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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE WILLIAMS,  
  
Petitioner,  
  
v.  
  
JOE LIZARRAGA,  
  
Respondent.

Case No. 1:18-cv-00748-AWI-JDP  
  
FINDINGS AND RECOMMENDATIONS  
THAT COURT DENY RESPONDENT'S  
MOTION TO DISMISS WITHOUT  
PREJUDICE  
  
OBJECTIONS DUE IN FOURTEEN DAYS  
  
ECF No. 13

Petitioner Lawrence Williams, a state prisoner without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges his conviction of failing to register a residence as a sex offender. He raises two habeas claims: (1) the government had insufficient evidence that petitioner willfully failed to register his residence because he did not understand his duty to register his residence due to his illiteracy and mental condition; and (2) petitioner had ineffective assistance of counsel because his attorney failed to investigate and raise the issue of petitioner's illiteracy and mental condition.

Respondent moves to dismiss the petition, arguing that the applicable statute of limitations has run. Petitioner opposes dismissal, alleging that his illiteracy and mental condition precluded him from filing a timely petition. Respondent does not dispute that petitioner is illiterate, that he has mental impairments, or that petitioner's illiteracy and mental impairments precluded him from filing a timely petition. For the reasons discussed below, we recommend that the court deny respondent's motion to dismiss.

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2 **I. Background**

3 In August 2014, petitioner was convicted in Fresno County of failing to register a residence  
4 in violation of California Penal Code § 290.011(b), which required a sex offender who moved to a  
5 new residence to register the new address within five days. See ECF No. 15-1 at 4. This  
6 conviction resulted in petitioner’s third strike under California’s three-strike law, and petitioner  
7 was sentenced to a term of twenty-five years to life in prison. *Id.*

8 **a. Mental impairment**

9 Petitioner alleges in his petition that has “several medical and psychological problems.”  
10 ECF No. 1 at 21. He declares under penalty of perjury that his mental conditions hinder his ability  
11 to comprehend what is written. ECF No. 1 at 21. A psychological evaluation form, attached to the  
12 petition, states that petitioner has “Schizophrenia, Paranoid type.” ECF No. 1 at 50. A treatment  
13 note, also attached to the petition, indicates that petitioner has been diagnosed with schizophrenia,  
14 and the note is signed by two doctors. See ECF No. 1 at 45. The treatment note states that  
15 petitioner can sign his name, but he cannot read or write. *Id.* Another exhibit attached to the  
16 petition, a form entitled “Recommendation for Adaptive Support,” states that petitioner “should be  
17 provided with staff assistance [and] shows deficits in reading, communication, and information  
18 processing.” *Id.* at 41.

19 Petitioner also alleges that he is illiterate. The exhibits to the petition support this allegation.  
20 Although petitioner finished eighth grade after being raised in an orphanage, he has a low TABE  
21 Score of 1.9.<sup>1</sup> ECF No. 1 at 38, 45, 50. Petitioner states in his declaration that he is illiterate and  
22 needs help from other inmates to prepare court submissions. ECF No. 19 at 7.

23 **b. State habeas proceedings**

24 After his conviction, petitioner’s direct appeal ended on May 10, 2016, when the California  
25 Court of Appeal vacated a one-year sentence enhancement and affirmed all other respects of the

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27 <sup>1</sup> “The TABE (Tests of Adult Basic Education) scores reflect an inmate’s educational achievement  
28 level and are expressed in numbers reflecting grade level.” *Nguyen v. Bartos*, No. 10-cv-1461,  
2012 WL 3589797, at \*2 n.1 (E.D. Cal. Aug. 20, 2012) (citations omitted).

1 judgment from the Fresno County Superior Court. ECF No. 15-2 at 2-4. Petitioner did not seek  
2 direct review from the California Supreme Court. Petitioner then filed six habeas petitions in state  
3 court between August 2016 and January 2018; the petitions were all denied. See ECF No. 15-3  
4 through ECF No. 15-15. Petitioner filed the petition in this case on May 30, 2018. ECF No. 1.  
5 The parties agree that the statute of limitations period was tolled while the state-court habeas  
6 petitions were pending. Respondent calculates that, other than the periods when those petitions  
7 were pending, a total of 473 days have passed. See ECF No. 13 at 10. Petitioner does not dispute  
8 this calculation.

## 9 **II. Discussion**

10 The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) imposes a one-year  
11 time limit for filing a federal petition for a writ of habeas corpus. 28 U.S.C. § 2244(d)(1). The  
12 parties agree that, unless tolling applies, petitioner’s one-year period had run when the instant  
13 petition was filed. The only question is whether petitioner’s allegations of illiteracy and mental  
14 condition merit equitable tolling of the one-year deadline.

15 The AEDPA’s one-year limitations period is subject to equitable tolling if a habeas petitioner  
16 shows: “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary  
17 circumstance stood in his way.” *Holland v. Florida*, 130 S. Ct. 2549, 2560-62 (2010). A  
18 petitioner’s mental impairment can be such an extraordinary circumstance. See *Orthel v. Yates*,  
19 795 F.3d 935, 938-41 (9th Cir. 2015). When a petitioner relies on his mental impairment as a basis  
20 for equitable tolling, courts in the Ninth Circuit apply a two-part test from *Bills v. Clark*:

21 (1) First, a petitioner must show his mental impairment was an  
22 “extraordinary circumstance” beyond his control by demonstrating the  
impairment was so severe that either

23 (a) petitioner was unable rationally or factually to personally  
24 understand the need to timely file, or

25 (b) petitioner’s mental state rendered him unable personally to  
prepare a habeas petition and effectuate its filing.

26 (2) Second, the petitioner must show diligence in pursuing the claims to  
27 the extent he could understand them, but that the mental impairment  
made it impossible to meet the filing deadline under the totality of the  
28 circumstances, including reasonably available access to assistance.

1 628 F.3d 1092, 1099-100 (9th Cir. 2010) (citations and footnote omitted). The kinds of mental  
2 impairments recognized for this test include those that prevent “understanding the need to file,  
3 effectuating a filing on his own, or finding and utilizing assistance to file.” *Id.* at 1100. The  
4 totality-of-the-circumstances inquiry in the second step “considers whether the petitioner’s  
5 impairment was a but-for cause of any delay.” *Id.* Thus, a petitioner’s mental impairment can  
6 justify equitable tolling if it “interferes with the ability to understand the need for assistance, the  
7 ability to secure it, or the ability to cooperate with or monitor assistance the petitioner does  
8 secure.” *Id.*

9 A district court faced with an allegation of mental impairment must also consider whether the  
10 record is sufficiently developed to apply the two-step test from *Bills*. The court may hold an  
11 evidentiary hearing if a petitioner makes “a good-faith allegation that would, if true, entitle him to  
12 equitable tolling.” *Laws v. Lamarque*, 351 F.3d 919 (9th Cir. 2003); *accord Roy v. Lampert*, 465  
13 F.3d 964, 969 (9th Cir. 2006). At the pleading stage, a petitioner need not “carry a burden of  
14 persuasion . . . in order to merit further investigation into the merits of his argument for tolling.”  
15 *Laws*, 351 F.3d at 924. The petitioner need only show “circumstances consistent with petitioner’s  
16 petition . . . under which he would be entitled to a finding of an ‘impediment’ under  
17 § 2244(d)(1)(B) or to equitable tolling for further factual development to be required.” *Id.*  
18 (quoting *Whalem/Hunt v. Early*, 233 F.3d 1146, 1148 (9th Cir. 2000)).

19 On the other hand, a district court has no obligation to hold an evidentiary hearing if an  
20 “amply developed” record “indicates that the petitioner’s mental incompetence was not so severe  
21 as to cause the untimely filing of his habeas petition.” *Roberts v. Marshall*, 627 F.3d 768, 773 (9th  
22 Cir. 2010). The court may also deny the respondent motion to dismiss, direct the respondent to file  
23 a more complete record of the petitioner’s mental impairment, and allow the respondent to renew  
24 the motion to dismiss after the submission of the additional record. *See Orthel*, 795 F.3d at 938,  
25 940. In addition, the court can direct the parties to brief the merits.<sup>2</sup>

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26 <sup>2</sup> *See Franklin v. Johnson*, 290 F.3d 1223, 1232 (9th Cir. 2002) (“Procedural bar issues are not  
27 infrequently more complex than the merits issues . . . so it may well make sense in some instances  
28 to proceed to the merits if the result will be the same.”); *McCoy v. Soto*, No. 15-cv-1578, 2017 WL  
2644837, at \*3 (E.D. Cal. June 20, 2017) (denying motion to dismiss on statute of limitations and

1 Here, petitioner has put forth a good-faith allegation that would, if true, entitle him to  
2 equitable tolling. According to petitioner’s submissions, he has schizophrenia. ECF No. 1 at 45.  
3 Physicians who have examined him have noted that petitioner is “disoriented to time, month, date,  
4 and year.” *Id.* The same physicians also reported that petitioner suffered from cognitive  
5 difficulties, paranoia, and hallucinations. *Id.* Petitioner has also adduced his declaration, stating  
6 that he has begged other inmates for help and has done all he could to pursue his remedies in state  
7 court. *See* ECF No. 19 at 5-6. Petitioner declares, “It would have been impossible for me to move  
8 any faster, as I had to find someone willing to help me. At no point did I stop or delay my efforts  
9 to process my petitions.” *Id.* at 5. Respondent has not filed a reply or disputed these facts.  
10 Petitioner’s submissions do not conclusively show that he could not pursue state habeas petitions,  
11 but they suffice to show “circumstances consistent” with the petition and equitable tolling that  
12 warrant further factual development. *See Laws*, 351 F.3d at 924.

13 Rather than holding an evidentiary hearing at this time, we recommend that the court deny  
14 respondent’s motion without prejudice. This approach will allow respondent to adduce evidence  
15 pertaining to petitioner’s mental impairment; the court can assess whether an evidentiary hearing is  
16 necessary after reviewing documentary evidence from both sides, as the district court did in  
17 *Orthel*. *See* 795 F.3d at 938, 940. Denying respondent’s motion without prejudice will also allow  
18 respondent to brief the merits rather than the equitable tolling issue—or to brief both the  
19 procedural issues and merits, as the respondent chooses. Accordingly, in the interest of efficiency,  
20 *see* Fed. R. Civ. P. 1, and considering a trial court’s obligation to ensure that the record is  
21 adequately developed, *see Orthel*, 795 F.3d at 940, the court should deny respondent’s motion  
22 without prejudice. If the court adopts these findings and recommendations, a new briefing  
23 schedule will issue. If appropriate, the court will consider appointment of counsel for petitioner.

### 24 **III. Findings and recommendations**

25 We recommend that the court deny respondent’s motion to dismiss, ECF No. 13, without  
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27 noting, “In the instant case, it appears that judicial economy will be better served by adjudicating  
28 Petitioner’s claims on the merits.”).

1 prejudice.

2         These findings and recommendations are submitted to the U.S. District Court Judge presiding  
3 over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the  
4 United States District Court, Eastern District of California. Within 14 days of the service of the  
5 findings and recommendations, any party may file written objections to the findings and  
6 recommendations with the court and serve a copy on all parties. That document must be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” The District Judge will then  
8 review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

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10 IT IS SO ORDERED.

11 Dated: January 23, 2019

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14 UNITED STATES MAGISTRATE JUDGE  
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