

1 However, because this court did not consider whether petitioner qualified for the equitable
2 exception based on actual innocence, the Ninth Circuit remanded the case for consideration of
3 that single issue, citing *McQuiggin. Id.*

4 The court ordered supplemental briefing and the state court record to address the actual
5 innocence issue. ECF No. 40. The court has received the record and the briefs, but stayed the
6 case at petitioner's request while petitioner asked for DNA testing through the state courts. ECF
7 No. 57. The state court granted petitioner's motion for DNA testing, and petitioner requests that
8 the stay be extended while that testing takes place. ECF Nos. 63, 65, 67. As the outcome of the
9 DNA testing is highly relevant to the issue before it, the court will grant the stay pending the
10 outcome of the testing.

11 Petitioner also asks for a limited exception to the stay so that he may file a motion for a
12 court order compelling state officials to run certain fingerprint evidence through all available law
13 enforcement data bases. Respondent has filed no opposition to this request, and the court will
14 grant the request.

15 In sum, the case shall remain stayed pending the outcome of state DNA testing as ordered
16 by the Solano County Superior Court on June 19, 2015, with a limited exception allowing
17 petitioner to seek the order regarding fingerprint evidence. Any such motion shall be filed within
18 30 days of the date of this order, and petitioner shall file a status report within seven days of the
19 state court hearing on September 4, 2015.

20 So ordered.

21 Dated: August 11, 2015.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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