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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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ALFONSO MUNOZ ALEGRIA,

No. CV 17-4238 PA (FFM)

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Petitioner,

ORDER TO SHOW CAUSE WHY THE
PETITION SHOULD NOT BE
DISMISSED AS UNTIMELY

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v.

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STATE OF CALIFORNIA,

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Respondent.

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On April 13, 2016, petitioner Alfonso Munoz Alegria (“petitioner”), a California prisoner, constructively¹ filed a Petition for Writ of Habeas Corpus by a Person in State Custody (the “petition”), pursuant to 28 U.S.C. § 2254, in the Eastern District of California. (Dkt. 1.) On June 2, 2017, the matter was transferred to this Court. (Dkt. 6.) The petition challenges petitioner’s 2013 conviction in the Superior Court of Riverside County for various crimes.

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¹ A pro se petitioner’s relevant filings may be construed as filed on the date they were submitted to prison authorities for mailing, under the prison “mailbox rule” of *Houston v. Lack*, 487 U.S. 266 (1988). Attached to the petition is a “Proof of Service by Mail” indicating that petitioner submitted the petition to prison authorities for mailing on April 13, 2017.

1 **1. LIMITATIONS PERIOD FOR FEDERAL HABEAS PETITIONS**

2 The present proceedings were initiated after the April 24, 1996, effective
3 date of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), Pub. L.
4 No. 104–132, 110 Stat. 1214 (1996). Accordingly, AEDPA’s timeliness
5 provisions apply, including a one-year limitations period which is subject to both
6 statutory and equitable tolling. *See* 28 U.S.C. § 2244(d)(1). For those prisoners
7 whose convictions became final post-AEDPA, the one-year period starts running
8 from the latest of four alternative dates set forth in 28 U.S.C. § 2244(d)(1)(A)-
9 (D). *See, e.g., Patterson v. Stewart*, 251 F.3d 1243, 1245–47 (9th Cir. 2001).

10 Because petitioner has not provided any basis to find otherwise, the Court
11 presumes that Section 2244(d)(1)(A), which governs the start date in most
12 habeas cases, applies here. Section 2244(d)(1)(A) provides that the one-year
13 limitations period “shall run from the latest of . . . the date on which the
14 [petitioner’s conviction] became final by the conclusion of direct review or the
15 expiration of the time for seeking such review.” Where, as here, the challenged
16 judgment was affirmed by the state’s highest court, the period of direct review
17 ends either when the petitioner failed to file a *certiorari* petition in the United
18 States Supreme Court and the 90-day period for doing so has expired, or when
19 the Supreme Court has ruled on a filed petition. *See Clay v. United States*, 537
20 U.S. 522, 527-32 and nn.3-4, 123 S. Ct. 1072, 155 L. Ed. 2d 88 (2003); *Wixom v.*
21 *Washington*, 264 F.3d 894, 897 (9th Cir. 2001).

22 The California Supreme Court denied petitioner’s petition for review on
23 January 13, 2016.² Thus, for the purposes of section 2244(d)(1)(A), petitioner’s
24 conviction became final on April 12, 2016, ninety days after the California

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26 ² The Court takes judicial notice of Petitioner’s state court proceedings as
27 indicated on the California Courts of Appeal official case information website,
28 found at <http://appellatecases.courtinfo.ca.gov/index.html>. *See Porter v. Ollison*,
620 F.3d 952, 954–55 (9th Cir. 2010) (federal courts may take judicial notice of
state court dockets found on the internet).

1 Supreme Court affirmed his conviction. Accordingly, the one-year limitations
2 period was set to expire on April 12, 2017. *See Patterson*, 251 F.3d at 1245-47.
3 Because petitioner did not initiate the current proceedings until April 13, 2017,
4 the present action is untimely, absent statutory or equitable tolling. *See* 28
5 U.S.C. § 2244(d)(1); *See Bell v. Barnes*, 2013 WL 5548621, at *4 (C.D. Cal. Oct.
6 4, 2013) (citations omitted) (finding that petition filed one day late is untimely).

7 **2. STATUTORY TOLLING**

8 Title 28 U.S.C. § 2244(d)(2) provides that “[t]he time during which a
9 properly filed application for state post-conviction or other collateral review with
10 respect to the pertinent judgment or claim is pending shall not be counted toward
11 any period of limitation under this subsection.” Here, petitioner admits he has
12 never filed a state habeas petition, an admission that California court records
13 confirm. Accordingly, he is not entitled to any statutory tolling and the petition
14 is untimely unless he is entitled to almost one year of equitable tolling.

15 **3. EQUITABLE TOLLING**

16 The AEDPA limitations period also may be subject to equitable tolling, if
17 the petitioner shows that extraordinary circumstances beyond the petitioner’s
18 control made timely filing of a federal habeas petition impossible and the
19 petitioner has acted diligently in pursuing his rights. *Holland v. Florida*, 560
20 U.S. 631, 649 (2010). The petitioner bears the burden of showing that equitable
21 tolling is appropriate. *Miranda v. Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002).

22 Here, petitioner has demonstrated neither that any extraordinary
23 circumstances prevented him from filing a timely petition nor that he diligently
24 pursued his right to file. Accordingly, petitioner has not shown that he is entitled
25 to equitable tolling.

26 **4. ORDER TO SHOW CAUSE**

27 Under the allegations and facts of the petition, petitioner has not
28 demonstrated that he is entitled to a later start date of the limitations period.

1 Therefore, and because the petition does not demonstrate any basis for tolling the
2 statute, or for setting aside the one-year limitation, the Court orders petitioner to
3 show cause in writing within thirty (30) days of the date of this order why the
4 petition should not be dismissed as time-barred. If petitioner fails to provide a
5 timely response to this order, the Court will recommend that the petition be
6 dismissed, with prejudice, as time-barred.

7 IT IS SO ORDERED.

8 DATE: September 1, 2017

9 /S/ FREDERICK F. MUMM
10 FREDERICK F. MUMM
11 United States Magistrate Judge
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