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19 UNITED STATES DISTRICT COURT  
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION  
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22 Ernest Dewayne Jones,  
 23 Petitioner,  
 24 v.  
 25 Michael Martel, Acting Warden of  
 California State Prison at San Quentin,  
 26 Respondent  
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Case No. CV-09-2158-CJC  
 DEATH PENALTY CASE  
 JOINT STIPULATION AND  
 [PROPOSED] ORDER RE:  
 SCHEDULE FOR MERITS  
 BRIEFING UNDER 28 U.S.C. §  
 2254(d)(1) and 2254(d)(2)

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1 On March 26, 2012, this Court denied petitioner’s motion for an evidentiary  
2 hearing, without prejudice, and ordered the parties to submit a proposed briefing  
3 schedule. Order, Mar. 26, 2012, ECF No. 75. The Court ordered petitioner to set forth  
4 how each claim satisfies 28 U.S.C. section 2254(d)(1) and/or section 2254(d)(2) of the  
5 Antiterrorism and Effective Death Penalty Act on the basis of the record before the  
6 state court.

7 Counsel for the parties have conferred regarding the proposed briefing schedule.  
8 Although counsel are uncertain whether the Court’s Order of March 26, 2012  
9 contemplates the merits briefing of all claims in the Petition or only those claims in  
10 petitioner’s motion for evidentiary hearing, the parties agree that it is in the interest of  
11 judicial economy and efficiency for the parties to brief the merits of all claims in the  
12 Petition rather than bifurcating the merits briefing of claims.

13 Counsel for petitioner informed counsel for respondent of the substantial  
14 litigation demands on Mr. Michael Laurence and Ms. Cliona Plunkett over the next  
15 several months, and proposed a briefing schedule that would grant petitioner eight  
16 months in which to prepare his initial briefing. Counsel for respondent stated his  
17 position that each party should have ninety days to prepare their initial briefing. The  
18 parties were unable to reach agreement as to a proposed briefing schedule and  
19 therefore submit separate proposed briefing schedules.

20 **Petitioner’s Proposed Briefing Schedule:**

21 This Court’s order requests a schedule for the filing of extensive merits briefing  
22 on the thirty claims contained in the Petition during an extraordinarily demanding time  
23 for petitioner’s counsel. The exponential increase in workload occasioned by a  
24 significant number of unexpected staff departures at the Habeas Corpus Resource  
25 Center (HCRC)—including a staff attorney assigned to petitioner’s case—and the  
26 number of upcoming filings that petitioner’s counsel have in other capital cases,  
27 coupled with the complexity of the factual and legal issues presented by the record in  
28 this case, precludes the filing of the merits briefing prior to December 2012. Ms.

1 Patricia Daniels, who was assigned to represent petitioner throughout the state court  
2 proceedings and in this Court, resigned her position at the HCRC, and thus is  
3 unavailable to prepare the merits briefing. In the next eight month period, Mr.  
4 Laurence must prepare and file state habeas corpus petitions in two cases, informal  
5 reply briefs in three state cases, and a federal habeas corpus petition in two cases. In  
6 addition, Mr. Laurence must prepare and file post-evidentiary hearing briefing in  
7 *Ashmus v. Chappelle*, No. 93-CV-00594 (N.D. Cal.) and a motion for an evidentiary  
8 hearing in *Taylor v. Chappelle*, No. CV-07-6602 (C.D. Cal.). Ms. Plunkett must  
9 devote significant time to matters in other cases in the next six months. She is  
10 preparing a denial or traverse to a return to an order to show cause with a due date of  
11 May 7, 2012. She also is involved in the preparation of a state habeas corpus petition  
12 with an estimated due date of November 13, 2012. Moreover, the HCRC is obliged to  
13 participate in the California Judicial Branch's mandatory furlough program, which  
14 requires counsel to take one furlough day a month.

15 Counsel anticipates the need to devote a substantial amount of time to  
16 researching and drafting petitioner's entitlement to relief on each of the thirty claims, a  
17 task that has not yet been performed by counsel. In addition, as previously noted by  
18 counsel, briefing the application of 28 U.S.C. section 2254(d) to petitioner's claims in  
19 light of the recent United States Supreme Court decisions, including *Martinez v. Ryan*,  
20 \_\_\_ U.S. \_\_\_, slip op. at 6 (Mar. 20, 2012) (holding that "[i]nadequate assistance of  
21 counsel at initial-review collateral proceedings may establish cause for a prisoner's  
22 procedural default of a claim of ineffective assistance at trial"); *Missouri v. Frye*, \_\_\_  
23 U.S. \_\_\_ (Mar. 21, 2012) (holding that trial counsel's failure to inform defendant of  
24 state's plea offers was deficient representation under *Strickland v. Washington*, 466  
25 U.S. 668 (1984)); *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_ (Mar. 21, 2012) (holding, on habeas  
26 corpus, that trial counsel's deficient advice concerning state's plea offer was  
27 prejudicial under *Strickland v. Washington*, 466 U.S. 668 (1984); and that 28 U.S.C.  
28 section 2254(d) does not bar habeas corpus relief), *Cullen v. Pinholster*, 563 U.S. \_\_\_,

1 131 S. Ct. 1388 (2011) (holding that analysis under 28 U.S.C. section 2254(d) is  
2 limited to the record before the state court), and *Harrington v. Richter*, \_\_ U.S. \_\_, 131  
3 S. Ct. 770 (2011) (holding that the deference required under 2254(d)(1) applies to  
4 summary denials), will require careful analysis, particularly on issues that are affected  
5 by application of those cases by the Court of Appeals for the Ninth Circuit.

6 In light of the workload demands, discussed above, and the substantial work  
7 envisioned by this Court's order, counsel for petitioner proposes the following:

8 Petitioner's opening brief addressing how each claim satisfies 28 U.S.C. section  
9 2254(d)(1) and/or (d)(2) will be filed no later than December 17, 2012.

10 Respondent's opposition shall be filed ninety (90) days after petitioner's  
11 opening brief.

12 Petitioner's reply to respondent's opposition will be filed no later than ninety  
13 (90) days after respondent's opposition.

14 **Respondent's Proposed Briefing Schedule:**

15 Counsel for respondent submits that the eight-month period proposed by  
16 petitioner to file his brief is unduly lengthy and unwarranted. Petitioner's claims for  
17 relief have already been presented in a 432-page Petition. At this point in the  
18 litigation, Petitioner need only brief why the state court's denial of those claims  
19 violated 28 U.S.C. section 2254(d)(1) and/or (d)(2). Furthermore, the briefing will  
20 necessarily be limited in scope by the requirement that the discussion be limited to  
21 matters contained in the state court record. Counsel for respondent also notes that the  
22 Petition was filed in this case over two years ago, on March 10, 2010.

23 Therefore, counsel for respondent proposes the following:

24 Petitioner's opening brief addressing how each claim satisfies 28 U.S.C. section  
25 2254(d)(1) and/or (d)(2) will be filed no later than July 16, 2012.

26 Respondent's opposition shall be filed ninety (90) days after petitioner's  
27 opening brief.

28 Petitioner's reply to respondent's opposition will be filed no later than forty-five


1 (45) days after respondent's opposition.

2 The parties stipulate that either party may, based on good cause, request to  
3 extend the deadline for filing any of the above referenced pleadings.

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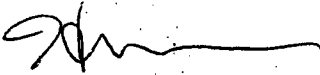
Dated: April 7, 2012

Respectfully submitted,  
HABEAS CORPUS RESOURCE CENTER

  
By: MICHAEL LAURENCE  
Attorneys for Ernest Dewayne Jones

Dated: April 12, 2012

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

  
By: HERBERT S. TETEF  
Deputy Attorney General  
Attorneys for Respondent

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

Ernest Dewayne Jones,  
Petitioner,

v.

Vincent Cullen, Acting Warden of  
California State Prison at San Quentin,  
Respondent.

Case No. CV-09-2158-CJC

DEATH PENALTY CASE

[PROPOSED] ORDER RE:  
SCHEDULE FOR MERITS  
BRIEFING UNDER 28 U.S.C. §  
2254(d)(1) and 2254(d)(2)

The Court is in receipt of the parties' Joint Stipulation Re: Schedule for Merits Briefing Under 28 U.S.C. § 2254(d)(1) and 2254(d)(2) lodged with the Court on April 12, 2012. Petitioner shall file his opening brief addressing how each claim satisfies 28 U.S.C. section 2254(d)(1) and/or (d)(2) on or before \_\_\_\_\_, Respondent shall file an Opposition \_\_\_\_\_ days after Petitioner's opening brief, and Petitioner shall file a Reply \_\_\_\_\_ days after Respondent's Opposition.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
CORMAC J. CARNEY  
United States District Judge

1 Submitted on April 12, 2012

2 By:

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8 \_\_\_\_\_  
9 /s/

10 MICHAEL LAURENCE  
11 Attorney for Petitioner

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