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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 STANTON HARRY MCCAIN II,

9 Petitioner,

10 v.

11 DONALD R HOLBROOK,

12 Respondent.

Case No. C18-328 RAJ-MLP

ORDER

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14 Currently before the Court is Petitioner's motion for order mandating access to
15 Petitioner's legal materials. (Dkt. ## 30, 31.) Having reviewed the motion, the response (dkt. #
16 35), the reply (dkt. # 43), heard the arguments of counsel (dkt. # 48), and reviewed the
17 supplemental materials filed by Respondent (dkt. ## 49, 50), the Court DENIES Petitioner's
18 motion as MOOT (dkt. ## 31, 32).

19 The current motion arises from an Order to Show Cause filed on April 3, 2018 by former
20 United States Magistrate Judge James P. Donohue. (Dkt. # 6.) The Court ordered Petitioner to
21 show cause why his 28 U.S.C. § 2254 habeas action should not be dismissed as barred by the
22 statute of limitations. (*Id.*) Petitioner's response to the Court's order was originally due on May
23 3, 2018. Petitioner requested and received at least six motions for extension of time to respond to

ORDER - 1

1 the Court's Order to Show Cause. (*See e.g.* Dkt. ## 8, 13, 18, 24, 29, 34, 45.) Petitioner
2 requested the extensions based primarily on his inability to have access to his legal papers which
3 he represents is necessary to respond to the Court's Order to Show Cause. To assist Petitioner,
4 the Court appointed counsel to represent Petitioner on November 14, 2018. (Dkt. # 21.) On April
5 15, 2019, Petitioner, through counsel, filed the instant motion asking the Court to order
6 Respondent to provide him access to his legal property, so he could assist his attorney in
7 responding to the Court's order to show cause.

8 Based on Respondent's response to the motion, it appeared that the parties could reach an
9 agreement as to a mechanism for affording Petitioner sufficient access to his legal materials so
10 that he may assist his counsel in responding to the Court's Order to Show Cause. On July 2,
11 2019, the Court held a teleconference hearing to determine whether an agreement could be
12 reached regarding the legal materials. (Dkt. # 48.) As a result of the hearing, Respondent filed a
13 supplement brief and declaration explaining that Petitioner would be permitted to have the
14 equivalent of one box of legal paperwork in his cell at a time (dkt. # 50 ("Hathaway Decl.") at ¶
15 3.); that Respondent had moved the remainder of Petitioner's legal materials to a property room
16 located approximately 90-100 yards from Petitioner's cell; (*id.* at ¶ 5); and that Petitioner would
17 be permitted to go through his property in that location (*id.*).

18 Based on the representations made by Respondent, the Court DENIES the motion as
19 MOOT (dkt. ## 30, 31). Petitioner is granted an additional 30-days to respond to the Court's
20 Order to Show Cause. The Court directs the Clerk to RESET the deadline for Petitioner to
21 respond to the Court's Order to Show Cause to August 30, 2019, and to send copies of this order

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1 to the parties and to the Honorable Richard A. Jones.

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3 Dated this 3rd day of July, 2019.

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5 MICHELLE L. PETERSON
6 United States Magistrate Judge
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