



1 petition is untimely under the Antiterrorism and Effective Death Penalty Act of 1996  
2 (“AEDPA”), and that Ground Two fails to present a federal constitutional claim. *See*  
3 Doc. No. 7. Petitioner filed an opposition to Respondent’s motion to dismiss. *See* Doc.  
4 No. 9. The Court referred the matter to United States Magistrate Judge Burkhardt for  
5 preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and  
6 Civil Local Rule HC.2. Judge Burkhardt has issued a detailed and well-reasoned report  
7 recommending that the Court grant Respondent’s motion to dismiss. *See* Doc. No. 10.  
8 Petitioner filed an objection to the Report and Recommendation on September 15, 2017.  
9 *See* Doc. No. 12. For the reasons set forth below, the Court **OVERRULES** Petitioner’s  
10 objection and **ADOPTS** the Report and Recommendation in its entirety.

## 11 DISCUSSION

### 12 *1. Standard of Review*

13 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §  
14 636(b)(1), the Court must “make a *de novo* determination of those portions of the report .  
15 . . to which objection is made,” and “may accept, reject, or modify, in whole or in part,  
16 the findings or recommendations made by the magistrate [judge].” 28 U.S.C. §  
17 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

### 18 *2. Analysis*

19 Petitioner generally objects to the recommendation that Ground One of his petition  
20 be dismissed as untimely under AEDPA based on equitable tolling. *See* Doc. No. 12 at  
21 2-3. Petitioner contends the Report and Recommendation emphasizes “the time frame of  
22 the petitioner’s filing.” *Id.* at 2. Petitioner essentially concedes Ground One of the  
23 petition is untimely, but argues that he is a “lay prisoner” and should not be treated as if  
24 “he were trained and astute in the law[.]” *Id.* at 3. “[A] litigant seeking equitable tolling  
25 bears the burden of establishing two elements: (1) that he has been pursuing his rights  
26 diligently, and (2) that some extraordinary circumstance stood in his way.” *Pace v.*  
27 *DiGuglielmo*, 544 U.S. 408, 418 (2005). However, a *pro se* petitioner’s “lack of legal  
28 sophistication” or “ignorance of the law” is not an “extraordinary circumstance

1 warranting equitable tolling.” *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006).  
2 Thus, Judge Burkhardt correctly determined there is no extraordinary circumstance to  
3 justify equitable tolling, and as a result, Ground One of the petition is untimely.

4 Accordingly, upon due consideration and after conducting a *de novo* review of the  
5 pertinent portions of the record, the Court **OVERRULES** Petitioner’s objection and  
6 **ADOPTS** the Report and Recommendation.

7 **CERTIFICATE OF APPEALABILITY**

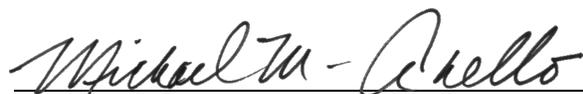
8 The federal rules governing habeas cases brought by state prisoners require a  
9 district court that dismisses or denies a habeas petition to grant or deny a certificate of  
10 appealability in its ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.  
11 § 2254. For the reasons stated above, and those set forth in detail in Judge Burkhardt’s  
12 Report and Recommendation, Petitioner has not shown “that jurists of reason would find  
13 it debatable whether the district court was correct in its procedural ruling.” *Slack v.*  
14 *McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, the Court **DECLINES** to issue a  
15 certificate of appealability.

16 **CONCLUSION**

17 Based on the foregoing, the Court **OVERRULES** Petitioner’s objection, **ADOPTS**  
18 the Report and Recommendation, and **DISMISSES** the petition with prejudice. The  
19 Court **DECLINES** to issue a certificate of appealability. The Clerk of Court is instructed  
20 to close the case and enter judgment in favor of Respondent.

21  
22 **IT IS SO ORDERED.**

23 Dated: October 18, 2017



24 HON. MICHAEL M. ANELLO  
25 United States District Judge  
26  
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