

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANDREW TILLMAN,
Petitioner,
v.
KELLY SANTORO, *Warden*,
Respondent.

Case No. ED CV 17-0330 PA (JCG)
**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed: (1) the Petition; (2) the Magistrate Judge’s Report and Recommendation (“R&R”); (3) Petitioner’s Objections to the R&R (“Objections”); and (4) the remaining record, and has made a *de novo* determination.

In his Objections, Petitioner opposes the R&R’s conclusion that the Petition is untimely under the Antiterrorism and Effective Death Penalty Act (“AEDPA”), and contends that the Petition’s delay should be excused because of its reliance on a recent California Supreme Court decision, *People v. Chiu*, 59 Cal. 4th 155 (2014). (Objections at 2-6.) However, because *Chiu* involved state law issues that were resolved by a state supreme court, it cannot be relied upon for a later accrual date. *See*

1 28 U.S.C. 2244(d)(1)(C); *see also Escalante v. Beard*, 2016 WL 4742322, at *4 (S.D.
2 Cal. June 2, 2016) (“To the extent [petitioner] [relies on] *People v. Chiu* to suggest it
3 . . . entitle[s] him to a later start date . . . such a position would be unavailing. *Chiu*
4 was a state supreme court decision that analyzed [] state law, and the alternate start
5 date under [] AEDPA only applies to rights [] recognized by the United State Supreme
6 Court . . .”).

7 Moreover, Petitioner’s reliance on *Chiu* for equitable tolling is misplaced for the
8 reasons discussed above.

9 Thus, on this record, the Court finds that the Petition is untimely.

10 Accordingly, IT IS ORDERED THAT:

- 11 1. The Report and Recommendation is approved and accepted;
12 2. Judgment be entered denying the Petition and dismissing this action with
13 prejudice; and
14 3. The Clerk serve copies of this Order on the parties.

15 Additionally, for the reasons stated in the Report and Recommendation and
16 above, the Court finds that Petitioner has not shown that “jurists of reason would find
17 it debatable whether”: (1) “the petition states a valid claim of the denial of a
18 constitutional right”; and (2) “the district court was correct in its procedural ruling.”
19 *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Thus, the Court declines to issue a
20 certificate of appealability.

21
22
23 DATED: May 1, 2017



24 HON. PERCY ANDERSON
25 UNITED STATES DISTRICT JUDGE
26
27
28