

1 The Petition purports to be directed to a 2008 conviction sustained by petitioner
2 in Los Angeles County Superior Court. (See Pet. at ¶¶ 2-3.) Based on the
3 Court’s initial review of the Petition, as well as information derived from the
4 California Appellate Courts website¹, it appeared to the Court that the Petition was
5 time barred. Accordingly, on February 2, 2015, the Court issued an Order to Show
6 Cause (“OSC”) as to why this action should not be dismissed with prejudice on the
7 ground of untimeliness.² On March 3, 2015, petitioner filed a Declaration for Order
8 to Show Cause (“Response”). In his Response, petitioner claimed he was entitled to
9 equitable tolling. (Response at 1.) Specifically, petitioner claimed that his placement
10 in a residential treatment program following his 2008 conviction, as well as his
11 ensuing substance abuse treatment, job readiness therapy and education constituted
12 “extraordinary circumstances” that made it “impossible to file the petition on time.”
13 (Response at 2-3.) The Court issued its Report and Recommendation (“R&R”) on
14 April 15, 2015, recommending the dismissal of the Petition with prejudice as
15 untimely. On April 30, 2015, petitioner filed Objections to the R&R and on May 4,
16 2015, petitioner filed a “Motion to Leave to Amend Plaintiff Objection to Report and
17 Recommendation” (“Motion for Leave”) seeking leave to amend his Objections.

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22 ¹ <http://appellatecases.courtinfo.ca.gov/index.html>

23 ² The Ninth Circuit has held that the district court has the authority to raise
24 the statute of limitations issue *sua sponte* when untimeliness is obvious on the face of
25 the petition and to summarily dismiss a petition on that ground pursuant to Rule 4 of
26 the Rules Governing Section 2254 Cases in the United States District Courts, so long
27 as the court “provides the petitioner with adequate notice and an opportunity to
28 respond.” See Nardi v. Stewart, 354 F.3d 1134, 1141 (9th Cir. 2004); Herbst v. Cook,
260 F.3d 1039, 1042-43 (9th Cir. 2001).

1 Court of jurisdiction to review petitioner’s removal order and, therefore, the Court
2 lacks jurisdiction over petitioner’s claims.

3 The Court notes that, although the REAL ID Act of 2005 has eliminated the
4 district court’s jurisdiction in some respects, the district courts retain subject matter
5 jurisdiction over 28 U.S.C. § 2241 petitions that do not involve final orders of
6 removal. See Nadarajah v. Gonzales, 443 F.3d 1069, 1075-76 (9th Cir. 2006); see
7 also Casas-Castrillon v. Dep’t of Homeland Sec., 535 F.3d 942, 946 (9th Cir. 2008).
8 Specifically, an alien detainee may be entitled to federal habeas corpus relief under
9 28 U.S.C. § 2241 if he has been subjected to prolonged and indefinite detention as
10 defined by the Supreme Court, see Zadvydas v. Davis, 533 U.S. 678, 687, 121 S. Ct.
11 2491, 150 L. Ed. 2d 653 (2001)⁵ and/or he has not been provided an adequate
12 opportunity to contest the necessity of his continued detention through the
13 immigration removal proceedings, Casas-Castrillon, 535 F.3d at 950-51. As currently
14 pled, the Petition does not appear to raise such a claim. To the extent petitioner
15 believes that he is entitled to relief on this basis, he may file another writ of habeas
16 corpus pursuant to 28 U.S.C. § 2241, provided that he addresses this claim in a simple,
17 concise, and direct manner so that the Court and respondents are provided adequate
18 notice of such allegations.

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21 ⁵ In Zadvydas, the Supreme Court considered a challenge to the prolonged
22 detention of two aliens who were being held in post-removal period detention at the
23 discretion of the Attorney General under Section 1231(a)(6). 533 U.S. at 682-86.
24 Acknowledging that a statute permitting the indefinite detention of aliens would “raise
25 a serious constitutional problem,” the Court concluded that Congress had not
26 expressly authorized the continued detention of aliens beyond a period reasonably
27 necessary to secure the alien’s removal. Id. at 690, 699-700. The Court held that after
28 a presumptively reasonable six-month period of post-removal period detention, the
alien was entitled to release if he successfully demonstrated that there was “good
reason to believe there is no significant likelihood of removal in the reasonably
foreseeable future.” Id. at 701.

1 **ORDER**

2 For the foregoing reasons, IT IS ORDERED that the Report and
3 Recommendation is VACATED and that this action be summarily dismissed without
4 prejudice.

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

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7 DATED: June 30, 2015

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9
10 DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

11 Presented by:

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13
14 David T. Bristow
United States Magistrate Judge