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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY MCCOY,  
Petitioner,  
v.  
JOHN SOTO,  
Respondent.

Case No. 1:15-cv-01578-LJO-EPG-HC  
  
ORDER FOR SUPPLEMENTAL BRIEFING  
ON EQUITABLE TOLLING AND  
VACATING JUNE 8, 2016 FINDINGS AND  
RECOMMENDATION (ECF No. 15)

Petitioner Anthony McCoy is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 8, 2016, the undersigned issued findings and recommendation that recommended that Respondent’s motion to dismiss be granted and the petition be dismissed as untimely. (ECF No. 15). On July 8, 2016, Petitioner filed objections to the findings and recommendation, arguing that he is entitled to equitable tolling because he was transferred to the Administrative Segregation Unit and had no access to the law library or his legal materials. (ECF No. 16).

The statutory limitations period is subject to equitable tolling if a petitioner demonstrates “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631, 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). The Ninth Circuit has recognized that a complete lack of access to a legal file may constitute an extraordinary

1 circumstance, Ramirez v. Yates, 571 F.3d 993, 998 (9th Cir. 2009), and that under certain  
2 circumstances prison limitations on law library access may constitute an extraordinary  
3 circumstance, Sossa v. Diaz, 729 F.3d 1225, 1236 (9th Cir. 2013). Given the fact-intensive  
4 nature of equitable tolling claims, Sossa, 729 F.3d at 1229–30, further development of the record  
5 is warranted to address this issue.

6 Accordingly, the Court HEREBY ORDERS:

- 7 1. The Findings and Recommendation issued on June 8, 2016 (ECF No. 15) is VACATED;
- 8 2. Within THIRTY (30) days of the date of service of this order, Respondent shall file a  
9 response addressing Petitioner’s claim of equitable tolling; and
- 10 3. Within THIRTY (30) days of the date of service of the Respondent’s response, Petitioner  
11 shall file a reply.

12 IT IS SO ORDERED.

13  
14 Dated: July 26, 2016

/s/ Eric P. Gray  
15 UNITED STATES MAGISTRATE JUDGE