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8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA
 10

11 ANTHONY SMITH, Jr.,)	NO. Civ. S 03-1871 LKK KJM
)	
12 Petitioner,)	UNOPPOSED REQUEST TO ISSUE WRIT OF
)	HABEAS CORPUS; ORDER
13 v.)	
)	
14 ROBERT K. WONG, Warden,)	Judge: Honorable LAWRENCE K. KARLTON
)	
15 Respondent.)	
)	
16 _____)	

17 Petitioner, ANTHONY SMITH, Jr., by and through his counsel,
 18 Assistant Federal Defender David M. Porter, requests this Court issue
 19 the order lodged herewith directing the issuance of the writ of habeas
 20 corpus in the above-entitled matter.

21 On August 3, 2007, this Court issued an order adopting the
 22 findings and recommendations of the magistrate judge that Mr. Smith's
 23 petition for writ of habeas corpus be granted as to the claim of jury
 24 coercion. CR #68.¹ Judgment was entered the same day. CR #69. Both
 25 parties filed appeals. CR ## 70, 72.

26 _____
 27 ¹ Mr. Smith was convicted of multiple counts. His claim of jury
 28 coercion affected only Count Four, for which he received a life
 sentence. This Court rejected his claims regarding other counts of
 conviction, for which he received determinate aggregate consecutive
 terms totaling twenty years.

1 On September 8, 2009, the Ninth Circuit Court of Appeals affirmed
2 the judgment of this Court in all respects. 580 F.3d 1071. On
3 November 30, 2009, the Ninth Circuit issued the mandate, which was
4 spread upon the docket of this Court on December 1, 2009. CR #84.

5 On November 1, 2010, the Supreme Court of the United States denied
6 the Warden's petition for writ of certiorari.² No. 09-1031.

7 On November 2, 2010, the undersigned contacted counsel for
8 Respondent, who graciously indicated that he had no objection to this
9 request.

10 Accordingly, pursuant to 28 U.S.C. § 2243, Mr. Smith requests this
11 Court enter the order lodged herewith issuing the writ of habeas
12 corpus.

13 Dated: November 2, 2010

14 Respectfully submitted,

15 DANIEL J. BRODERICK
16 Federal Defender

17 /s/ David M. Porter
18 DAVID M. PORTER
19 Assistant Federal Defender

20 Attorney for Petitioner
21 ANTHONY SMITH, Jr.

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25 ² During the interim, Mr. Smith asked this Court to issue the writ
26 of habeas corpus. CR #85. While the magistrate judge agreed with Mr.
27 Smith that the only appropriate form of relief would be "a partial
28 grant of the petition," CR #87 at 2 (citing *Harvest v. Castro*, 531 F.3d
737, 744 (9th Cir. 2008)), she acceded to Warden's request that the
court "hold its order in abeyance" until certiorari proceedings were
concluded. *Id.* at 3.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 ANTHONY SMITH, Jr.,) NO. Civ. S 03-1871 LKK KJM P
5)
6 Petitioner,) **ORDER**
7)
8 v.)
9)
10 ROBERT K. WONG, Warden,)
11)
12 Respondent.)
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10 **ORDER**

11 Pursuant to the mandate of the United States Court of Appeals for
12 the Ninth Circuit in the case of *Anthony Bernard Smith, Jr. v. B.*
13 *Curry*, No. 07-16875, which affirmed this Court's Judgment of August 3,
14 2007, granting habeas corpus relief as to petitioner's claim of jury
15 coercion, the writ of habeas corpus in the above-captioned case hereby

16 **ISSUES.**

17 The conviction of Mr. Smith on Count Four in Superior Court Number
18 97F07219 is **VACATED**. Unless the state commences a retrial within
19 forty-five (45) days from the date of this order, the conviction on
20 Count Four shall be DISMISSED and Mr. Smith shall be RELEASED from
21 custody on the sentence imposed on that count.

22 IT IS SO ORDERED.

23 Dated: November 2, 2010

24 
25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
27 UNITED STATES DISTRICT COURT
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