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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 LARRY LUIS TORRES,  
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Petitioner,  
v.  
STUART SHERMAN, Warden,  
Respondent.

Case No.: 17cv978-MMA(BGS)

**ORDER DISMISSING PETITION  
FOR WRIT OF HABEAS CORPUS**

[ Doc. No. 1 ]

Petitioner Larry Luis Torres (hereinafter referred to as “Petitioner”), a state prisoner proceeding *pro se* and *in forma pauperis*, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to Title 28, United States Code section 2254.<sup>1</sup> Doc. No. 1 (“Pet.”). Petitioner challenges his convictions for second degree murder and premeditated attempted murder. *Id.* at 15; *see also* Lodgment (“Lodg.”) 1 Vol. 2 at 130.<sup>2</sup> Respondent answered the Petition on October 11, 2017 [Doc. No. 11 (“Ans.”)] and Petitioner filed a traverse on January 29, 2018 [Doc. No. 18 (“Trav.”)]. As outlined

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<sup>1</sup> Although this case was randomly referred to United States Magistrate Judge Bernard G. Skomal pursuant to 28 U.S.C. § 636(b)(1)(B), the Court has determined that neither a Report and Recommendation nor oral argument are necessary for the disposition of this matter. *See* S.D. Cal. Civ.L.R. 72.1(d).

<sup>2</sup> All record citations in the Order are based on CM/ECF page numbers.

1 below, the Court **DISMISSES** the Petition with prejudice as untimely, thereby, declining  
2 to decide the Petition on the merits.

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 The following facts are taken from the California Court of Appeal’s opinion in  
5 *People v. Contreras*, No. D047266, 2006 Cal. App. Unpub. LEXIS 11306 (Dec. 15,  
6 2006):

7 The Organized Entres Kabrones (OEK) and Locos are rival Hispanic street  
8 gangs. Martinez and Lamas were members of the OEK gang, while Torres  
9 and Contreras either were Locos members or backed the Locos gang. In the  
10 evening of January 6, 2004, Martinez, his girlfriend Becky Soto and Lamas  
11 went to the Key Largo apartments in El Cajon to visit Lamas’s girlfriend in  
12 Martinez’s Honda Civic. The Key Largo apartments are located on Locos’s  
13 “turf” and Lamas often received threats and whistles when he visited his  
14 girlfriend at her apartment. At that time, Lamas was under house arrest for  
15 possession of a concealed knife and the outing violated his curfew.

16 After visiting Lamas’s girlfriend, the threesome went to another apartment  
17 complex to find their friends, but were directed to a trailer park. When Lamas  
18 got into the Honda he noticed a dark colored Mustang and saw the car again  
19 on the way to the trailer park. Soto made a U-turn to see if the Mustang  
20 followed them; eventually, the Mustang ended up right behind them. Soto  
21 noticed two people in the Mustang and that the driver had a goatee and black  
22 hair. Lamas and Soto later identified Contreras as the driver of the Mustang  
23 and Torres as the passenger.

24 After Lamas had Soto pull over, the Mustang stopped in the middle of the  
25 street in front of them. Lamas did not have any weapons and learned that  
26 Martinez had a pocketknife. Soto told Martinez to put the knife away, but did  
27 not remember what he did with it. Martinez walked to the passenger side of  
28 the Mustang and Lamas went to the passenger side rear of the car. Although  
Lamas recognized the defendants, he could not recall the context. Lamas  
identified himself as OEK and asked the defendants in a commanding voice  
where they were from, meaning what gang, [he] received a response that he  
did not understand and then heard someone say “that’s cool.” Soto  
remembered that Lamas raised his hands as if he wanted to fight when he  
walked toward the Mustang, but saw nothing in his hands.

As Martinez leaned down to look inside the car with his hands by his sides,  
Lamas tried to push him away because he did not know what would happen.  
Lamas heard someone inside the car say “fuck OEK” and saw Martinez  
straighten up with a surprised look on his face. Lamas also saw a gun come

1 up from inside the Mustang, heard a shot and saw Martinez grab his stomach.  
2 Torres then shot Lamas in the back as he ran toward the Honda. Lamas never  
3 saw Martinez take the knife out of his pocket and neither he nor Soto saw  
4 Martinez make any sudden or threatening moves.

5 After the Mustang “peeled out,” Lamas ran back and saw that Martinez  
6 had been shot in the head. Lamas searched Martinez’s pockets for a cell phone  
7 and pulled the pocketknife out. He dropped the knife, ran back to the Honda  
8 to call the police, with the first officers arriving in less than a minute. Police  
9 later recovered the folded pocketknife and found no other weapons at the  
10 scene.

11 The police located the Mustang and took the defendants into custody. A  
12 search of the car revealed a loaded .41 caliber revolver, containing both  
13 defendants’ fingerprints, and a loaded .25 caliber semiautomatic pistol. Police  
14 also found two bags containing marijuana and a notebook with Contreras’s  
15 name and drug weights and dollar amounts. Blood spatter on the Mustang  
16 matched Martinez and Contreras had an oozing stab wound on his back.

17 Lamas survived a single gunshot wound to the abdomen, but Martinez died  
18 from gunshot wounds to his head and abdomen. The .41 caliber bullet  
19 removed from Martinez’s brain matched the weapon found in the Mustang  
20 and the .25 caliber bullet removed from his abdomen was consistent with the  
21 other weapon in the Mustang, but could not be positively identified as having  
22 been fired from that gun. The angle of bullet that entered Martinez’s forehead  
23 suggested Martinez was bending down when he was shot.

24 The defendants were charged with murder and attempted murder. As to  
25 both counts, it was alleged that the defendants intentionally discharged a  
26 firearm and committed the crime for the benefit of a gang. Special  
27 circumstances were also alleged as to the murder count of discharging a  
28 firearm from a motor vehicle and committing the offense for the benefit of a  
29 gang. Also, as to the attempted murder, it was alleged that great bodily injury  
30 had been inflicted.

31 The matter proceeded to trial and both defendants testified. About a week  
32 before the murder, OEK gang members stabbed Contreras while he was in  
33 OEK territory. After the stabbing, Locos gang member Frank Soto (no relation  
34 to Becky Soto), gave Contreras a gun to protect himself. Thereafter, Contreras  
35 never left the house without the gun and ultimately used it to shoot Martinez.  
36 Contreras claimed Martinez suddenly straightened from a crouched position  
37 and had something in his hand. Contreras believed Martinez had a gun and  
38 admitted that he and Torres almost simultaneously fired their weapons.  
39 Contreras then heard Torres fire his gun a second time. Torres claimed he fired  
40 his weapon after Martinez lunged at him and that he fired again when Lamas  
41 came toward him. Although Torres admitted he did not see a gun, he believed

1 that Martinez was going to shoot him.

2 At the conclusion of testimony, the People successfully amended the  
3 information to add a separate enhancement to the murder charge that it was  
4 perpetrated by a firearm from a vehicle against a person outside the vehicle.  
5 A jury found Contreras guilty of first degree murder, Torres guilty of second  
6 degree murder, and both guilty of premeditated attempted murder. The jury  
7 also found true all special circumstance allegations attached to both counts.  
8 The trial court sentenced Contreras to state prison for life without the  
9 possibility of parole, plus a life term and an additional term of 50 years to life,  
10 and Torres to state prison for 70 years to life, with an additional three-year  
11 term.

12 Lodg. 10 at 2-5.<sup>3</sup>

13 Petitioner and Contreras both filed unsuccessful appeals. *See* Lodg. 3; *see also*  
14 Lodg. 4. Petitioner argued that the trial court erred in admitting certain evidence, there  
15 was insufficient evidence to sustain the gang enhancements, and the trial court erred in  
16 permitting the prosecution to amend the information to add a “drive-by” enhancement.  
17 *See* Lodg. 3. On August 14, 2006, Contreras filed a habeas corpus petition in the  
18 California Court of Appeal alongside his appeal arguing, among other things, ineffective  
19 assistance of counsel for failing to present Martinez’s juvenile court record pursuant to  
20 California Welfare and Institutions Code section 827. *See* Lodg. 8. Contreras attached a  
21 petition for disclosure of Martinez’s juvenile court record, the June 8, 2006 order  
22 granting that petition, and Martinez’s juvenile court record. *See id.* at 44-76. On August  
23 21, 2006, the California Court of Appeal ordered the Clerk’s office “to send a copy of  
24 [Contreras’ state petition], the record submitted with the petition, and [the June 8, 2006]  
25 order, to any party or counsel in *People v. Contreras* (D047266) who is not a party or  
26 counsel in [Contreras’ habeas corpus proceedings].” *See* Lodg. 9. The California Court  
27 of Appeal denied Contreras’ petition on December 15, 2006. *See* Lodg. 11. On that

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28 <sup>3</sup> This Court presumes the State Court’s factual determinations to be correct absent clear and  
convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1); *Miller-El v. Cockrell*, 537 U.S. 322, 340  
(2003); *see also Parke v. Raley*, 506 U.S. 20, 35 (1992) (holding findings of historical fact, including  
inferences properly drawn from such facts, are entitled to statutory presumption of correctness).

1 same date, the California Court of Appeal affirmed Torres' judgment. *See* Lodg. 10.  
2 Petitioner appealed to the California Supreme Court on January 12, 2007, arguing that the  
3 trial court erred in admitting certain evidence, there was insufficient evidence to sustain  
4 the gang enhancements, and the trial court erred in permitting the prosecution to amend  
5 the information to add a "drive-by" enhancement. *See* Lodg. 12. The California  
6 Supreme Court summarily denied review without citation to authority on February 21,  
7 2007. *See* Lodg. 13.

8 On June 24, 2014, Petitioner filed a petition pursuant to California Welfare and  
9 Institutions Code section 827 with the San Diego County Superior Court for the  
10 disclosure of Martinez's juvenile court record. *See* Doc. No. 1-1 ("Pet. Ex.") at 48-67.  
11 This petition was granted on September 11, 2014. *See id.* at 80. On September 1, 2015,<sup>4</sup>  
12 Petitioner constructively filed a petition for writ of habeas corpus in the San Diego  
13 County Superior Court arguing that non-disclosure of Martinez's juvenile court record  
14 violates *Brady v. Maryland*, 373 U.S. 83 (1963) because it is exculpatory evidence that  
15 could have supported his self-defense claim at trial. *See* Lodg. 14. The court denied the  
16 petition as untimely on November 25, 2015, but noted the petition also failed on the  
17 merits. *See* Lodg. 15. On February 10, 2016, Petitioner filed a petition for writ of habeas  
18 corpus in the California Court of Appeal, 4<sup>th</sup> Appellate Division, arguing the prosecution  
19 failed to disclose Martinez's juvenile court record in violation of *Brady*. *See* Lodg. 16.  
20 The Court of Appeal denied the petition on February 26, 2016. *See* Lodg. 17. Petitioner  
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24 <sup>4</sup> According to the "mailbox rule," a habeas petition is deemed constructively filed when the *pro se*  
25 prisoner delivers it to prison authorities for forwarding to the clerk of the court. *Ramirez v. Yates*, 571  
26 F.3d 993, 996 n.1 (9th Cir. 2009). In the instant case, it is unclear when Petitioner delivered the state  
27 habeas petition to prison authorities (*see* Pet. Ex. N. at 148), however, because he signed the petition on  
28 September 1, 2015, the Court liberally construes September 1, 2015 as the mailing date. *See Marsh v.*  
*Soares*, 223 F.3d 1217, 1218 n. 1 (10th Cir. 2000) ("Liberal application of the mailbox rule . . . causes us  
to treat the petition as placed in the hands of prison authorities on the same day it was signed."); *see also*  
*Torres v. Cullen*, No. CIV S-09-2150 JAM GGH P, 2011 U.S. Dist. LEXIS 978 at \*4-5 n.2 (E.D. Cal.  
Jan. 4, 2011) (citing *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001)).

1 constructively filed a petition for writ of habeas corpus in the California Supreme Court  
2 on April 26, 2016, raising the same argument as his previous petitions. *See* Lodg. 18.  
3 The California Supreme Court denied the petition without comment, on April 19, 2017.  
4 *See* Lodg. 19. Finally, Petitioner constructively filed the instant Petition with this Court  
5 on May 7, 2017. *See* Pet.

#### 6 SCOPE OF REVIEW

7 Title 28, United States Code section 2254(a), sets forth the scope of review for  
8 federal habeas corpus claims:

9 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall  
10 entertain an application for a writ of habeas corpus in behalf of a person in  
11 custody pursuant to the judgment of a State court only on the ground that he  
12 is in custody in violation of the Constitution or laws or treaties of the United  
States.

13 28 U.S.C. § 2254(a).

#### 14 DISCUSSION

15 Petitioner presents a single ground for relief: the prosecution failed to obtain, and  
16 then disclose, Martinez’s juvenile court record pursuant to California Welfare and  
17 Institutions Code section 827, in violation of *Brady*. *See* Pet. Respondent argues the  
18 Petition should be dismissed as untimely. *See* Ans. at 14-17. Respondent alternatively  
19 argues that the state courts correctly determined there is no merit to Petitioner’s *Brady*  
20 claim. *Id.* at 20-26. In light of the Court’s decision that the Petition is untimely, the  
21 Court declines to address Respondent’s arguments regarding the merits of Petitioner’s  
22 claim.

#### 23 ***A. The AEDPA’s Statute of Limitations***

24 Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”),  
25 effective April 24, 1996, a one year statute of limitations applies to an application for a  
26 writ of habeas corpus by a person in custody pursuant to a state court judgment. *See* 28  
27 U.S.C. § 2244(d)(1). The one year limitations period runs from the latest of:  
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1 (A) the date on which the judgment became final by the conclusion of direct  
2 review or the expiration of the time for seeking such review;

3 (B) the date on which the impediment to filing an application created by State  
4 action in violation of the Constitution or laws of the United States is removed,  
5 if the applicant was prevented from filing by such State action;

6 (C) the date on which the constitutional right asserted was initially recognized  
7 by the Supreme Court, if the right has been newly recognized by the Supreme  
8 Court and made retroactively applicable to cases on collateral review; or

9 (D) the date on which the factual predicate of the claim or claims presented  
10 could have been discovered through the exercise of due diligence.

11 28 U.S.C. § 2244(d)(1)(A)-(D).

12 Petitioner argues that the date he discovered the factual predicate of his claim is  
13 later than the date his judgment became final. Therefore, he contends the discovery of  
14 the factual predicate should trigger the commencement of the statute limitations. *See*  
15 *Trav.* at 7. Specifically, Petitioner claims that the factual predicate of his *Brady* claim  
16 was not discoverable until he received Martinez's juvenile court record in August or  
17 September of 2014. *See Trav.* at 7. Respondent argues that the date the judgment  
18 became final is later than the factual predicate date and should commence the statute of  
19 limitations. *See Ans.* at 14-15. Specifically, Respondent contends that Petitioner could  
20 have discovered the factual predicate of his claim around August 21, 2006, when the  
21 Court of Appeal consolidated Contreras' habeas corpus petition with Petitioner and  
22 Contreras' direct appeal and ordered a copy of the habeas corpus record be sent to all  
23 parties or counsel. *See Ans.* at 15. That record included Martinez's juvenile court  
24 record. *See Lodg.* 8 at 48-76. In response, Petitioner argues that the information in  
25 Contreras' file is irrelevant to the timeliness of the instant Petition, and that it establishes  
26 that Martinez's juvenile court record was not disclosed at trial. *See Trav.* at 7.

27 Petitioner's judgment became final by the conclusion of direct review on May 22,  
28 2007, ninety days after the California Supreme Court denied Petitioner's petition for

1 review on February 21, 2007.<sup>5</sup> *See Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999)  
2 (explaining that direct review “includes the period within which a petitioner can file a  
3 petition for a writ of certiorari from the United States Supreme Court, whether or not the  
4 petitioner actually files such a petition”); *see also* Cal. R. Ct. 8.532(b)(2)(A) (stating that  
5 California Court decisions are final on filing the denial of a petition for review).

6         Petitioner maintains the statute of limitations runs from the date he received  
7 Martinez’s juvenile court record in August or September of 2014 because that is when he  
8 discovered the factual predicate of his claim. *See Trav.* at 7. Section 2244(d)(1)(D),  
9 however, does not delay commencement of the limitations period until the petitioner  
10 *actually* discovers the factual predicate; it delays it until the factual predicate “*could* have  
11 been discovered with due diligence.” *Ford v. Gonzalez*, 683 F.3d 1230, 1235 (9th Cir.  
12 2012) (emphasis added). Due diligence requires reasonable diligence for the  
13 circumstances. *Id.*; *Quezada v. Scribner*, 611 F.3d 1165, 1168 (9th Cir. 2010). The “due  
14 diligence clock” begins when the individual knows, or through due diligence could  
15 discover, the important facts, regardless of when their legal significance is actually  
16 discovered. *Ford*, 683 F.3d at 1235.

17         Petitioner received Martinez’s juvenile court record in or around August 2006,  
18 when the Clerk’s office sent him Contreras’ habeas corpus record. *See Lodg.* 9.  
19 Petitioner does not dispute receipt of Contreras’ habeas corpus record, including  
20 Martinez’s juvenile court record. *See Trav.* Had Petitioner exercised due diligence by  
21 reading Contreras’ record upon receipt, he would have discovered Martinez’s juvenile  
22 court record at that time.

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25         <sup>5</sup> Respondent argues that the judgment became final on March 7, 2007, when the California Court of  
26 Appeal issued a remittitur, however, a “remittitur merely designates the judgment of the appellate  
27 tribunal which is authenticated to the court from which the appeal is taken and corresponds to the  
28 mandate used in the practice of the United States Supreme Court.” *See Combs v. Haddock*, 209 Cal.  
App. 2d 627, 631 (1962); *see also Prasad v. Yates*, No. 2:09-cv-0980-FCD-JFM (HC), 2009 U.S. Dist.  
LEXIS 105546, at \*3-4 (E.D. Cal. Nov. 11, 2009) (finding the remittitur date did not finalize the  
judgment).



1 Even if Petitioner had not received Martinez’s juvenile court record around August  
2 2006, Petitioner was aware that Martinez had a criminal past at trial. For example,  
3 comments were made to police investigators mentioning Martinez’s possible juvenile  
4 court record (*see* Trav. at 14), and Becky Soto affirmatively answered that Martinez had  
5 been in prison before a relevance objection was sustained (*see* Lodg. 2 Vol. 5 at 160-61).  
6 Further, at trial Petitioner “tried to learn why Martinez was incarcerated, but it was never  
7 disclosed.” *See* Pet. at 14. As such, Petitioner knew of Martinez’s juvenile court record  
8 at the time of trial. Thus, Petitioner could have discovered the factual predicate of his  
9 *Brady* claim even sooner than August 2006, if he had exercised due diligence shortly  
10 after learning of Martinez’s criminal past at trial.

11 The Court concludes that Petitioner, with due diligence, could have discovered the  
12 factual predicate of his claim before, or shortly after, receiving Martinez’s juvenile court  
13 record around August 2006. Because the May 22, 2007 finality date is later than the  
14 August 2006 factual predicate date, the limitations period began on May 23, 2007, and  
15 expired on May 23, 2008. *See* 28 U.S.C. § 2244(d)(1); *see also Patterson v. Stewart*, 251  
16 F.3d 1243, 1246 (9th Cir. 2001) (applying Fed. R. Civ. P 6(a) to statutes of limitation).  
17 The Petition was filed on May 7, 2017, 8 years, 11 months, and 14 days after the statute  
18 of limitations expired. Therefore, the Petition is untimely, unless sufficiently tolled.

## 19 ***B. Tolling***

### 20 **1. Petitioner Is Not Entitled to Statutory Tolling**

21 Section 2244(d)(2) provides the “time during which a properly filed application for  
22 State post-conviction or other collateral review with respect to the pertinent judgment or  
23 claim is pending shall not be counted toward” the one-year limitations period. 28 U.S.C.  
24 § 2244(d)(2). The “statute of limitations is not tolled from the time a final decision is  
25 issued on direct state appeal and the time the first state collateral challenge is filed  
26 because there is no case ‘pending’ during that interval.” *See Nino v. Galaza*, 183 F.3d  
27 1003, 1006 (9th Cir. 1999); *see also Ferguson v. Palmateer*, 321 F.3d 820, 823 (9th Cir.  
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1 2003) (“[S]ection 2244(d) does not permit the reinitiation of the limitations period that  
2 has ended before the state petition was filed.”).

3 As discussed previously, the statute of limitations expired on May 23, 2008, and  
4 Petitioner constructively filed his first state habeas petition on September 1, 2015. As  
5 such the limitations period expired prior to the filing of Petitioner’s first state habeas  
6 petition. Because the limitations period is not tolled after state post-conviction  
7 proceedings are final and before state habeas proceedings are initiated, Petitioner is not  
8 entitled to statutory tolling under § 2244(d)(2). *Nino*, 183 F.3d at 1006. As such, the  
9 instant Petition is time-barred, unless Petitioner can establish an entitlement to equitable  
10 tolling. *See Bills v. Clark*, 628 F.3d 1092, 1097-98 (9th Cir. 2010).

## 11 **2. Petitioner Fails to Show That Equitable Tolling Is Warranted**

12 A petitioner is entitled to equitable tolling if he shows that (1) he has been pursuing  
13 his rights diligently and (2) some extraordinary circumstance stood in his way, preventing  
14 timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Again, reasonable diligence  
15 is required. *Id.* at 653. Equitable tolling is available only when extraordinary  
16 circumstances beyond the prisoner’s control make it impossible to file the petition on  
17 time, and those circumstances were the cause of the late filing. *Bills*, 628 F.3d at 1097;  
18 *see also Miles v. Prunty*, 187 F.3d 1104, 1107 (9th Cir. 1999) (finding that equitable  
19 tolling is only available “[w]hen external forces, rather than a petitioner’s lack of  
20 diligence, account for the failure to file a timely claim”). The petitioner bears the burden  
21 of demonstrating his entitlement to equitable tolling. *Pace v. DiGuglielmo*, 544 U.S. 408,  
22 418 (2005).

23 Petitioner argues that he is entitled to equitable tolling because he “has been  
24 pursuing his rights diligently since at least 2007” and he “knew nothing of Brady [or] of a  
25 prosecutor’s duty to disclose exculpatory evidence until 2012.” *See Trav.* at 7. Petitioner  
26 claims he was diligent in 2007 because he met a possibly exonerating witness and was  
27 working to gather the resources to interview him. *See Pet.* at 13-14. Once his family  
28 hired an attorney and investigator at the end of 2008, the witness decided he was no

1 longer able to help Petitioner. *Id.* At that point, the attorney said he would review the  
2 trial transcripts, but nothing came of the review. *See* Pet. At 13-14. Petitioner then  
3 “waited until late 2011 and early 2012 before [he] finally decided to study [his] case and  
4 conduct legal research.” *Id.* Respondent argues Petitioner has not been diligent because  
5 there is a near ten-year delay between the receipt of Martinez’s juvenile court record and  
6 the filing of the instant Petition. *See* Ans. at 17. Respondent further argues that  
7 Petitioner’s lack of knowledge of *Brady* until 2012 is insufficient to show extraordinary  
8 circumstances. *See id.*

9 Petitioner has not established diligence during the entire time he seeks to toll. *See*  
10 Pet. at 13-14. While he alleges diligence between 2007 and 2008 and from 2011 on,  
11 Petitioner does not assert any facts to support his diligence from 2008 when the witness  
12 withdrew to late 2011 when Petitioner began his legal research. *See Smith v. McGinnis*,  
13 208 F.3d 13, 17 (2d Cir. 2000) (“[T]he party seeking equitable tolling must have acted  
14 with reasonable diligence throughout the period he seeks to toll.”); *White v. Long*, No.  
15 CV 13-02121 SVW (AN), 2013 U.S. Dist. LEXIS 116054, at \*17 (C.D. Cal., Aug. 12,  
16 2013) (explaining that equitable tolling requires a showing of diligence during the time  
17 the party seeks to toll). As such, Petitioner has not demonstrated the requisite diligence  
18 and is not entitled to equitable tolling.

19 Further, Petitioner does not establish that extraordinary circumstances stood in his  
20 way of timely filing. First, Petitioner’s lack of knowledge of *Brady* is not an  
21 extraordinary circumstance warranting equitable tolling. Ignorance of the law is  
22 regularly rejected as a basis for equitable tolling because it does not demonstrate  
23 extraordinary circumstances, but common circumstances many prisoners experience. *See*  
24 *Ford v. Pliler*, 590 F.3d 782, 789 (9th Cir. 2009) (noting that the equitable tolling  
25 “standard has never been satisfied by a petitioner’s confusion or ignorance of the law  
26 alone”); *see also Waldron-Ramsey v. Pacholke*, 556 F.3d 1008, 1013 n.4 (9th Cir. 2009)  
27 (“[A] pro se petitioner’s confusion or ignorance of the law is not, itself, a circumstance  
28 warranting equitable tolling.”); *Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006)

1 (holding that “a pro se petitioner’s lack of legal sophistication is not, by itself, an  
2 extraordinary circumstance”). Second, Petitioner’s financial inability to immediately hire  
3 an investigator or attorney after meeting the potential witness in 2007 is not an  
4 extraordinary circumstance. *See McMillan v. Woods*, No. 2:11-CV-10390, 2011 U.S.  
5 Dist. LEXIS 150241, at \*11-12 (E.D. Mich. Dec. 8, 2011) (finding no extraordinary  
6 circumstance existed where the petitioner argued he was “entitled to equitable tolling of  
7 the limitations period because he was unknowledgeable in the law and was waiting for  
8 his family and friends to raise money to hire an attorney to pursue his post-conviction  
9 remedies”). Consequently, the Court finds that Petitioner’s lack of knowledge of *Brady*  
10 and his financial inability to immediately obtain resources are not extraordinary  
11 circumstances that warrant equitable tolling of the AEDPA statute of limitations.

12 Thus, Petitioner has not demonstrated the requisite diligence or any extraordinary  
13 circumstances that prevented him from timely filing. Therefore, he is not entitled to  
14 equitable tolling. *See Holland* 560 U.S. at 649. Accordingly, Petitioner’s Petition is  
15 untimely.

#### 16 CERTIFICATE OF APPEALABILITY

17 The federal rules governing habeas cases brought by state prisoners require a  
18 district court that dismisses or denies a habeas petition to grant or deny a certificate of  
19 appealability in its ruling. *See* Rule 11(a), Rules Governing § 2254 Cases, 28 U.S.C. foll.  
20 § 2254. For a certificate of appealability to issue, a petitioner must show that (1)  
21 reasonable jurists would find it debatable whether there is a valid claim of constitutional  
22 denial, *and* (2) reasonable jurists could debate whether the district court reached the  
23 proper procedural conclusion. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). Because  
24 Petitioner has not made the showing that reasonable jurists could debate this procedural  
25 conclusion, the Court **DECLINES** to issue a certificate of appealability.

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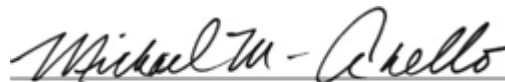
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1 CONCLUSION

2 Based on the foregoing and having reviewed the files herein, the Court **DISMISSES**  
3 the Petition with prejudice as untimely. Further, the Court **DECLINES** to issue a  
4 certificate of appealability. The Clerk of Court is instructed to enter judgment accordingly  
5 and close this case.

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7 **IT IS SO ORDERED.**

8 Dated: October 4, 2018

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10 Hon. Michael M. Anello  
11 United States District Judge  
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