

JUL 29 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RALPHAEL HERNANDEZ,  
  
Petitioner - Appellant,  
  
v.  
  
MICHAEL F. MARTEL,\* Warden,  
  
Respondent - Appellee.

No. 10-56616

D.C. No. 5:10-cv-01117-DOC

MEMORANDUM\*\*

Appeal from the United States District Court  
for the Central District of California  
David O. Carter, District Judge, Presiding

Submitted July 22, 2014\*\*\*

Before: GOODWIN, CANBY, and CALLAHAN, Circuit Judges.

California state prisoner Raphael Hernandez appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition as untimely. We

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\* Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Michael F. Martel is substituted for his predecessor, Leland McEwen, as Warden.

\*\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 2253, and we vacate and remand.

Hernandez contends that he timely filed his habeas petition because he is entitled to statutory tolling. The Warden has filed a letter indicating that he does not oppose Hernandez's requested relief of returning the matter to the district court. Having reviewed the record, we agree that Hernandez's section 2254 habeas petition was timely. We vacate the judgment of the district court and remand for consideration of Hernandez's claims on the merits.

**VACATED and REMANDED.**