison’s loss of his documents associated with his state court convictions. *Id.* Arellano
17 contended that he was being denied access to his legal materials and asked that an attorney
18 be appointed to assist him. *Id.* The superior court denied that petition on June 22, 2015.
19 Lodgment No. 15.

20 On April 20, 2016, Arellano constructively filed a petition for writ of habeas corpus
21 in the California Court of Appeal. Lodgment No. 16. In the petition, Arellano alleged that
22 prison officials lost the transcripts of his trial and that the superior court improperly denied
23 his request for a new set of transcripts. *Id.* The state appellate court denied that petition in
24 a written, unpublished opinion on June 7, 2016. Lodgment No. 17.

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26 ¹ A notice of appeal by a pro se prisoner is deemed filed at the moment the prisoner delivers it to prison
27 authorities for forwarding to the clerk of the court. *Houston v. Lack*, 487 U.S. 266, 276 (1988). The Ninth
28 Circuit has held that for purposes of calculating the AEDPA limitation period, the *Houston* mailbox rule
applies to both the prisoner’s federal habeas petition and the state court habeas petitions that began the
period of tolling. *Anthony v. Cambra*, 236 F.3d 568, 575 (9th Cir. 2000).

1 Arellano's next state court filing was a habeas corpus petition he constructively filed
2 in the California Court of Appeal on June 12, 2016 in which he challenged the restitution
3 order in his case, alleging his counsel was ineffective for failing to try to reduce the
4 restitution amount. Lodgment No. 18. While awaiting the court of appeal's decision, he
5 filed a petition for review in the California Supreme Court on June 14, 2016, in which he
6 again argued he was being improperly denied his transcripts. Lodgment No. 20. On June
7 20, 2016, the state appellate court denied the petition Arellano had filed on June 12, 2016,
8 finding that he had failed to establish he was prejudiced by any error of counsel. (ECF No.
9 34-29). On August 10, 2016, the California Supreme Court denied the petition for review
10 Arellano had filed on June 14, 2016. Lodgment No. 19.

11 On June 25, 2016, while his petition for review was still pending in the California
12 Supreme Court, Arellano filed a writ of mandate in the California Court of Appeal.
13 Lodgment No. 21. In this filing, Arellano again attacked the restitution ordered in his case.
14 *Id.* On July 8, 2016, the state court of appeal denied the writ of mandate. Lodgment No. 22.

15 On June 19, 2016, Arellano constructively filed his final state court petition for writ
16 of habeas corpus. Lodgment No. 23. In that petition, he claimed that a small claims action
17 that he had filed against R.J. Donovan prison was improperly dismissed. *Id.* The state
18 appellate court denied that petition on August 10, 2016. Lodgment No. 24.

19 On August 27, 2016, Arellano constructively filed a petition for writ of habeas
20 corpus pursuant to 28 U.S.C. § 2254 in this Court in case no. 16-cv-2337-WQH-MDD.
21 Case No. 16-cv-2337-WQH-MDD, ECF No. 1. In that petition, Arellano argued that he
22 was being denied access to courts. *Id.* On March 12, 2018, Magistrate Judge Mitchell D.
23 Dembin issued a Report and Recommendation recommending that the petition be denied,
24 and recommending against consolidating 16-cv-2337-WQH-MDD with this case. Case
25 No. 16-cv-2337-WQH-MDD, ECF No. 15. Objections are due June 18, 2018. Case No.
26 16-cv-2337-WQH-MDD, ECF No. 23.

27 On February 15, 2017, Arellano filed a second habeas corpus action pursuant to 28
28 U.S.C. § 2254 in this Court in this case, 17-cv-0354-WQH-MDD (ECF No. 1) (the

1 “Petition”). On December 13, 2017, Arellano filed an amended petition (ECF No. 32) (the
2 “FAP”). On December 27, 2017, Paramo filed the motion to dismiss the FAP. (ECF No.
3 33). On March 7, 2018, Arellano filed an Opposition to the Motion to Dismiss the FAP.
4 (ECF No. 47). On March 12, 2018, Paramo filed a Reply to Arellano’s Opposition to the
5 Motion to Dismiss the FAP. (ECF No. 48).

6 **II. Discussion**

7 The FAP contains 84 claims attacking his convictions, sentence, and restitution
8 order. (ECF No. 32). Paramo contends that the FAP is untimely. (ECF No. 33-1). In his
9 opposition to the motion to dismiss, Arellano contends he should be entitled to both
10 statutory and equitable tolling and that his petition is therefore timely. (ECF No. 47).

11 **A. Standard of Review**

12 This Petition is governed by the Antiterrorism and Effective Death Penalty Act of
13 1996 (“AEDPA”). *See Lindh v. Murphy*, 521 U.S. 320 (1997). Under the AEDPA, a
14 habeas petition will not be granted with respect to any claim adjudicated on the merits by
15 the state court unless that adjudication: (1) resulted in a decision that was contrary to, or
16 involved an unreasonable application of, clearly established federal law; or (2) resulted in
17 a decision that was based on an unreasonable determination of the facts in light of the
18 evidence presented at the state court proceeding. 28 U.S.C. § 2254(d); *Early v. Packer*,
19 537 U.S. 3, 8 (2002). In deciding a state prisoner’s habeas petition, a federal court is not
20 called upon to decide whether it agrees with the state court’s determination; rather, the
21 court applies an extraordinarily deferential review, inquiring only whether the state court’s
22 decision was objectively unreasonable. *See Yarborough v. Gentry*, 540 U.S. 1, 4 (2003).

23 Under 28 U.S.C. § 2244(d), a petitioner has one year from the date his or her
24 conviction is final to file a petition for writ of habeas corpus in federal court pursuant to 28
25 U.S.C. § 2254. *See* 28 U.S.C. § 2244(d). The statute of limitations, however, is subject to
26 both statutory and equitable tolling. *See* 28 U.S.C. § 2244(d)(1); *Calderon v. United States*
27 *Dist. Court (Beeler)*, 128 F.3d 1283, 1288 (9th Cir. 1997), *overruled on other grounds by*
28 *Calderon v. United States Dist. Court (Kelly)*, 163 F.3d 530, 540 (9th Cir. 1998).

1 **1. Commencement of the One-Year Statute of Limitations**

2 Arellano was convicted in San Diego Superior Court on February 10, 2011.
3 Lodgment No. 3 at 111–21. He appealed his convictions to the California Court of Appeal.
4 Lodgment Nos. 4–6. That court upheld his convictions in an unpublished opinion.
5 Lodgment No. 7. Arellano then filed a petition for review in the California Supreme Court
6 which was denied on April 17, 2013. Lodgment Nos. 8, 9. Arellano did not file a petition
7 for writ of certiorari in the United States Supreme Court. Thus, his convictions became
8 final on July 16, 2013, ninety days after the California Supreme Court denied his petition.
9 *McMonagle v. Meyer*, 802 F.3d 1093, 1097 (9th Cir. 2015); *Bowen v. Roe*, 188 F.3d 1157,
10 1158–59 (9th Cir. 1999). The statute of limitations began running the next day, July 17,
11 2013. Fed. R. Civ. P. 6(a). Absent statutory or equitable tolling, Arellano’s federal habeas
12 corpus petition was due on July 17, 2014.

13 **2. Statutory Tolling**

14 Under 28 U.S.C. § 2244(d)(2), “[t]he time during which a properly filed application
15 for State post-convictions or other collateral review . . . is pending shall not be counted
16 toward any period of limitation under this subsection.” Arellano filed his first state habeas
17 corpus petition challenging his convictions in the San Diego Superior Court on March 31,
18 2014. Lodgment No. 10. This petition tolled the statute of limitations, but by that time a
19 period of 257 days had passed, leaving 108 days of the statute of limitations remaining.
20 The superior court denied the petition on June 19, 2014, 80 days later, Lodgment No. 11,
21 and the statute of limitations began running again the following day. It expired 108 days
22 later on October 6, 2014, absent further tolling.²

23 The Supreme Court has stated that “an application is pending as long as the ordinary
24 state collateral review process is ‘in continuance’—i.e., ‘until the completion of’ that
25 process.” *Carey v. Saffold*, 536 U.S. 214, 219–20 (2002). This includes the time during

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² October 5, 2014, which is 108 days after June 20, 2014, was a Sunday, and therefore the following
Monday, October 6, 2014 is the operative date. Fed. R. Civ. P. 6(a)(3)(A).

1 which a petition is being considered by a state court and, generally speaking, the time
2 between filings (gap tolling), unless the petitions filed in the state courts were untimely or
3 successive. *See Porter v. Ollison*, 620 F.3d 953, 958 (9th Cir. 2010); *see also Evans v.*
4 *Chavis*, 546 U.S. 189, 199-200 (2006). The Supreme Court has noted that a reasonable
5 time period between state filings is 30 to 60 days. *Evans*, 546 U.S. at 199–201 (citing
6 *Saffold*, 536 U.S. at 222–23). Arellano constructively filed his next state habeas corpus
7 petition 108 days later on October 6, 2014. Lodgment No. 12. Arellano is not entitled to
8 gap tolling for the period between when the San Diego Superior Court denied his first
9 habeas corpus petition and when he filed his second habeas corpus petition because the
10 time period between the two filings is well beyond the 30 to 60 days contemplated by the
11 Supreme Court. *See id.*

12 Moreover, the second habeas corpus petition that Arellano filed in the San Diego
13 Superior Court did not toll the statute of limitations because it did not challenge his state
14 court convictions. *See Lodgment No. 12.* Rather, it challenged a prison disciplinary
15 decision associated with drugs found in Arellano’s cell. *Id.* The statute of limitations
16 expired 108 days later on October 6, 2014.

17 The next two state habeas corpus petitions that Arellano filed did not toll the statute
18 of limitations. Arellano’s third habeas corpus petition and his fourth state habeas corpus
19 petition did not attack his state court convictions. Lodgment Nos. 14, 16. Instead, they
20 claimed that he was being denied access to courts because prison officials had lost his legal
21 documents. *Id.* Arellano’s fifth state habeas corpus petition was not filed until June 12,
22 2016, over a year and a half after the statute of limitations expired on October 6, 2014, and
23 two years after his first state habeas petition (the last petition which challenged his state
24 court convictions) had been denied. Lodgment No. 10. The Petition is therefore untimely
25 unless he is entitled to sufficient equitable tolling to render it timely.

26 **3. Equitable tolling**

27 The statute of limitations under AEDPA “is subject to equitable tolling in
28 appropriate cases.” *Holland v. Florida*, 560 U.S. 631, 645 (2010). “To be entitled to

1 equitable tolling, [a petitioner] must show '(1) that he has been pursuing his rights
 2 diligently, and (2) that some extraordinary circumstance stood in his way' and prevented
 3 timely filing." *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007) (quoting *Pace v.*
 4 *DiGuglielmo*, 544 U.S. 408, 418 (2005)). Equitable tolling is unavailable in most cases,
 5 and "the threshold necessary to trigger equitable tolling is very high, lest the exceptions
 6 swallow the rule." *Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002).

7 Arellano contends that he is entitled to equitable tolling for three distinct periods of
 8 time. First, he contends that he is entitled to equitable tolling for the period between
 9 September 9, 2013, when his legal materials were confiscated by prison authorities, and
 10 March 29, 2014, when they were returned to him. (ECF No. 47 at 2–4). Second, he
 11 contends that he is entitled to equitable tolling for the period between June 19, 2014, when
 12 the San Diego Superior Court denied his habeas corpus petition, and September 24, 2014,
 13 when the prison lost his legal materials. *Id.* at 5–6. Finally, he contends that he is entitled
 14 to equitable tolling for the period between September 24, 2014, when prison authorities
 15 lost his legal materials, and the present date. *Id.* at 6–32. In support of his contentions,
 16 Arellano has filed approximately 450 pages of documents associated with his years-long
 17 dispute with prison authorities about the loss of his legal materials. *See id.*

18 Lack of access to legal materials can be the basis for equitable tolling. *Espinosa-*
 19 *Matthews v. California*, 432 F.3d 1021, 1026 (9th Cir. 2005). The lack of access to the
 20 materials must be an "extraordinary circumstance" which prevented him from filing his
 21 federal habeas corpus petition on time. *Fue v. Biter*, 842 F.3d 650, 656–57 (9th Cir. 2016).
 22 Arellano's documentation establishes that he was without a substantial portion of his legal
 23 materials from September 9, 2013 until at least March 29, 2014, two days before he filed
 24 his first habeas corpus petition in state court. (ECF No. 47 at 35–46). Accordingly, the
 25 Court concludes that Arellano is entitled to equitable tolling for the first period of time he
 26 requests, from September 9, 2013 until March 29, 2014, a period of 201 days.

27 As to the second period of time, June 19, 2014 until September 24, 2014, it is not
 28 clear that Arellano is entitled to equitable tolling. In his Opposition, Arellano states that

1 he was denied access to his legal materials from June 19, 2014 until August 2, 2014, and
2 was eventually given all his legal material on August 30, 2014. *Id.* at 5. Arellano also
3 states that he was unable to access the law library or copy machines from August 2, 2014,
4 until September 24, 2014 despite his requests to do so. *Id.* Normally, ordinary prison
5 limitations such as lack of access to the law library are not “extraordinary” and do not make
6 it “impossible” to file a petition on time. *Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir,
7 2009). In an abundance of caution, however, the Court will award Arellano equitable
8 tolling for the time period from June 19, 2014 until September 24, 2014, which is 97 days.
9 Arellano is thus far eligible for 298 days of equitable tolling.

10 As to the third period of time, September 24, 2014 until the present, the Court
11 concludes Arellano is entitled to equitable tolling for a portion of that time. Arellano
12 contends that he gave the prison law librarian “all [his] legal papers” on September 24,
13 2014, and thereafter they were “intentionally destroy[ed]” by the librarian. (ECF No. 47
14 at 5). It is this event that initiated Arellano’s years-long dispute with prison authorities
15 regarding the whereabouts of his legal documents. *See id.*

16 Having reviewed the documentation provided by Arellano, the Court finds that the
17 evidence supports a conclusion that a significant portion of Arellano’s legal documents
18 were lost by prison authorities on September 24, 2014. The documents show that after
19 Arellano gave his legal documents to the librarian, the librarian gave them to an inmate to
20 return to Arellano. *Id.* at 56, 72. According to Arellano, the inmate did not deliver the
21 documents to him and the documents were never returned to him despite repeated attempts
22 to obtain them through the prison grievance system. *Id.* at 6–32. On July 9, 2015, however,
23 Arellano stated the following in a CDCR 602 grievance form as follows:

24 On 6-11-2015 I came out of Adseg [Administrative Segregation]. On
25 6-14-2015 I received my legal material, although half of my habeas is missing,
26 I still received it. For such reason *I am not asking no more for my legal*
27 *material.* Am asking to be compensated for the unnecessary delay cause[d]
28 by Curtis who didn’t follow the Title 15 rules and deprive[d] me of access to
court due process.

1 (Id. at 186.) On July 14, 2015, Arellano filed a CDCR 22 Inmate/Parolee Request for
2 Interview, Item or Service. In it, he stated “I received my property on 6-14-2015, 2 weeks
3 after I realize[d] one box of legal paperwork is missing. In it there w[ere] trial transcripts
4 volume 1, 2. Can you search [i]n storage to see if it’s there?” *Id.* at 236. Thus, according
5 to his own statements, at least as of June 14, 2015, Arellano was in possession of the bulk
6 of his legal materials and had told prison staff that he was satisfied with the legal material
7 he had in his possession. *See, e.g., Ford v. Pliler*, 590 F.3d 782, 790 (9th Cir. 2009) (the
8 lack of transcripts does not entitle a petitioner to equitable tolling where the petitioner is
9 aware of the factual bases for his claims); *Ramirez*, 571 F.3d at 998. Therefore, giving
10 Arellano the benefit of the most liberal interpretation possible, the Court will assume for
11 purposes of this motion that he is entitled to equitable tolling for the period between
12 September 24, 2014, and June 14, 2015, a period of 263 days. Considering all of the
13 equitable tolling discussed, Arellano is entitled to 561 days of equitable tolling.

14 **4. The Petition is Untimely**

15 As previously noted, after taking into account the statutory tolling to which Arellano
16 is entitled, Arellano’s federal habeas corpus petition was due October 6, 2014. With the
17 addition of 561 days of equitable tolling, his petition was due April 19, 2016. He did not
18 file the petition in this case until February 21, 2017. The petition is therefore untimely.

19 **III. Conclusion**

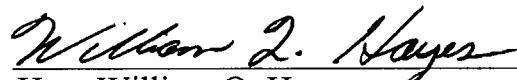
20 The Motion to Dismiss (ECF No. 33) is GRANTED.

21 Rule 11 of the Rules Following 28 U.S.C. § 2254 requires district courts to “issue or
22 deny a certificate of appealability when it enters a final order adverse to the applicant.”
23 Rule 11, 28 U.S.C. foll. § 2254. A certificate of appealability will issue when the petitioner
24 makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253;
25 *Pham v. Terhune*, 400 F.3d 740, 742 (9th Cir. 2005). A “substantial showing” requires a
26 demonstration that ““reasonable jurists would find the district court’s assessment of the
27 constitutional claims debatable or wrong.”” *Beaty v. Stewart*, 303 F.3d 975, 984 (9th Cir.
28 2002) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court concludes

1 Arellano has not made the required showing, and therefore a certificate of appealability
2 is DENIED.

3 The Motion to Appoint Counsel (ECF No. 59) is DENIED as moot.

4 Dated: July 20, 2018



5 Hon. William Q. Hayes
6 United States District Court

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**Additional material
from this filing is
available in the
Clerk's Office.**