

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). The Petition does
7 not contain sufficient information for the Court to determine precisely when
8 Petitioner’s convictions became final. However, because the Petition was not
9 filed until April 15, 2019, it appears to be untimely, absent statutory or equitable
10 tolling. *See* 28 U.S.C. § 2244(d)(1); *Bell v. Barnes*, 2013 WL 5548621, at *4
11 (C.D. Cal. Oct. 4, 2013) (citations omitted) (finding that petition filed one day
12 late is untimely).

13 **2. STATUTORY TOLLING**

14 Title 28 U.S.C. § 2244(d)(2) provides that “[t]he time during which a
15 properly filed application for state post-conviction or other collateral review with
16 respect to the pertinent judgment or claim is pending shall not be counted toward
17 any period of limitation under this subsection.”

18 The Petition does not state whether Petitioner filed any state habeas
19 petitions with respect to the convictions at issue. Therefore, Petitioner has not
20 shown that he is entitled to statutory tolling.

21 **3. EQUITABLE TOLLING**

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

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1 Here, Petitioner has demonstrated neither that any extraordinary
2 circumstances prevented him from filing a timely petition nor that he diligently
3 pursued his right to file. Accordingly, Petitioner has not shown that he is
4 entitled to equitable tolling.

5 **4. ORDER TO SHOW CAUSE**

6 Under the allegations and facts of the Petition, Petitioner has not
7 demonstrated that he is entitled to a later start date of the limitations period.
8 Therefore, and because the Petition does not demonstrate any basis for statutory
9 or equitable tolling, or for setting aside the one-year limitation, the Court orders
10 Petitioner to show cause in writing within thirty (30) days of the date of this
11 order why the Petition should not be dismissed as time-barred. If Petitioner fails
12 to provide a timely response to this order, the Court will recommend that the
13 Petition be dismissed, with prejudice, as time-barred.

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15 IT IS SO ORDERED.

16 DATE: July 12, 2019

17 /S/FREDERICK F. MUMM
18 FREDERICK F. MUMM
United States Magistrate Judge