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

RICHARD J. VIEIRA,	)	No. 1:05-CV-01492-AWI(DP)
	)	
Petitioner,	)	<u>DEATH PENALTY CASE</u>
	)	
vs.	)	ORDER GRANTING PETITIONER’S
	)	REQUEST TO MODIFY BRIEFING
MICHAEL MARTEL, as Acting Warden of	)	SCHEDULE FOR PHASE III OF THE
San Quentin State Prison,	)	LITIGATION
	)	
Respondent.	)	

Petitioner Richard John Vieira (“Vieira”) has submitted a request to modify the scheduling order issued July 22, 2010, and last modified on October 27, 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 January 9, 2012.
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

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

10 4. The Warden shall file his opposition to the evidentiary hearing motion on or before February  
11 20, 2012. The Warden may address therein any issues relating to *Pinholster, supra*,  
12 pertaining to further evidentiary development.

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

14 6. The matter thereafter will stand submitted.

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16 IT IS SO ORDERED.

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18 Dated: December 19, 2011

19 /s/ Anthony W. Ishii  
20 Anthony W. Ishii, Chief  
21 United States District Judge  
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