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6 **UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**  
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11 CLARENCE RAY, JR., ) Case No.: No. 1:96-cv-06252-LJO  
12 )  
13 Petitioner, )  
14 )  
15 v. ) ORDER AUTHORIZING STATE COURT  
16 ) APPEARANCE IN ANCILLARY MATTER  
17 )  
18 KEVIN CHAPPELL, Warden of San )  
19 )  
20 Quentin State Prison,\* )  
21 )  
22 Respondent. )  
23 )  
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18 Counsel for petitioner, CLARENCE RAY, JR., has notified the Court that the California  
19 Supreme Court issued an order in *In re Ray*, No. S110219, directing the Secretary of the Department  
20 of Corrections and Rehabilitation to show cause in the Superior Court of Kern County, when the  
21 matter is placed on calendar, why petitioner's death sentence should not be vacated and petitioner  
22 sentenced to life imprisonment without the possibility of parole on the ground that he is mentally  
23 retarded under *Atkins v. Virginia*, 536 U.S. 304 (2002). .

24 This claim must be exhausted before this Court may consider it. This Court finds that such  
25 exhaustion proceedings falls within "other appropriate motions and procedures" within the meaning of  
26 18 U.S.C. § 3599(e), such that it is appropriate for federal counsel to conduct exhaustion proceedings  
27 on the claim. *See Harbison v. Bell*, 556 U.S. 180, 190, n.7 (2009).

28 \* Kevin Chappell, Warden, is substituted for his predecessor Wardens pursuant to FRCP Rule 25(d).

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2 The request of petitioner's counsel to memorialize this finding by means of this order is  
3 granted.  
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5 IT IS SO ORDERED

6 Dated: September 6, 2013

7 /s/ Lawrence J. O'Neill  
8 Lawrence J. O'Neill  
9 United States District Judge  
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