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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 FELIPE GUERRA SANCHEZ,

12 Petitioner,

13 v.

14 RONALD RACKLEY,

15 Respondent.  
16

Case No. 1:16-cv-00604-LJO-EPG-HC

ORDER FOR SUPPLEMENTAL BRIEFING  
ON EQUITABLE TOLLING AND  
VACATING SEPTEMBER 27, 2016  
FINDINGS AND RECOMMENDATION  
(ECF No. 16)

17 Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. § 2254. On September 27, 2016, the undersigned issued findings and  
19 recommendation recommending that Respondent's motion to dismiss be granted and the petition  
20 be dismissed as untimely. (ECF No. 16). On October 26, 2016, Petitioner filed objections to the  
21 findings and recommendation, arguing that he is entitled to equitable tolling because he does not  
22 speak English, the prison law library lacked Spanish-language legal materials, and he pursued his  
23 rights as diligently as possible until he was finally able to receive assistance from a fellow  
24 inmate. (ECF No. 17).

25 The statutory limitations period is subject to equitable tolling if a petitioner demonstrates  
26 “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary  
27 circumstance stood in his way’ and prevented timely filing.” Holland v. Florida, 560 U.S. 631,  
28 649 (2010) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005)). The Ninth Circuit has

1 recognized that a “combination of (1) a prison law library’s lack of Spanish-language legal  
2 materials, and (2) a petitioner’s inability to obtain translation assistance before the one-year  
3 deadline, could constitute extraordinary circumstances.” Mendoza v. Carey, 449 F.3d 1065, 1069  
4 (9th Cir. 2006). Given the fact-intensive nature of equitable tolling claims, Sossa v. Diaz, 729  
5 F.3d 1225, 1229–30 (9th Cir. 2013), further development of the record is warranted to address  
6 this issue.

7 Accordingly, the Court HEREBY ORDERS:

- 8 1. The Findings and Recommendation issued on September 27, 2016 (ECF No. 16) is  
9 VACATED;
- 10 2. Within thirty (30) days of the date of service of this order, Respondent shall file a  
11 response addressing Petitioner’s claim of equitable tolling; and
- 12 3. Within thirty (30) days of the date of service of the Respondent’s response, Petitioner  
13 shall file a reply.

14  
15 IT IS SO ORDERED.

16 Dated: November 21, 2016

17 /s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE