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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11	JOSE MACIAS,)	CASE NO. CV 12-04821 GW (RZ)
12)	
12	Petitioner,)	
13	vs.)	ORDER TO SHOW CAUSE RE
13)	UNTIMELINESS
14	M.D. BITER, Warden,)	
15)	
15	Respondent.)	
16	_____)		

17 The Court issues this Order To Show Cause directed to Petitioner because the
18 face of the petition suggests that the action may be time-barred.

19 In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act
20 (“AEDPA”), a portion of which established a one-year statute of limitations for bringing
21 a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the
22 limitations period commences on the date a petitioner’s conviction became final. *See* 28
23 U.S.C. § 2244(d)(1). The limitations period will start instead on one of the following dates,
24 whichever is latest, if any of them falls after the petitioner’s conviction becomes final: the
25 date on which a State-created impediment – itself a violation of Constitutional law – was
26 removed; the date on which a newly-recognized Constitutional right was established; or
27 the date on which the factual predicate for the claims could have been discovered through
28 the exercise of due diligence. 28 U.S.C. § 2244(d)(1).

1 The time spent in state court pursuing collateral relief in a timely manner is
2 excluded, *see* 28 U.S.C. § 2244(d)(2), and the statute also is subject to equitable tolling.
3 *Holland v. Florida*, 560 U.S. ___, 130 S. Ct. 2549, 2562, 177 L. Ed. 2d 130 (2010).

4 Petitioner indicates that he signed the current petition on April 22, 2012.
5 From the face of the petition and from judicially-noticeable materials, the Court discerns
6 as follows:

- 7 (a) On October 27, 2009, in Los Angeles County Superior Court, Petitioner
8 pleaded no contest to several charges, including robbery and enhancements
9 for weapon use. He was sentenced to 25 years in prison. *See* Pet. ¶ 2.
- 10 (b) Petitioner did not appeal. (His form petition indicates that he did appeal. Pet.
11 ¶ 3. Not so. The Court takes judicial notice that Petitioner's subsequent state-
12 court filings actually were petitions for habeas relief, not appeals, as discussed
13 below in paragraphs d and e.) His conviction became final after Monday,
14 December 28, 2009, after his 60-day deadline for seeking a certificate of
15 probable cause, and noticing an appeal, expired. *See* CAL. R. CT., Rules
16 8.304(b) (need for certificate) & 8.308 (60 day deadline). His one-year
17 AEDPA limitations period began running at that time.
- 18 (c) Over a year passed. The limitations period expired after Tuesday,
19 December 28, 2010.
- 20 (d) Two months after that expiration, on February 25, 2011, Petitioner filed a
21 habeas petition in the California Court of Appeal, which denied relief on
22 February 28, 2011. *See* docket in *In re Macias*, No. B231167 (Cal. Ct. App.
23 2d Dist. 2011).
- 24 (e) Over seven more months passed. On October 3, 2011, Petitioner filed another
25 state habeas action, this time in the California Supreme Court. That court
26 denied relief on February 15, 2012. In doing so, the court cited cases
27 indicating the court's view that its decision rested at least in part on
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