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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

APRIL ROSIE LOPEZ TREVIZO,

 Plaintiff,

 v.

DEAN BORDERS,

 Defendant.

No. 1:16-cv-01845-DAD-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 62)

Petitioner April Rosie Lopez Trevizo is a state prisoner proceeding *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 31, 2019, the court dismissed the petition as untimely and entered judgment. (Doc. Nos. 50, 51.) Petitioner then appealed to the Ninth Circuit Court of Appeals. (Doc. No. 52.) On September 15, 2020, the Ninth Circuit issued an order granting petitioner’s motion to vacate the judgment in part, granting “a limited remand to allow the district court to determine in the first instance whether petitioner’s habeas petition is timely in light of the January 26, 2015 state court decision.” (Doc. No. 56.) The Ninth Circuit also directed the court to “to reevaluate equitable tolling for the relevant period.” (*Id.*)

On September 22, 2020, the assigned magistrate judge issued a scheduling order, directing the parties to file briefs addressing whether the pending habeas petition was timely in light of the January 26, 2015 state court determination. (Doc. No. 58.) After an extension of time, on December 3, 2020, respondent filed a supplemental brief stating that this court should find the

1 pending petition timely, arguing that the court need not rely on equitable tolling to do so, and
2 withdrawing respondent's previously made argument that the petition pending before this court
3 was untimely filed.¹ (Doc. No. 61 at 2.)

4 On January 19, 2021, the assigned magistrate judge issued findings and recommendations,
5 recommending that the undersigned find that the petition for writ of habeas corpus was timely
6 filed in light of the January 26, 2015 state court decision. (Doc. No. 62 at 3.) The findings and
7 recommendations were served on all parties and contained notice that any objections thereto were
8 to be filed within fourteen (14) days from the date of service. (*Id.*) To date, no objections to the
9 findings and recommendations have been filed with the court, and the time in which to do so has
10 now passed.

11 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
12 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
13 findings and recommendations are supported by the record and by proper analysis.

14 Accordingly,

- 15 1. The findings and recommendations issued on January 19, 2021 (Doc. No. 62), are
16 adopted in full;
- 17 2. The court finds that the pending petition for writ of habeas corpus was timely
18 filed;
- 19 3. The Clerk of Court is directed to forward a copy of this order and findings and
20 recommendations issued on January 19, 2021 (Doc. No. 62) to the Ninth Circuit
21 Court of Appeals.

22 IT IS SO ORDERED.

23 Dated: March 4, 2021

24 
UNITED STATES DISTRICT JUDGE

25 _____
26 ¹ As the assigned magistrate clearly and correctly described in the pending findings and
27 recommendations, respondent asserts in the briefing that the parties and the court had operated on
28 the mistaken assumption that petitioner was challenging a judgment of conviction entered in
2004, "when in fact the 2004 judgment had been replaced (because of a combined resentencing
due to state habeas relief in a related matter) by a 2015 judgment." (Doc. No. 62 at 2.)