



1 reasons set forth below the court will direct the parties to file further briefing in accordance with  
2 this order.

3 By this action, petitioner challenges a felony conviction for assault, entered pursuant to a  
4 no contest plea, on the ground that he received ineffective assistance of counsel when his defense  
5 attorney failed to advise him of the immigration consequences of his plea. Petitioner entered his  
6 plea on March 20, 2009. (ECF No. 26 at 2.) On April 24, 2009, he was sentenced to one year in  
7 county jail followed by three years of formal felony probation. (ECF No. 26 at 3.) In August  
8 2009, on petitioner's motion the jail term was modified to 364 days. (ECF No. 26 at 3.) On  
9 April 2, 2010, petitioner admitted a violation of probation and was sentenced to three years in  
10 state prison for violating probation. (ECF No. 26 at 3.) Petitioner did not file a direct appeal  
11 from any of the foregoing proceedings. (ECF No. 26 at 4.)

12 While the parties dispute when the limitations period began to run, they both assume that  
13 the conviction at issue in these proceedings became final on June 2, 2010, sixty days after  
14 petitioner admitted the probation violation and was sentenced to three years in state prison. *See*  
15 ECF No. 12 at 3; ECF No. 18 at 1-2. The magistrate judge finds that petitioner's conviction and  
16 sentence became final on June 2, 2010. (ECF No. 26 at 7.)

17 In the instant case, the date on which petitioner's conviction became final is relevant both  
18 to the statute of limitations analysis and, should the matter survive respondent's current motion to  
19 dismiss, to analysis of the merits of petitioner's claim. Petitioner's ineffective assistance of  
20 counsel claim is based on *Padilla v. Kentucky*, 559 U.S. 356 (2010). The rule announced in  
21 *Padilla* does not apply retroactively to criminal convictions that were final before *Padilla* was  
22 decided. *Chaidez v. United States*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1103, 1105 (2013). *Padilla* was decided  
23 on March 31, 2010. Thus, the question of whether the conviction at issue in these proceedings  
24 became final sixty days after he was sentenced on April 24, 2009 or, instead, sixty days after the  
25 April 2, 2010 sentencing proceeding is key.<sup>1</sup>

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26 <sup>1</sup> The alleged ineffectiveness of counsel occurred in connection with petitioner's March 24, 2009  
27 conditional no contest plea. (ECF No. 26 at 6-7 (quoting ECF No. 1 at 5).) Petitioner does not  
28 challenge counsel's performance in connection with his April 2, 2010 admission to the probation  
violation that resulted in his three year prison sentence. It is the three year sentence, apparently,

1           Good cause appearing, IT IS HEREBY ORDERED that within twenty days from the date  
2 of this order the parties shall file supplemental briefs addressing, as appropriate, the legal basis  
3 for the finding that petitioner's conviction for violation of California Penal Code § 245(a)(2)  
4 became final sixty days after he was sentenced to state prison for admitting a violation of the  
5 probation term imposed on that conviction, or whether, under state law, that conviction became  
6 final at some earlier date. The parties may, but are not required at this time to, address any other  
7 issues presented by the question raised in this order.

8 DATED: September 15, 2015.

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12 UNITED STATES DISTRICT JUDGE  
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28 that triggered the immigration consequences petitioner now faces.