

1 Constitutional right forming the basis of the claim).¹ The limitations period then ran out one year
2 later on June 25, 2013, well before petitioner commenced this action earlier this year. Because
3 petitioner fails to point to any basis for tolling the limitations period between June 26, 2012 and
4 June 25, 2013, petitioner's petition for writ of habeas corpus must be dismissed as time-barred.

5 Accordingly, IT IS HEREBY RECOMMENDED that:

- 6 1. Respondent's motion to dismiss (ECF No. 9) be granted;
- 7 2. Petitioner's petition for a writ of habeas corpus be dismissed as time-barred; and
- 8 3. This case be closed.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner
14 may address whether a certificate of appealability should issue in the event he files an appeal of
15 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
16 court must issue or deny a certificate of appealability when it enters a final order adverse to the
17 applicant). Any response to the objections shall be served and filed within fourteen days after
18 service of the objections. The parties are advised that failure to file objections within the
19 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
20 F.2d 1153 (9th Cir. 1991).

21 Dated: August 10, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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26 ¹ In Dodd v. U.S., 545 U.S. 353, 356-60 (2005), the Supreme Court made clear that to the extent
27 the limitations period does not begin to run until a Constitutional right is recognized by the
28 Supreme Court, it is the issuance of the decision which recognizes the right which triggers the
running of the limitations period, not the date the Supreme Court finds the right retroactively
applicable to cases on collateral review.