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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 RICHARD WESLEY BRYAN,  
9  
10 Petitioner,

11 v.

12 PAT GLEBE,

13 Respondent.

CASE NO. C14-5147BHS

ORDER ADOPTING IN PART  
AND DECLINING TO ADOPT IN  
PART REPORT AND  
RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”)  
15 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 35), and  
16 Petitioner Richard Wesley Bryan’s (“Bryan”) objections to the R&R (Dkt. 36).

17 On May 12, 2016, Judge Strombom issued the R&R recommending that the Court  
18 dismiss Bryan’s petition as time barred because the statute of limitations has expired and  
19 Bryan was not entitled to equitable tolling. Dkt. 35. On May 26, 2016, Bryan filed  
20 objections. Dkt. 36.

21 The district judge must determine de novo any part of the magistrate judge’s  
22 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the  
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Bryan contends that Judge Strombom based her decision on an  
4 incorrect procedural fact and that the Government should be required to answer the  
5 merits of his petition. Dkt. 36. With regard to the former issue, the record is unclear as  
6 to the date of Bryan's hearing before the Indeterminate Sentence Review Board  
7 ("ISRB"). In Bryan's opening brief after remand, he asserts that the hearing was in July  
8 2011. Dkt. 27 at 11. On the other hand, Bryan has also stated that the hearing was in  
9 July 2010. Dkt. 6 at 15; Dkt. 36-4 at 6.<sup>1</sup> In relying on the earlier date, Judge Strombom  
10 concluded as follows:

11 Mr. Bryan does not explain why he waited almost two years to file his  
12 personal restraint petitions in state court after his ISRB hearing or another  
13 two years after that to file his federal habeas petition. There is no evidence  
14 that Mr. Bryan was pursuing his rights diligently and that some  
15 extraordinary circumstance stood in his way.

16 R&R at 7–8. Contrary to these conclusions, Bryan argues that the ISRB hearing was in  
17 July 2011, he filed his state petition approximately seven months after that hearing, and  
18 diligently pursued his rights culminating in this federal petition. Dkt. 36 at 3. While  
19 Bryan may not ultimately be entitled to equitable tolling, he has shown that additional  
20 clarification and analysis is necessary. Therefore, the Court declines to adopt the R&R as  
21 to the equitable tolling issue.

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22 <sup>1</sup> The Court is unable to find any official record of this hearing either in the  
Administrative Record or in the parties' exhibits.

1 With regard to Bryan's request that the Government answer the merits of his  
2 claims, the Court declines to issue such an order. The equitable tolling issue should be  
3 decided before any analysis on the merits is necessary. Although the Government has  
4 repeatedly declined to address this issue (*see* Dkts. 12, 31), due process only guarantees  
5 an opportunity to respond and does not require a party to respond to every issue raised by  
6 the other party.

7 Finally, there is no dispute that the statute of limitations under 28 U.S.C. § 2244(d)  
8 has expired, and the Court adopts the R&R on that issue.

9 Therefore, the Court having considered the R&R, Bryan's objections, and the  
10 remaining record, does hereby find and order as follows:

11 (1) The R&R is **ADOPTED in part** on the issue of expiration of the statute of  
12 limitations;

13 (2) The Court **DECLINES to adopt** the R&R as to all other issues; and

14 (3) The petition is referred for further consideration.

15 Dated this 19th day of July, 2016.

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BENJAMIN H. SETTLE  
United States District Judge