

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

8	RICHARD J. VIEIRA,	)	Case No. 1:05-cv-1492-OWW
9	Petitioner,	)	<u>DEATH PENALTY</u> CASE
10	vs.	)	
11	Michael Martel, as Acting Warden of San	)	ORDER GRANTING PETITIONER'S
12	Quentin State Prison,	)	REQUEST TO MODIFY BRIEFING
13	Respondent.	)	SCHEDULE FOR PHASE III OF THE
		)	LITIGATION

Petitioner Richard John Vieira ("Vieira") has submitted a request to modify the scheduling order issued July 22, 2010, and last modified on July 11, 2011. Vieira's counsel reports that counsel for Respondent Michael Martel, as Acting Warden of San Quentin Prison ("the Warden") has no objection to the requested modification.

GOOD CAUSE APPEARING THEREFOR,

1 Vieira's reply to the Warden's memorandum of points and authorities in opposition to the petition shall be filed on or before December 19, 2011.

2 The parties are encouraged to meet and confer about the need to conduct discovery. It is anticipated that motions for formal discovery pursuant to Rule 6 of the Rules Governing §2254 Cases or record expansion pursuant to Rule 7 of the Rules Governing § 2254 Cases will be presented and resolved without altering the schedule for briefing the petition.

3 Vieira shall file his motion for an evidentiary hearing pursuant to Rule 8 of the Rules Governing § 2254 Cases on or before January 23, 2012. The evidentiary hearing motion shall be limited to identification of: (a) the claims for which a hearing is sought; (b) an offer of proof as to the evidence sought to be presented; (c) a brief statement of the legal grounds for the evidentiary

1 hearing; and (d) an explanation of diligence exercised in state court to develop the claims before the  
2 California Supreme Court (*see* 28 U.S.C. § 2254(e)(2)). In light of the briefing of the petition, legal  
3 analysis and citation of authorities in support of claims for which a hearing is sought will not be  
4 necessary. The exception to presentation of legal analysis and citation to authority involves briefing  
5 the application of *Cullen v. Pinholster*, 131 S.Ct. 1388 (2011), to Vieira's entitlement to further  
6 evidentiary development.

7 4 The Warden shall file his opposition to the evidentiary hearing motion on or before February  
8 20, 2012. The Warden may address therein any issues relating to *Pinholster, supra*, pertaining to  
9 further evidentiary development.

10 5 Vieira shall file his reply to the opposition on or before March 26, 2012.

11 6 The matter thereafter will stand submitted.

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13 IT IS SO ORDERED

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15 Dated: October 26, 2011

16 /s/ Anthony W. Ishii  
17 Anthony W. Ishii, Chief  
18 United States District Judge  
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