MICHAEL LAURENCE, State Bar No. 121854
PATRICIA DANIELS, State Bar No. 162868
CLIONA PLUNKETT, State Bar No. 256648
HABEAS CORPUS RESOURCE CENTER
303 Second Street, Suite 400 South
San Francisco, California 94107
Telephone: (415) 348-3800
Facsimile: (415) 348-3873
mlaurence@hcrc.ca.gov
docketing@hcrc.ca.gov

Attorneys for ERNEST DEWAYNE JONES

UNITED STATES DISTRICT COURT

FOR CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Ernest Dewayne Jones, Petitioner, v. Vincent Cullen, Warden of California State Prison at San Quentin, Respondent.	Case No. CV-09-2158-CJC DEATH PENALTY CASE REPLY TO OPPOSITION TO MOTION FOR MORE DEFINITE STATEMENT NO HEARING ORDERED

In June 2008, the California Commission on the Fair Administration of Justice issued its Final Report, concluding – as did California Supreme Court Chief Justice Ronald M. George – that "California's death penalty system is dysfunctional." California Commission on the Fair Administration of Justice, Final Report (hereafter "CCFAJ Report") 114 (3) (2008).[1] Among the several reasons supporting the Commission's findings are: (1) the inability of the California state system to identify and resolve factual disputes in habeas corpus proceedings;[2] (2) the California Supreme

[1] The Death Penalty Report is available on the Commission's website, http://www.ccfaj.org/rr-dp-official.html, with different pagination than the published Final Report. In this Reply, page numbers in the internet version are provided in parentheses following the published Final Report page numbers.

[2] *See, e.g.*, CCFAJ Report at 118 (13) (recommending changes in procedures "to

Court's failure to grant relief in meritorious cases;[3] and (3) delays in the state and federal court proceedings.[4] As a result, California death penalty cases entail numerous years of post-conviction litigation, with the vast majority having the death judgment vacated by federal courts. *See, e.g., id*. at 122, 125 (22, 29) (noting that federal courts ultimately grant relief in 70% of the cases after an average of 16.75 years of litigation).

Petitioner filed the Motion for a More Definite Statement (hereafter "Motion") to address the California system's failure to identify or resolve disputed factual issues and ensure that the parties' positions are framed early in this litigation. Although petitioner provided the California Supreme Court with detailed factual allegations for the constitutional claims asserted in the state habeas corpus petitions and supplied numerous supporting records and declarations, respondent did not address those factual allegations in the state court proceedings. (*See, e.g*., Informal Response to Petition for Writ of Habeas Corpus, filed Apr. 17, 2003, in *In re Jones*, California Supreme Court Case No. S110791.) The state court compounded the problem by failing to issue an order to show cause, requiring respondent to file a return setting forth the factual bases for his legal positions, and conducting an evidentiary hearing to resolve any factual disputes.[5] As noted in the Motion, respondent's Answer to the Petition for Writ of Habeas Corpus filed in this Court (hereafter "Answer") – which is a general denial to each and every allegation – obfuscates his legal positions, will produce piecemeal and wasteful litigation, and perpetuates the dysfunctional process.

---

encourage more factual hearings and findings in state habeas proceedings).

[3] *See, e.g., id*. at 115 (4) (noting that 70% of cases that have been finally resolved by federal courts have resulted in grants of relief).

[4] *See, e.g., id*. at 123 (23) (noting that "much" of the delay in federal habeas corpus proceedings is "attributable to the absence of a published opinion and/or evidentiary hearing in the state courts").

[5] *See* Hon. Arthur L. Alarcon, Remedies for California's Death Row Deadlock, 80. S. Cal. L. Rev. 697, 742-43 (2007) (describing the California informal briefing process and quoting Senator Diane Feinstein's conclusion that the "absence of a thorough explanation of the [California Supreme] Court's reasons for its habeas decisions often requires federal courts to essentially start each federal habeas death penalty appeal from scratch, wasting enormous time and resources").

In his Opposition to Petitioner's Motion for More Definite Statement (hereafter "Opposition"), respondent concedes that "denying knowledge of the facts alleged in the petition was probably not the most accurate response." (Opposition at 8). Nonetheless, respondent asserts that he is exempt from standard pleading requirements by the operation of Title 28 section 2254(d), enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (hereafter "AEDPA"). Respondent's position is incorrect for several reasons.

First, the AEDPA did not alter the pleading requirements in habeas corpus cases or the application of the Rules of Civil Procedure. As Rule 5(b) of the Rules Governing Section 2254 Cases in the United States District Courts ("2254 Rules") states, and respondent concedes, "[t]he answer must address the allegations in the petition." 2254 Rule 5(b), 28 U.S.C. foll. §2254. Respondent states his duty under Rule 5 as simply responding to the "allegations" and stating whether any claim is procedurally barred from federal review. (*See* Opposition at 3.) Respondent's view that his obligations are satisfied by globally stating that petitioner is not entitled to relief – rather than addressing the factual allegations and raising factual defenses to those allegations – overlooks the requirement that the answer "permit the court and the parties to uncover quickly the disputed issues." Advisory Committee Notes to 2254 Rule 5.[6] Respondent's reliance on *Williams v. Calderon*, 52 F.3d 1465 (9th Cir. 1995), as support for his position that the answer does not require fact-by-fact responses, is misplaced. (Opposition at 3-4.) In *Williams*, "[t]he answer responded to the petition on the merits, laying out *the state's alternative view of the facts* and the law." 52 F.3d at 1483 (emphasis added); *see also* Federal Judicial Center, Resource Guide for

[6] Respondent addresses the Advisory Committee Notes by asserting that the Answer permits the parties to uncover the disputed issues and repeating his general legal position concerning section 2254(d). (Opposition at 5.) The Opposition, however, does not explain how such a general denial allows petitioner or this Court to discern respondent's "defenses" premised on a counter view of the facts presented in the Petition.

Managing Capital Cases, Volume II: Habeas Corpus Review of State Capital Convictions 16 (2010), available at http://www.fjc.gov/public/pdf.nsf/lookup/Hab10-00.pdf/$file/Hab10-00.pdf ("The scope of the state's answer … will vary depending on the type of petition the petitioner files.… However, if the petition is a comprehensive filing that includes all grounds for relief, supporting facts, and legal points and authorities, the answer should also be comprehensive, alleging all procedural and substantive defenses."). In this case, petitioner and the Court remain uninformed of the disputed issues because respondent simply did not provide his view of the facts alleged in the Petition.

Second, respondent's reliance on the AEDPA as support for his assertion that he "need not specifically aver as to which allegations are true, which are untrue, and which are unknown" to him because the California Supreme Court's rejection of all claims was "reasonable" is similarly unavailing. (Opposition at 3.) Respondent's repeated invocation of Title 28 section 2245(d) ignores the reality that the California Supreme Court denied the state habeas corpus petitions without any factual development, findings, or legal conclusions. Assuming that section 2245(d) applies to, and limits the review of, state court summary adjudications,[7] any application of that provision must be made after this Court determines whether the facts presented by petitioner establish a federal constitutional claim. *See, e.g., Davis v. Woodford*, 446 F.3d 957, 960 (9th Cir. 2006) ("[Petitioner] first raised the claim in a habeas petition before the California Supreme Court, and that petition was denied without comment. Therefore, we undertake an independent review of the record."); *Delgado v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000) ("when the state court does not supply reasoning for its decision," the federal court is required to conduct "an independent review of the record" "to determine whether the state court clearly erred in its application of

[7] The United States Supreme Court has not resolved whether section 2254(d) applies to an unexplained summary denial. *Knowles v. Mirzayance*, 556 U.S. __, 129 S. Ct. 1411, 1418 n.2, 173 L. Ed. 2d 251 (2009).

controlling federal law.").[8] Without the necessary, requested fact-development proceedings, it is impossible for this Court to determine whether the state court decisions were "contrary to, or an unreasonable application of, United States Supreme Court precedent, or resulted in a decision that was unreasonable in light of the evidence presented in the state court proceeding." *See, e.g., Killian v. Poole*, 282 F.3d 1204, 1208 (9th Cir. 2002) (evidentiary hearing proper because "[h]aving refused [petitioner] an evidentiary hearing on the matter, the state cannot argue now that the AEDPA deference is owed the factual determinations of the California courts"); *Marshall v. Hendricks*, 307 F.3d 36 (3rd Cir. 2002) ("At the end of the day, our ruling is that the District Court erred in concluding that the State's application of *Strickland* was reasonable. We conclude that the District Court could not make that determination without conducting an evidentiary hearing to explore the claimed ineffectiveness of counsel.").[9]

---

[8] *See also* CCFAJ Report at 149 (89-90) (under the California summary denial procedure, federal courts do not have the benefit of a prior evidentiary hearing or a written order with reasons for its decision.)

[9] Thus, it is unsurprising that, as of June 2008, when the CCFAJ Final Report was published, in every habeas corpus case that has been finally resolved by the federal courts, the district courts were required to conduct an evidentiary hearing because the facts were not developed in the state court proceedings. *See, e.g., Alcala v. Woodford*, 334 F.3d 862 (9th Cir. 2003); *Ainsworth v. Woodford*, 268 F.3d 868 (9th Cir. 2001); *Bean v. Calderon*, 163 F.3d 1073 (9th Cir. 1998); *Bloom v. Calderon*, 132 F.3d 1267 (9th Cir. 1997); *Caro v. Woodford*, 280 F.3d 1247 (9th Cir. 2002); *Clark v. Brown*, 442 F.3d 708 (9th Cir. 2006); *Coleman v. Calderon*, 210 F.3d 1047 (9th Cir. 2000); *Daniels v. Woodford*, 428 F.3d 1181 (9th Cir. 2005); *Douglas v. Woodford*, 316 F.3d 1079 (9th Cir. 2003); *Dyer v. Calderon*, 151 F.3d 970 (9th Cir. 1998); *Frierson v. Woodford*, 463 F.3d 982 (9th Cir. 2006); *Ghent v. Woodford*, 279 F.3d 1121 (9th Cir. 2002); *Grant v. Brown*, Order, Civ. S-90-0779 (E.D. Cal. Jan. 12, 2006); *Hamilton v. Vasquez*, 17 F.3d 1149 (9th Cir. 2000); *Hayes v. Brown*, 399 F.3d 972 (9th Cir. en banc 2002); *Hendricks v. Calderon*, 70 F.3d 1032 (9th Cir. 1995); *Hovey v. Ayers*, 458 F.3d 892 (9th Cir. 2006); *Howard v. Calderon*, Order, CV 88-7240 (C.D. Cal. Sept. 26, 1996); *Hunter v. Vasquez*, Order, C 90-3275 (N.D. Cal. Dec. 9, 1998); *Jackson v. Brown*, 513 F.3d 1057 (9th Cir. 2008); *Jackson v. Calderon*, 211 F.3d 1148 (9th Cir. 2000); *Jennings v. Woodford*, 290 F.3d 1006 (9th Cir. 2002); *Karis* v. Calderon, 283 F.3d 1117 (9th Cir. 2002); *Keenan v. Woodford*, 2001 WL 835856 (Dec. 21, 1999); *Malone v. Vasquez*, Order, 96-4040-WJR, (C.D. Cal Jan. 11, 1999); *Mayfield v. Woodford*, 270 F.3d 915 (9th Cir. 2001); *McDowell v. Calderon*, 130 F.3d 833 (9th Cir. en banc 1997); *McLain v. Calderon*, 134 F.3d 1383 (9th Cir. 1998); *Melton v. Vasquez*, Order, CV 89-4182 (C.D. Cal. Jan. 19, 2007); *Moore v. Calderon*, 108 F.3d 261 (9th Cir. 1997); *Morris v. Woodford*, 273 F.3d 826 (9th Cir. 2002); *Murtishaw v.*

Third, respondent's request to forestall the identification of "factual disputes" until "further briefing" (Opposition at 5) will result in unnecessary delay and piecemeal litigation, both situations counter to the purpose of AEDPA. *See, e.g.*, *Rhines v. Weber*, 544 U.S. 269, 277, 125 S. Ct. 1528, 1534, 161 L. Ed. 2d 440 (2005) (recognizing that the AEDPA seeks to streamline federal habeas corpus proceedings). In light of respondent's general denial of each allegation in the Petition, petitioner must draft the Traverse and the Motion for an Evidentiary Hearing on the assumption that respondent will dispute every fact until some undefined date when respondent will reveal his true legal position.[10] Thus, petitioner is required to undertake a renewed investigation to support and corroborate the facts, when respondent ultimately will not dispute many, if not most of those facts, at an evidentiary hearing.[11]

Woodford, 255 F.3d 926 (9th Cir. 2001); *Odle v. Woodford*, 238 F.3d 1084 (9th Cir. 2001); *Ramirez v. Vasquez*, Order, 91-CV-03802 (C.D. Cal. Feb. 5, 2008); *Sandoval v. Calderon*, 241 F.3d 765 (9th Cir. 2001); *Silva v. Woodford*, 416 F.3d 980 (9th Cir. 2005); *Wade v. Calderon*, 29 F.3d 1312 (9th Cir. 1994); *Williams v. Vasquez*, Order, 90-1212R (S.D. Cal. Sept. 9, 1993); *Allen v. Woodford*, 395 F.3d 979 (9th Cir. 2005); *Anderson v. Calderon*, 232 F.3d 1053 (9th Cir. 2000); *Babbitt v. Calderon*, 151 F.3d 1170 (9th Cir. 1998); *Beardslee v. Woodford*, 358 F.3d 560 (9th Cir. 2004); *Bonin v. Calderon*, 59 F.3d 815 (9th Cir. 1995); *Davis v. Woodford*, 384 F.3d 628 (9th Cir. 2004); *Fields v. Woodford*, 503 F.3d 755 (9th Cir. 2007); *Harris v. Pulley*, 692 F.2d 1189 (9th Cir. 1982), *rev'd*, 465 U.S. 37 (1984); *Morales v. Calderon*, 388 F.3d 1159 (9th Cir. 2004); *Rayley v. Ylst*, 470 F.3d 792 (9th Cir. 2006); *Rich v. Calderon*, 187 F.3d 1064 (9th Cir. 1999); *Sims v. Brown*, 430 F.3d 1220 (9th Cir. 2005); *Siripongs v. Calderon*, 133 F.3d 732 (9th Cir. 1998); *Thompson v. Calderon*, 120 F.3d 1045 (9th Cir. 1997), *rev'd*, 523 U.S. 538 (1998); *Williams v. Calderon*, 83 F.3d 281 (9th Cir. 1996); *Williams v. Woodford*, 384 F.3d 567 (9th Cir. 2004).

[10] Respondent does not explain why petitioner and this Court must proceed without this critical information at this stage. Even if respondent intends to state his position with respect to the facts in dispute in response to the Motion for an Evidentiary Hearing, petitioner will be forced to expend time and resources preparing the Traverse and the evidentiary hearing motion unaware of respondent's factual positions.

[11] Respondent asserts that presentation of new facts (and presumably new witnesses in support of facts already alleged) to this Court would render a claim unexhausted. (Opposition at 8) However, respondent has confused the issue: claims, not facts, must be exhausted. *See Batchelor v. Cupp*, 693 F.2d 859, 862 (9th Cir. 1982). "Exhaustion [ ] does not require that a habeas petitioner ... present to the state courts every piece of evidence supporting his federal claims in order to satisfy the exhaustion requirement. Rather, to exhaust the factual basis of the claim, the petitioner must only provide the state court with the operative facts, that is, all of the facts necessary to give application to the constitutional principle upon which [the petitioner] relies." *Davis v. Silva*, 511 F.3d. 1005, 1009 (9th Cir. 2008) (internal citations

Finally, respondent's acknowledgement that his denial of all facts in the Petition was inaccurate and that he regards the state court record as the "best evidence of the relevant facts" (Opposition at 8) constitutes an admission of the insufficiency of his Answer. Respondent relies on *People v. Duval*, 9 Cal. 4th 464, 37 Cal. Rptr. 2d 259 (1995), as authority for the proposition that the state court presumes true those facts alleged by petitioner at the initial pleading stage of state habeas corpus proceedings. *Duval* involved the sufficiency of the state's return to an order to show cause. The court in *Duval* discussed the court's disapproval of returns containing only general denials, *id*. at 479-80, and explained that a return containing a general denial indicates the state's "willingness to rely on the record." *Id*. at 479 (quoting *In re Lewallen*, 23 Cal 3d. 274, 278, 152 Cal. Rptr. 528 (1979)). The court also set forth the rule that when a "respondent is deemed to have admitted those material factual allegations that they fail to dispute," the issues may be resolved without resort to an evidentiary hearing. *Id*. (citing *In re Sixto*, 48 Cal. 3d 1247, 1252, 259 Cal. Rptr. 491 (1989)). By analogy, respondent's general denial in the Answer and the inference that there will be no evidentiary hearing in this case (Opposition at 2) appear to amount to an admission of all material factual allegations. If this is not respondent's view, then he should be required to take a position with regard to the facts in this case and to put forward his differing view of those facts.

CONCLUSION

Petitioner's Motion for a More Definite Statement merely requests that this Court order respondent to disclose his defenses to the legal and factual allegations contained in the Petition. Such disclosure is required by the Rules Governing Section 2254 Cases in the United States District Courts and the Rules of Civil Procedure and to

---

omitted). New facts render a claim unexhausted only where they "fundamentally alter the legal claim already considered by the state courts." *Vasquez v. Hillery*, 474 U.S. 254, 257-59, 106 S. Ct. 617, 620-22, 88 L. Ed. 2d 598 (1986), *overruled on other grounds*, 8 U.S.C. § 2254(c).

avoid wasteful and inefficient litigation in this case. For the foregoing reasons and the reasons previously stated in, the motion should be granted.

Dated: May 10, 2010

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

By: /s/ Michael Laurence
MICHAEL LAURENCE
Attorneys for Petitioner Ernest Dewayne Jones