

1 The Ninth Circuit Court of Appeals issued its order on August 26, 2016. (ECF No. 18).
2 The Ninth Circuit determined that the claims did not lie at the core of habeas corpus, gave
3 Plaintiff leave to amend his petition to assert claims under 42 U.S.C. § 1983, and stated that “[i]f
4 any petitioner chooses to amend, the district court should determine in the first instance the
5 impact of *Gilman* on his claims.” (*Id.* at p. 4).

6 On February 13, 2017, Plaintiff amended his petition to assert claims under section 1983.
7 (ECF No. 31). On May 2, 2017, the Court issued an order to show cause, directing Plaintiff to
8 show cause why all of his non-Marsy’s Law claims should not be dismissed, both because the
9 Ninth Circuit Court of Appeals appears to have only given Plaintiff leave to assert claims based
10 on Marsy’s law, and because the non-Marsy’s Law claims appear to be barred by the applicable
11 statute of limitations. (ECF No. 38). On May 11, 2017, Plaintiff filed his response to the order to
12 show cause. (ECF No. 39).

13 Plaintiff asserts that in his opening brief to the Ninth Circuit Court of Appeals, he included
14 several uncertified issues. (ECF No. 39, p. 3). Plaintiff further asserts that these issues “were
15 pending the resolution of the U.S. Court of Appeals from the two grounds that were certified,”
16 and that the statute of limitations was tolled when Plaintiff filed his notice of appeal. (ECF No.
17 39, p. 6). Given Plaintiff’s assertions, the ambiguity in the Ninth Circuit Court of Appeals’ order,
18 and the fact that failure to file a case within the statute of limitations is an affirmative defense, the
19 Court will discharge its order to show cause. However, any defendant may raise one or both of
20 these issues as a defense to the extent these claims proceed past the screening phase.

21 Accordingly, based on the foregoing, it is **HEREBY ORDERED** that the order to show
22 cause is **DISCHARGED**. The Court will screen Plaintiff’s complaint in due course.

23
24 **IT IS SO ORDERED.**

25 Dated: May 15, 2017

26 /s/ Eric P. Gray
27 UNITED STATES MAGISTRATE JUDGE
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