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

MILTON OTIS LEWIS,

Petitioner,

No. CIV S-02-0013 FCD GGH DP

vs.

DEATH PENALTY CASE

ROBERT AYERS, Warden

Respondent.

ORDER

_____ /

The parties shall, within twenty-one days of the filed date of this order, file concise simultaneous briefs concerning whether Cullen v. Pinholster, –U.S.–, 131 S.Ct. 1388 (2011) invalidates this court’s order for an evidentiary hearing, i.e., whether all issues on which an evidentiary hearing was granted were 28 U.S.C. § 2254(d)(1) issues which should be reviewed solely on the factual record set forth in state court either during trial, direct review, or in state habeas proceedings. The parties shall also brief whether respondent is bound by Cullen or whether Cullen only applies to potential grants of a petition as opposed to potential denials. See 28 U.S.C. § 2254(d): “an application for a writ of habeas corpus...shall not be *granted* with

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1 respect to any claim...” If respondent argues that respondent is not bound by Cullen, respondent
2 shall indicate whether respondent desires an evidentiary hearing, and on what issues.¹

3 Dated: 04/19/2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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25 ¹If respondent requests an evidentiary hearing on any issue, and the court determines that
26 respondent is entitled to such a hearing, the court shall afford petitioner the opportunity to fully
factually respond at such a hearing.