

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
 4 San Francisco, California 94107
 Telephone: (415) 348-3800
 5 Facsimile: (415) 348-3873
 Email: docketing@hcrc.ca.gov
 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

11 Ernest Dewayne Jones,
 12 Petitioner,

13 v.

14 Kevin Chappell, Warden of California
 State Prison at San Quentin,
 15 Respondent.

Case No. CV-09-2158-CJC

DEATH PENALTY CASE

PETITIONER'S EX PARTE
 APPLICATION FOR AN
 EXTENSION OF TIME TO FILE
 BRIEF ON THE APPLICATION OF
 28 U.S.C. § 2254(d) TO NON-
 EVIDENTIARY HEARING CLAIMS

17 Pursuant to Rule 7-19 of the Local Rules for the United States District Court for
 18 the Central District of California, Petitioner Ernest Dewayne Jones hereby applies for
 19 an order granting a thirty (30) day extension of time, to and including February 12,
 20 2014, to file Petitioner's 28 U.S.C. § 2254(d) Brief on Non-Evidentiary Hearing
 21 Claims. Petitioner does not request any additional time to file the Petitioner's Reply
 22 Brief on the Application of 28 U.S.C. § 2254(d) to Evidentiary Hearing Claims.

23 On November 12, 2013, this Court ordered Petitioner to file by January 13,
 24 2014, a reply brief addressing each of the claims raised in Petitioner's Opening
 25 2254(d) Brief on Evidentiary Hearing Claims and each of the remaining claims in the
 26 Petition for Writ of Habeas Corpus. ECF. No. 96. As explained in the attached
 27 Declaration of Michael Laurence, counsel will complete and file the reply briefing on
 28

1 the evidentiary hearing claims, but is unable to complete the briefing on the remaining
2 claims. Thus, Petitioner requests an extension of time of thirty (30) days, to and
3 including February 12, 2014, by which to file the brief on the non-evidentiary hearing
4 claims.

5 Petitioner has advised Respondent's counsel of this request, and counsel has
6 stated that he does not have a position on the extension of time requested in the
7 application. The contact information for counsel for Respondent is as follows:

8 HERBERT S. TETEF
9 Deputy Attorney General
10 300 South Spring Street, Suite 1702
11 Los Angeles, CA 90012
12 Telephone: (213) 897-0201
13 Facsimile: (213) 897-6496
14 Email: DocketingLAAWT@doj.ca.gov

15 This request is based on good cause as set forth in the attached Declaration of
16 Michael Laurence, Esq.

17 Dated: January 7, 2014

18 Respectfully submitted,

19 HABEAS CORPUS RESOURCE CENTER

20 /s/ Michael Laurence

21 By: Michael Laurence
22 Attorney for Ernest Dewayne Jones
23
24
25
26
27
28

1 **DECLARATION OF MICHAEL LAURENCE**

2 I, Michael Laurence, declare as follows:

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

7 2. On March 26, 2012, this Court issued an order denying without prejudice
8 Petitioner’s Motion for Evidentiary Hearing and directing Petitioner to file an opening
9 brief addressing how each of his claims for relief satisfies 28 U.S.C. section 2254(d).
10 The parties met and conferred, and filed a proposed briefing schedule with the Court
11 on April 12, 2012. Joint Stipulation And [Proposed] Order Re: Schedule For Merits
12 Briefing Under 28 U.S.C. § 2254(d)(1) and 2254(d)(2) (“Joint Stipulation”), filed Apr.
13 12, 2012, ECF No. 76.

14 3. Petitioner filed His Opening 2254(d) Brief On Evidentiary Hearing
15 Claims (“Opening Brief”) on December 10, 2012. As explained in the Opening Brief,
16 counsel for Petitioner limited his briefing to the evidentiary hearing claims because of
17 this Court’s order limiting the size of the brief to 100 pages and anticipated that full
18 briefing on the remaining claims would occur following this Court’s determination
19 whether to conduct an evidentiary hearing, and proceedings consistent with that
20 determination. ECT No. 84 n.1.

21 4. On June 15, 2013, Respondent filed an Opposition to Petitioner's Opening
22 § 2254(d) Brief on Evidentiary Hearing Claims. Pursuant to Petitioner’s application
23 and this Court’s orders, Petitioner’s Reply was due to be filed November 12, 2013.

24 5. On November 8, 2014, I submitted a request for a sixty (60) day extension
25 to file the Reply given the extraordinary and unanticipated workload since receiving
26 the Opposition, including my obligations in the filings of four state habeas corpus
27 petitions and two informal replies in California Supreme Court Case Nos. S180670,
28 S212038, S166315, S212256, S154541, and S121365.

1 6. On November 12, 2013, this Court granted the extension request to and
2 including January 13, 2014, but ordered Petitioner to file a reply brief addressing each
3 of the claims raised in Petitioner’s Opening 2254(d) Brief on Evidentiary Hearing
4 Claims and each of the remaining claims in the Petition for Writ of Habeas Corpus.
5 ECF. 96. The Court further stated that “[a]ny further requests for an extension are
6 strongly disfavored.” ECF 96 at 2.

7 7. Mindful of the Court’s desire to have briefing on all of the claims
8 completed by January 13, 2014, I worked diligently on drafting the brief. The reply
9 briefing on each of the claims raised in the Opening Brief will be completed and filed
10 on January 13, 2014. Nonetheless, I will be unable to complete the briefing on the
11 remaining claims by that date because of staff departures, my commitments in other
12 cases, and the complexity of the claims remaining to be briefed.

13 8. As the Court is aware, on October 29, 2013, Ms. Bethany Lobo resigned
14 from her position at the HCRC, effective November 15, 2014. Ms. Lobo was
15 responsible for briefing half of the Opening Brief and, had she remained at the HCRC,
16 would have been assigned to research and draft the briefing on half of the non-
17 evidentiary hearing claims. Her departure required me to absorb a significant amount
18 of her responsibilities. I also was forced to assign other attorneys, without any
19 familiarity with the record or the work conducted to prepare and file the habeas corpus
20 petition, to research and draft briefing on these claims. My ability to shift work to
21 other HCRC attorneys, however, has been impeded by the extraordinary case load that
22 the office has had in 2013 and will continue to have in 2014.¹ In addition, the strain on
23 staff has resulted in five attorneys announcing their resignations since August 2013,
24 further limiting my ability to assign additional counsel to Mr. Jones’s case.

25 9. My ability to absorb the work on the non-evidentiary hearing claims has
26

27 ¹ In 2013, the HCRC filed eight habeas corpus petitions and seven replies to
28 informal responses in the California Supreme Court. I anticipate that we will file nine
state habeas corpus petitions and nine replies to informal responses in 2014.

1 been hindered by my responsibilities in filings since this Court's order of November
2 12, 2013. On December 2, 2013, I filed a 354-page Reply to the Informal Response in
3 California Supreme Court Case No. S199918, in which the California Supreme Court
4 denied my requests for extensions of time although one of the two state attorneys
5 assigned to the case was on protected family leave from August 2013 to mid-January
6 2014. In addition, because of staffing shortages, I was required to provide assistance in
7 the filing of a state habeas corpus petition in California Supreme Court Case No.
8 S214543, which was filed on November 12, 2013; a state habeas corpus petition in
9 California Supreme Court Case No. S215554, which was filed on December 30, 2013;
10 and a reply to the informal response in California Supreme Court Case No. 199915,
11 which was filed on January 6, 2014. As I previously described to the Court, I also am
12 the supervisor on several cases with filings deadlines in early 2104. Nonetheless, I
13 diligently have been working on the briefing as directed by this Court's order.

14 10. Ms. Plunkett -- who is the sole staff attorney assigned to Mr. Jones's case
15 -- has devoted substantial time to drafting the claims for which she is responsible, but
16 also has experienced competing demands from other cases with imminent filing
17 deadlines, in addition to her assigned cases. Ms. Plunkett is currently preparing state
18 habeas corpus petitions in two cases (California Supreme Court Case Nos. S089609
19 and S044693) and an informal reply (California Supreme Court Case No. S206945), in
20 addition to ongoing litigation relating to an Order to Show Cause in San Mateo County
21 Superior Case No. SC31145.

22 11. Our ability to complete full briefing on the non-evidentiary hearing claims
23 also has been hindered by the complexity of those claims. The state briefing setting
24 forth the factual and legal bases for the claims was almost 1200 pages; Mr. Jones's
25 briefing in the automatic appeal comprised 357 pages, and the petitions filed October
26 21, 2002, and October 16, 2007, and replies to Respondent's informal responses
27 comprised 838 pages.

28 12. Despite our best efforts, and although we will timely file the Reply Brief

1 on the Evidentiary Hearing Claims, we are unable to fully comply with this Court's
2 order regarding the non-evidentiary hearing claims. I thus request a thirty (30) day
3 extension of time to file Petitioner's 28 U.S.C. § 2254(d) Brief on Non-Evidentiary
4 Hearing Claims.

5 13. Ms. Plunkett contacted Mr. Herbert Tetef, counsel for Respondent, and
6 informed him of the substance of this request for additional time, including the
7 proposed due date. On January 7, 2014, Mr. Tetef authorized Petitioner's counsel to
8 represent to the Court that he does not take a position on this application.

9 The foregoing is true and correct and executed under penalty of perjury under
10 the laws of the United States on January 7, 2014.

11
12
13 /s/ Michael Laurence
14 Michael Laurence
15
16
17
18
19
20
21
22
23
24
25
26
27
28