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

JOSE SAUCEDA-CONTRERAS,)
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 Petitioner,)
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 v.)
)
 MARION SPEARMAN, Warden,)
)
 Respondent.)
 _____)

No. SA CV 15-1117-JAK (PLA)

**ORDER TO SHOW CAUSE RE: DISMISSAL
OF HABEAS PETITION AS BARRED BY
THE EXPIRATION OF THE STATUTE OF
LIMITATIONS**

I.

BACKGROUND

Petitioner, through counsel, initiated this action on July 8, 2015, by filing a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 (“Petition” or “Pet.”), along with a Memorandum of Points and Authorities in support of the Petition. The Petition challenges petitioner’s November 26, 2008, conviction in the Orange County Superior Court in case number 07NF0170, of first degree murder (Cal. Penal Code § 187(a)). (Pet. at 2).

Petitioner alleges four grounds for relief: (1) the trial court erroneously admitted petitioner’s statements taken by the police who ignored his unequivocal invocation of his rights to counsel and to remain silent; (2) without petitioner’s statement, the respondent did not establish a corpus

1 delecti or cause of death; (3) instructing the jury with CALCRIM number 362 impermissibly
2 permitted the jury to draw inferences of guilt; and (4) cumulative error. (Pet. at 5-6).

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4 **II.**

5 **DISCUSSION**

6 The instant Petition is subject to the Antiterrorism and Effective Death Penalty Act of 1996
7 (“AEDPA”) one-year statute of limitations, as set forth under 28 U.S.C. § 2244(d). See Calderon
8 v. U.S. Dist. Court (Beeler), 128 F.3d 1283, 1286 (9th Cir. 1997).¹ In most cases, the limitation
9 period begins to run from “the date on which the judgment became final by conclusion of direct
10 review or the expiration of the time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A).

11 As stated above, petitioner was convicted pursuant to a jury trial on November 26, 2008.
12 (Pet. at 2). Petitioner appealed to the California Court of Appeal, and on February 16, 2011, the
13 court of appeal reversed petitioner’s conviction on the ground that the police violated his Miranda²
14 rights. (Pet. at 2-3). On November 26, 2012, after the California Supreme Court reversed the
15 decision of the California Court of Appeal (People v. Saucedo-Contreras, 55 Cal. 4th 203 (2012)),
16 the court of appeal affirmed petitioner’s conviction. (Pet. at 3). Petitioner’s petition for review in
17 the California Supreme Court was denied on March 13, 2013, without comment or citation to
18 authority (id.), and his conviction became final on June 11, 2013, when the ninety-day period for
19 filing a petition for certiorari in the Supreme Court expired. Bowen v. Roe, 188 F.3d 1157, 1158-59
20 (9th Cir. 1999). Thus, the one-year limitation period for seeking federal habeas relief began to run
21 on June 12, 2013, and expired on June 11, 2014.

22 On its face, therefore, it appears that the instant Petition, filed on July 8, 2015, is barred by
23 the statute of limitations.

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27 ¹ Beeler was overruled on other grounds in Calderon v. U.S. Dist. Court (Kelly), 163 F.3d
530, 540 (9th Cir. 1998) (en banc).

28 ² Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

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3 **III.**

4 **ORDER**

5 Based on the foregoing, petitioner is **ordered to show cause** why the instant Petition
6 should not be dismissed as time barred.

7 Specifically, **no later than August 7, 2015**, petitioner must submit to the Court a response
8 to this Order to Show Cause making clear his arguments, if any, as to why the Petition should not
9 be dismissed as time barred.

10 **Failure to respond by August 7, 2015, may result in the instant Petition being**
11 **summarily dismissed with prejudice as barred by the statute of limitations.**

12 DATED: July 20, 2015

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15 PAUL L. ABRAMS
16 UNITED STATES MAGISTRATE JUDGE
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