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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARQUIMEDES MENDOZA,
Petitioner,
v.
MATTHEW CATE,
Respondent.

No. 2:09-cv-1710 MCE DAD P

ORDER

Petitioner is a former state prisoner proceeding through appointed counsel with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. An evidentiary hearing is currently scheduled in this matter on April 21, 2014.

On April 10, 2014, respondent filed an unopposed request to vacate the scheduled April 21, 2014 evidentiary hearing pending the resolution of a motion to dismiss to be filed by respondent within ten days. Good cause appearing, respondent's request to vacate the evidentiary hearing will be granted.

On April 14, 2014, petitioner's appointed counsel filed an unopposed request to maintain the scheduled hearing date of April 21, 2014, but to hold a status conference in place of the scheduled evidentiary hearing. Petitioner also requests that the subpoena duces tecum previously issued to secure the attendance of petitioner's former trial counsel at the evidentiary hearing be kept in place requiring that petitioner's former counsel be required to appear at that date and time

1 so that he could then be “ordered to return on a mutually convenient date” by the court.

2 The court does not find good cause to issue the order sought by petitioner’s counsel. If
3 respondent’s anticipated motion to dismiss is denied and the evidentiary hearing is rescheduled
4 and if petitioner’s former trial counsel is served with a subpoena to attend that evidentiary
5 hearing, and if petitioner’s former counsel despite having been served with such a subpoena fails
6 to appear, the court will at that time exercise its authority to procure counsel’s appearance.
7 Accordingly, petitioner’s request for an order replacing the April 21, 2014 evidentiary hearing
8 with a status conference at which a witness would be required to be present will be denied.

9 Accordingly, IT IS ORDERED that:

- 10 1. Respondent’s April 10, 2014 request to “Vacate the Briefing Schedule Pending the
11 Court’s Resolution of Respondent’s Anticipated Motion to Dismiss” (ECF No. 70) is granted;
- 12 2. The evidentiary hearing previously scheduled for April 21, 2014 is vacated;
- 13 3. Petitioner’s April 14, 2014 request “to Maintain Current Court Date as a Status
14 Conference” (ECF No. 71) is denied;
- 15 4. The subpoena duces tecum issued on April 9, 2014 to petitioner’s former counsel is
16 vacated; and
- 17 5. The Clerk of Court is directed to serve this order on the U.S. Marshal.

18 Dated: April 14, 2014

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE