

1 Having considered the Parties’ arguments and the law, as well as the underlying state
2 court record, the Court **OVERRULES** Petitioner’s Objection, **ADOPTS** Judge
3 Crawford’s Report and Recommendation, **GRANTS** Defendant’s Motion to Dismiss, and
4 **DISMISSES WITH PREJUDICE** Petitioner’s Petition.

5 **BACKGROUND**

6 Judge Crawford’s Report and Recommendation contains a complete and accurate
7 recitation of the relevant portions of the factual and procedural histories underlying
8 Defendant’s pending Motion to Dismiss. (*See* R&R. 1–2.) This Order incorporates by
9 reference the background as set forth therein.

10 **LEGAL STANDARD**

11 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district
12 court’s duties regarding a magistrate judge’s report and recommendation. The district court
13 “shall make a de novo determination of those portions of the report . . . to which objection
14 is made,” and “may accept, reject, or modify, in whole or in part, the findings or
15 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c); *see also United*
16 *States v. Raddatz*, 447 U.S. 667, 673–76 (1980). In the absence of a timely objection,
17 however, “the Court need only satisfy itself that there is no clear error on the face of the
18 record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s
19 note (citing *Campbell v. U.S. Dist. Court*, 510 F.2d 196, 206 (9th Cir. 1974)).

20 **ANALYSIS**

21 In his Opposition, Petitioner’s sole argument in support of tolling the Antiterrorism
22 and Effective Death Penalty Act of 1996 (“AEDPA”) statute of limitations (*see* 28 U.S.C.
23 § 2244(d)) is that there were “lockdowns in prison preventing him access to the law
24 library.” (Opp’n 3.) Petitioner further argues that his Motion for a Continuance—filed in
25 his prior federal habeas case—“shed a light” on why tolling is appropriate. (*Id.*)

26 The document Petitioner references was a “Motion for a 30 Day Continuance” that
27 Petitioner filed 959 days after his first federal petition was dismissed, or 757 days after
28 formal judgment was entered in favor of Respondent. In the document, Petitioner requested

1 a 30 day continuance, noted that his state petition was denied by the California Supreme
2 Court, and explained only that Petitioner had “been having problems obtaining documents
3 that he need[s] to argue his case.”¹

4 In his Objection to Judge Crawford’s R&R, Petitioner argues he “did the best he
5 could in exhausting his federal claims . . . [and] [i]t has nothing to do with [sic] law library
6 and its [sic] access to, but everything to do with his [sic] how much he knows about the
7 legal process.” (Obj. 3.)

8 Petitioner has said nothing about the year-long stint between the denial of his final
9 state petition and filing of his request for a thirty-day continuance. (*See* Opp’n 2; Obj. 2.)
10 And even if Petitioner’s mere assertions that (1) he had “been having problems obtaining
11 documents that he need[s] to argue his case[,]”²—which Petitioner subsequently explained
12 was a reference to “prison lockdowns[,]” (*see* Opp’n 2–3)— and; (2) he does not
13 understand “the legal process[,]” were sufficient to toll the AEDPA statute of limitations
14 during this entire year,³ the instant Petition would still be untimely.

15 Specifically, Petitioner’s first state petition was denied on March 3, 2013, and
16 Petitioner took no further action until September 25, 2013, when he filed his first petition
17 in federal court. This period comprises 204 days during which the AEDPA statute of
18 limitations was running. Next, even assuming that Petitioner’s first federal petition tolled
19 AEDPA’s statute of limitations from September 25, 2013 until the final judgment in favor
20 of Respondents (rather than the petition’s initial dismissal)—issued on September 18,
21 2014—then the statute continued to run from that point forward until Petitioner filed his
22

23 ¹ *See Hill v. Beard*, 13cv2333-CAB (JMA), ECF No. 7. Because the Court rejected this document due to
24 the case having already been dismissed, the document is not a part of the formal record for the case.

25 ² *See Hill v. Beard*, 13cv2333-CAB (JMA), ECF No. 7-1, at 1.

26 ³ They are not. *See, e.g., Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (“We have little difficulty
27 determining that [the petitioner] is not entitled to equitable tolling . . . simply because he remained in
28 administrative segregation and had limited access to ‘the law library [and] copy machine.’” (third
alteration in original)); *Clark v. McEwen*, No. 10-cv-2149, 2012 WL 1205509, at *11 (S.D. Cal. Feb. 28,
2012) (holding “a lack of understanding of the law does not constitute the extraordinary circumstances
required for equitable tolling.”)

1 next state-court petition⁴ on July 15, 2015, in the California Supreme Court. The period
2 comprises 300 days during which the AEDPA statute of limitations was running. This
3 totals 504 days—well beyond AEDPA’s one-year statute of limitations. Thus, even if the
4 Court granted Petitioner a year’s worth of equitable tolling from the denial of his final state
5 petition to the date of his request for a thirty-day continuance, the instant Petition would
6 still be untimely.

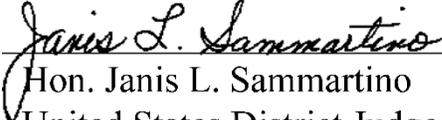
7 **CONCLUSION**

8 Given the foregoing, the Court **OVERRULES** Petitioner’s Objection, **ADOPTS**
9 Judge Crawford’s Report and Recommendation, **GRANTS** Defendant’s Motion to
10 Dismiss, and **DISMISSES WITH PREJUDICE** Petitioner’s Petition. Furthermore,
11 because Petitioner’s Petition would be untimely even if the Court granted Petitioner the
12 most generous amount of tolling possible under Petitioner’s allegations, Petitioner has
13 failed to show “that jurists of reason could disagree with the district court’s resolution of
14 his constitutional claims or that jurists could conclude the issues presented are adequate to
15 deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327
16 (2003); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the Court
17 **DENIES** a certificate of appealability.

18 Because this concludes the litigation in this matter, the Clerk **SHALL** close the file.

19 **IT IS SO ORDERED.**

20 Dated: September 12, 2017

21 
22 Hon. Janis L. Sammartino
23 United States District Judge
24
25
26

27 ⁴ Petitioner filed another state-court petition during the pendency of his first federal petition. Specifically,
28 he filed his second state-court petition on June 18, 2014 in California Superior Court, which the Superior
Court denied on August 18, 2014.