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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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JON R. CRAWLEY,

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Petitioner,

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CASE NO. 2:07-cv-01288-RSL-JLW

08

v.

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M. KRAMER, Warden,

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ORDER VACATING DEFERRAL OF  
REPORT AND RECOMMENDATION

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Respondent.

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This Court entered an “Order Deferring Preparation of Report and Recommendation”

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on October 30, 2009. (*See* Docket 19.) As of that date, this case had already been pending

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for a substantial period of time. This Court presumed a decision in *Hayward v. Marshall*, a

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case pending for decision before a limited en banc panel in the U.S. Court of Appeals for the

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Ninth Circuit, would be forthcoming in a reasonable period of time. 512 F.3d 536 (9th Cir.

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2008), *reh’g en banc granted*, 527 F.3d 797 (9th Cir. 2008). *Hayward* presents issues

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sufficiently similar to those in this case that it seems likely the en banc decision in *Hayward*

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will have significant implications for the resolution of petitioner’s case.

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*Hayward* was argued and submitted on June 24, 2008, and thus it has been over

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nineteen (19) months since its submission, and almost four (4) months since this Court

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deferred action in this case. As of the date of this Order, *Hayward* remains undecided, and

01 this Court has no information as to when an opinion might be forthcoming.


02 Fairness to the parties requires that this Court move ahead on the merits of this case.

03 The “Order Deferring Preparation of Report and Recommendation” is therefore VACATED.

04 This Court will file a Report and Recommendation in the very near future.

05 In deciding to vacate the “Order Deferring Preparation of Report and  
06 Recommendation,” the Court is mindful of the need to balance competing interests, as defined  
07 in *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110-11 (9th Cir. 2005) and *Yong v. INS*, 208  
08 F.3d 1116, 1120-21 (9th Cir. 2000), and as applied by Judge Wallace in *Nelson v. Sisto*, 2009  
09 WL 2579194 (E.D. Cal. 2009). This Order to proceed is based primarily upon two facts.  
10 First, the petition in this case was originally filed on June 29, 2007. (*See* Docket 1.)  
11 Petitioner, who remains confined, has waited over thirty-two (32) months for the District  
12 Court to address the merits of his petition. Secondly, the filing of a Report and  
13 Recommendation by the U.S. Magistrate Judge, while it serves to advance the case toward a  
14 ruling, does not constitute a final disposition by the District Court. If *Hayward* is decided  
15 while the Report and Recommendation is pending before the U.S. District Judge, he will be  
16 able to take the decision into account in ruling upon this case.

17 DATED this 24th day of February, 2010.

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20 JOHN L. WEINBERG  
21 United States Magistrate Judge  
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