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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THEODORE JOHN NELSON,	)	CASE NO. CV 15-1072 RGK (RZ)
	)	
Petitioner,	)	ORDER TO SHOW CAUSE
	)	
vs.	)	
	)	
F.S.P. Warden,	)	
	)	
Respondent.	)	
_____	)	

The Court issues this Order To Show Cause directed to Petitioner because the face of the petition suggests that his challenge to his 2011 conviction may be time-barred.

In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act (“AEDPA”), a portion of which established a one-year statute of limitations for bringing a habeas corpus petition in federal court. 28 U.S.C. § 2244(d). In most cases, the limitations period commences on the date a petitioner’s conviction became final. See 28 U.S.C. § 2244(d)(1).

The time spent in state court pursuing collateral relief in a timely manner is excluded, see 28 U.S.C. § 2244(d)(2), and the statute also is subject to equitable tolling. *Holland v. Florida*, 560 U.S. 631 (2010).

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1 Petitioner indicates that he signed the current petition on February 3, 2015.  
2 From the face of the petition and from judicially-noticeable materials, the Court discerns  
3 as follows:

- 4 (a) On Wednesday, February 9, 2011, Petitioner entered a no contest plea to cohabitant  
5 battery charges in Los Angeles County Superior Court. He was sentenced that day  
6 to 12 years in prison. Pet. ¶ 2.
- 7 (b) Petitioner did not appeal. Pet. ¶ 3. The judgment became final after Monday,  
8 April 11, 2011, after his 60-day deadline for seeking a certificate of probable cause,  
9 and noticing an appeal, expired. See CAL. R. CT., Rules 8.304(b) (need for  
10 certificate) & 8.308 (60-day deadline). His one-year AEDPA limitations period  
11 began running at that time.
- 12 (c) One year passed, during which Petitioner had no pending state-court challenges to  
13 his conviction or sentence. His limitations period thus appears to have expired after  
14 Wednesday, April 11, 2012.
- 15 (d) Two more years passed. In “April 2014,” Petitioner filed the first of three  
16 hierarchical state habeas petitions, in the trial court. That court denied relief, as did  
17 the California Court of Appeal and California Supreme Court. The state high court  
18 denied his final petition on November 12, 2014. Pet. ¶¶ 6(a)-(c).
- 19 (e) Over two months later, Petitioner signed the current petition.

20 \* \* \* \* \*

21 Unless this Court has miscalculated the limitations period, or some form of  
22 additional tolling applies in sufficient measure, this action is time-barred. It became stale  
23 in April of 2012, one year after his conviction became final. Petitioner’s commencement  
24 of state habeas proceedings thereafter did not rejuvenate his stale claims. See *Green v.*  
25 *White*, 223 F.3d 1001, 1003 (9th Cir. 2000).

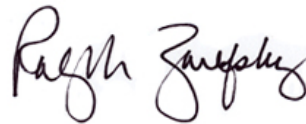
26 This Court may raise *sua sponte* the question of the statute of limitations bar,  
27 so long as it gives Petitioner an opportunity to be heard on the matter. *Herbst v. Cook*, 260  
28 F.3d 1039 (9th Cir. 2001). Accordingly, Petitioner shall show cause in writing why this

1 action should not be dismissed as being barred by the one-year statute of limitations.  
2 Petitioner shall file his response to the Court's Order to Show Cause not later than 30 days  
3 from the filing date of this Order.

4 If Petitioner does not file a response within the time allowed, the action may  
5 be dismissed for failure to timely file, and for failure to prosecute.

6 IT IS SO ORDERED.

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8 DATED: February 18, 2015

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RALPH ZAREFSKY  
12 UNITED STATES MAGISTRATE JUDGE  
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