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

LOUIS OLIVEREZ, JR.,  
Plaintiff,  
v.  
BEN ALBITRE,  
Defendant.

Case No. 1:09-cv-00352-LJO-SKO PC  
**ORDER LIFTING STAY AND  
REINSTATING WRIT OF HABEAS  
CORPUS AD TESTIFICANDUM  
DIRECTING PRODUCTION OF INMATE  
DIEGO R. HERNANDEZ, CDCR #V-28618**  
(Doc. 86)  
**ORDER DIRECTING CLERK'S OFFICE  
TO SERVE ORDER ON RJD  
CORRECTIONAL FACILITY AND  
WITNESS DIEGO R. HERNANDEZ**  
**ORDER REQUIRING PARTIES TO  
NOTIFY COURT ON OR BEFORE  
SEPTEMBER 18, 2013, WHETHER THEY  
ARE WILLING TO STIPULATE TO  
WITNESSES'S APPEARANCE BY  
TELEPHONE**

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This matter is currently set for jury trial before U.S. District Judge Lawrence J. O'Neill on October 1, 2013. On August 22, 2013, the Court issued a writ of habeas corpus ad testificandum directing the production of inmate **Diego R. Hernandez, CDCR #V-28618**, for trial as a witness on the behalf of Plaintiff. On September 4, 2013, the Court received and filed a letter from inmate Hernandez stating that he does not want to be transported for trial. A telephonic hearing to discuss the matter with the parties was scheduled and the Court issued an order staying the transportation writ, pending further order.

1 Following the hearing held earlier today, the Court ordered that inmate Hernandez by  
2 videoconference for trial. The Court noted that if Richard J. Donovan Correctional Facility could  
3 not or would not accommodate the videoconference, inmate Hernandez would be transported for  
4 trial. The Court has since learned that the prison does not have videoconferencing capabilities.  
5 Therefore, the stay shall be lifted and the writ directing the production of inmate Hernandez  
6 reinstated.

7 If both parties are willing to stipulate to the appearance of inmate Hernandez by telephone,  
8 the prison can accommodate that request and the Court will permit it. Fed. R. Civ. P. 43(a).  
9 However, both parties have to be willing to allow inmate Hernandez to testify by telephone. To  
10 that end, the parties shall notify the Court or on before September 18, 2013, whether or not they  
11 are willing to stipulate to a telephone appearance. If both parties are willing, the Court will issue  
12 the appropriate orders directing that inmate Hernandez be available by telephone rather than in  
13 person.

14 Accordingly, it is HEREBY ORDERED that:

15 1. The stay of the writ of habeas corpus ad testificandum directing the production of  
16 inmate Diego R. Hernandez, CDCR # V-28618, is LIFTED and the writ directing the production  
17 of inmate Hernandez for trial on October 1, 2013, in the United States District Court for the  
18 Eastern District of California, Fresno Division, is REINSTATED;

19 2. The Clerk's Office shall serve a courtesy copy of this order by facsimile on the  
20 Litigation Office at Richard J. Donovan Correctional Facility;

21 3. The Clerk's Office shall serve a courtesy copy of this order on Diego R.  
22 Hernandez, CDCR # V-28618; and

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4. On or before September 18, 2013, the parties shall notify the Court whether or not they are willing to stipulate to the appearance of inmate Hernandez by telephone.

IT IS SO ORDERED.

Dated: September 6, 2013

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE