

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN LEE HOLT,

Case No. 1:97-cv-06210-DAD-SAB

Petitioner,

DEATH PENALTY CASE

RON DAVIS, Warden Of San Quentin State Prison.

ORDER UPON STIPULATION REGARDING
TESTIMONY OF GEORGE PETERSON
(Doc. No. 267)

Respondent.¹

16 Before the court is the stipulation of petitioner's counsel, attorney Robert M. Myers and
17 Assistant Federal Defender Jennifer Mann, and respondent's counsel, Deputy Attorneys General
18 Sean M. McCoy and Peter W. Thompson, filed June 14, 2017, to an order directing the
19 admission of the June 19, 1995 declaration of associate defense counsel George Peterson, (see
20 State Habeas Corpus Petition, Ex. 30 thereto) in lieu of live or deposition testimony at the
21 evidentiary hearing scheduled for October 24, 2017.

22 The parties represent that they do not intend to call Mr. Peterson to testify at the hearing
23 because he is eighty-six years old and in poor health due to heart problems and would testify
24 consistently with his declaration. The parties further represent that Mr. Peterson's declaration
25 will be his only testimony offered in this action.

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²⁷ 1 Pursuant to Fed. R. Civ. P. 25(d), Ron Davis, Warden of San Quentin State Prison, is
28 substituted as respondent in place of his predecessor wardens.

1 Based on the parties' stipulated representations, the court finds good cause to grant the
2 request. *See* 28 U.S.C. § 2246 ("On application for a writ of habeas corpus, evidence may be
3 taken orally or by deposition, or, in the discretion of the judge, by affidavit...."); *Phillips v.*
4 *Smith*, 300 F. Supp. 130, 134 (S.D. Ga. 1969) (use of affidavits in habeas corpus applications is
5 within the sound discretion of the district judge).

6 Accordingly, the declaration of George Peterson, signed June 19, 1995, shall be admitted
7 in lieu of live or deposition testimony at the evidentiary hearing in this action.

IT IS SO ORDERED.

10 Dated: June 16, 2017

Dale A. Lloyd
UNITED STATES DISTRICT JUDGE