

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

6 Attorneys for Petitioner ERNEST DEWAYNE JONES

7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION  
10

11 Ernest Dewayne Jones,

12 Petitioner,

13 v.

14 Kevin Chappell, Acting Warden of  
California State Prison at San Quentin,

15 Respondent.  
16  
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Case No. CV-09-2158-CJC

DEATH PENALTY CASE

PETITIONER'S EX PARTE  
APPLICATION FOR A 180-DAY  
EXTENSION OF TIME TO FILE AN  
OPENING BRIEF ON THE  
APPLICATION OF 28 U.S.C. §  
2254(d)

18 Pursuant to Rule 7-19 of the Local Rules for the United States District Court for  
19 the Central District of California, Petitioner Ernest Dewayne Jones hereby applies for  
20 an order granting a 180-day extension of time, to and including March 11, 2013, to file  
21 his Opening Brief addressing how each of his claims for relief in his Petition for Writ  
22 of Habeas Corpus satisfies 28 U.S.C. section 2254(d)(1) and/or (d)(2). Petitioner's  
23 brief is currently due to be filed September 10, 2012.

24 Petitioner has advised Respondent's counsel of this request, and counsel objects  
25 to the length of time requested in the application. The contact information for counsel  
26 for Respondent is as follows:  
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1 HERBERT S. TETEF  
2 Deputy Attorney General  
3 300 South Spring Street, Suite 1702  
4 Los Angeles, CA 90012  
5 Telephone: (213) 897-0201  
6 Facsimile: (213) 897-6496  
7 Email: DocketingLAAWT@doj.ca.gov

8 The reasons for this application are set forth in the attached Declaration of  
9 Michael Laurence, Esq. As counsel's declaration explains, unanticipated  
10 developments compel this request for an extension to file the Opening Brief until and  
11 including March 11, 2013.

12 Dated: September 4, 2012

Respectfully submitted,

HABEAS CORPUS RESOURCE CENTER

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15 /s/ Michael Laurence

16 By: Michael Laurence  
17 Attorney for Ernest Dewayne Jones  
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**DECLARATION OF MICHAEL LAURENCE IN SUPPORT OF  
PETITIONER'S EX PARTE APPLICATION FOR A 180-DAY EXTENSION  
OF TIME TO FILE HIS OPENING BRIEF ON THE APPLICATION OF 28  
U.S.C. § 2254(d)**

I, Michael Laurence, declare as follows:

1. I am an attorney at law admitted to practice by the State of California and before this Court. I am the Executive Director of the Habeas Corpus Resource Center. I was appointed as lead counsel for Petitioner Ernest DeWayne Jones in the above-referenced matter by this Court in an order dated April 14, 2009.

2. On March 26, 2012, this Court issued an order denying Petitioner's Motion for Evidentiary Hearing and directing Petitioner to file an opening brief addressing how each of his thirty claims for relief satisfies 28 U.S.C. section 2254(d)(1) and/or (d)(2). The parties met and conferred, and filed a proposed briefing schedule with the Court on April 12, 2012. Joint Stipulation And [Proposed] Order Re: Schedule For Merits Briefing Under 28 U.S.C. § 2254(d)(1) and 2254(d)(2) ("Joint Stipulation"), filed Apr. 12, 2012, ECF No. 76. On April 16, 2012, this Court issued a briefing schedule ordering Petitioner to file his opening brief by September 10, 2012.

3. Due to anticipated and unanticipated litigation commitments in other cases, counsel have not been able to devote the time required to prepare Petitioner's brief by the current due date. As explained in the Joint Stipulation, counsel requested December 17, 2012 as the due date for the filing of the Opening Brief because of counsel's extraordinary workload. Joint Statement at 3 (noting that lead counsel was required to prepare and file state habeas corpus petitions in two cases, informal reply briefs in three state cases, and a federal habeas corpus petition in two cases and post-evidentiary hearing briefing and a motion for an evidentiary hearing in two federal cases). This workload unexpectedly increased exponentially with the departure of experienced attorneys with filing deadlines merely months from their separation dates. I filed a state habeas petition in California Supreme Court Case No. S049626 on

1 August 6, 2012. In that case, one of the assigned staff attorneys resigned just months  
2 before the petition was due, requiring me to assume unanticipated additional work to  
3 prepare the petition. I also was required to devote a significant amount of time to assist  
4 with the preparation of the amended petition in California Supreme Court Case No.  
5 S167195, which was filed on August 27, 2012. In that case, one assigned staff attorney  
6 went on family leave in June 2012. In addition, since this Court's April 16, 2012  
7 order, I have filed a 71-page post-evidentiary hearing reply brief in *Ashmus v.*  
8 *Chappell*, No. 93-CV-00594-TEH (N.D. Cal.), and a 542-page evidentiary hearing  
9 brief in *Taylor v. Chappell*, No. CV-07-6602 (C.D. Cal.).

10 4. In addition, I was required to devote a great amount of time to responding  
11 to unforeseen litigation in *People v. Sims*, Los Angeles Superior Court Case No.  
12 A591707, in which I am counsel of record. Despite the existence of a federal stay of  
13 execution and a state court injunction prohibiting executions, on May 1, 2012, the Los  
14 Angeles County District Attorney filed a motion asking the court to set a hearing to set  
15 an execution date for Mr. Mitchell Sims and seeking to compel the California  
16 Department of Corrections to execute him using a one drug protocol. Litigating that  
17 motion has involved significant research, briefing, preparation for hearings, and  
18 arguing at hearings in Los Angeles. In addition to drafting extensive pleadings in the  
19 matter, I am required to prepare for and attend an evidentiary hearing scheduled for  
20 September 10, 2012, on the CDCR's ability to conduct single-drug execution.

21 5. Finally, I am responsible for drafting and filing the petition in *Maury v.*  
22 *Chappell*, No. 2:12-cv-1043 (E.D. Cal.), on or before October 24, 2012.

23 6. Similarly, Ms. Cliona Plunkett has been unable to devote time to the  
24 Opening Brief. Beginning in mid-April 2012, Ms. Plunkett devoted the majority of her  
25 time to the preparation of a denial to a return to an order to show cause that was filed  
26 on May 7, 2012 in San Mateo County Superior Case No. SC31145. In addition to  
27 responding to each of the material allegations in the return why petitioner in that case  
28 is ineligible for the death penalty within the meaning of *Atkins v. Virginia*, 536 U.S.

1 304 (2002), the denial also had to address deficiencies in the pleadings.

2 7. Over the next three months, Ms. Plunkett and I must prepare and file a  
3 state habeas corpus petition due on November 28, 2012, in California Supreme Court  
4 Case No. S029843. Since May, Ms. Plunkett has had to focus almost exclusively on  
5 the preparation of this state habeas petition due to the unexpected resignation in June  
6 of the other assigned staff attorney and my inability to assist prior to my August state  
7 habeas filing deadlines. Preparation of the petition in that case is complicated because  
8 the case involves multiple codefendants and multiple victims. The schedule for filing  
9 the state petition in that case, therefore, makes it impossible to meet our deadline to file  
10 our opening brief in this case. However, there is a collateral benefit to extending the  
11 deadline in this case: should California voters adopt Proposition 34 on November 6,  
12 section 2254(d) briefing on Petitioner's penalty phase claims will become moot,  
13 thereby conserving judicial resources.

14 8. Since this Court issued its March 26, 2012 order, HCRC has gained  
15 substantially more experience briefing § 2254(d) issues, including a (1) Motion for an  
16 Evidentiary Hearing in *Taylor v. Chappell*, No. CV 07-6602-DMG (C.D. Cal.) (filed  
17 6/13/2012); (2) Petitioner's Reply Brief on Claims Four and Five in *Ashmus v.*  
18 *Chappell*, No. 3:93-cv-00594-TEH (N.D. Cal.) (filed 5/3/12); and (3) Petitioner's 28  
19 U.S.C. § 2254(d) Brief in *Coffman v. Johnson*, No. CV 06-7304 ABC (C.D. Cal.) (to  
20 be filed this month).

21 9. In each of these cases, the California Supreme Court failed to provide any  
22 reasons for denying all of the petitioner's claims without an evidentiary hearing.  
23 Consequently, we have learned that section 2254(d) briefing requires us to devote  
24 substantial time to researching the California Supreme Court's published decisions on  
25 similar claims to determine the court's legal rationale for rejecting our clients' claims.  
26 In addition, the emerging case law interpreting *Cullen v. Pinholster*, 131 S. Ct. 1388  
27 (2011), and *Harrington v. Richter*, 131 S. Ct. 770 (2011) is novel and complex. In our  
28 experience, the resulting section 2254(d) briefs are complicated and voluminous.

1           10.    On August 20, 2012, Ms. Plunkett contacted Mr. Herbert Tetef, counsel  
2 for Respondent, and informed him of the substance of this request for additional time,  
3 including the proposed due date. Mr. Tetef authorized petitioner's counsel to represent  
4 to the Court that he objects to the length of time being requested.

5           11.    Granting this extension will permit counsel to draft and edit the Opening  
6 Brief to ensure the avoidance of repetitive arguments and thus conserve the parties'  
7 and this Court's limited time. Given the significant and unanticipated case obligations  
8 that counsel must fulfill through the remainder of 2012, and the work that must be  
9 completed on the Opening Brief, I anticipate filing the Opening Brief on or before  
10 March 11, 2013.

11           The foregoing is true and correct and executed under penalty of perjury under  
12 the laws of the United States on September 4, 2012.

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15                               /s/ Michael Laurence  
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