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

10 CARL MONTIGUE LEWIS,

11 Petitioner,

No. CIV S-03-1410 GEB EFB P

12 vs.

13 DAVID L. RUNNELS,

14 Respondent.

ORDER

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16 Petitioner is a state prisoner proceeding through counsel with this application for a writ  
17 of habeas corpus pursuant to 28 U.S.C. § 2254. One of petitioner's claims for relief is that his  
18 conviction must be reversed because the prosecutor exercised peremptory challenges to strike  
19 two jurors on the basis of race, in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). That  
20 claim has been set for evidentiary hearing on February 2, 2009.

21 On January 14, 2009, petitioner filed a motion for discovery, in which he requests that  
22 respondent produce: (1) completed juror questionnaires for prospective jurors on petitioner's  
23 jury panel who were not seated for trial, and (2) all personal notes written by the prosecutor  
24 regarding jury selection and individual jurors, including notes relating to juror questionnaires  
25 and "questions asked of, and answers given by prospective jurors during voir dire." Points and  
26 Authorities in Support of Motion for Discovery, at 3. In response to petitioner's motion for

1 discovery, respondent's counsel informs the court that the prosecutor has searched the relevant  
2 files and has determined that no such documents exist. Response to Motion for Discovery, at 2.  
3 Respondent states that "there is simply nothing to discover." *Id.*

4 Good cause appearing, it is hereby ORDERED that, within seven days from the date of  
5 this order, respondent shall file a certification to that effect.<sup>1</sup> The certification shall be signed  
6 under penalty of perjury.

7 DATED: January 22, 2009.

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9 EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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25 <sup>1</sup> The certification should include the signature of the individual who performed the search  
26 for the documents and affirm that he/she has conducted a thorough search of all relevant records and  
has determined that the materials requested by petitioner in his motion for discovery do not exist.