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5 Attorney for Petitioner  
 6 WILLIAM R. DYE

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 8 **UNITED STATES DISTRICT COURT**  
 9 **EASTERN DISTRICT OF CALIFORNIA**

10 WILLIAM R. DYE,

No. 2:12-cv-02201 TLN-EFB

11  
 12 Petitioner,

13 v.

14 FRED FOULK, Warden,

15 Respondent./

16 **Stipulation and Order**

17 IT IS HEREBY STIPULATED between BARRY MORRIS, attorney for  
 18 petitioner, WILLIAN R. DYE, and MAX FEINSTAT, attorney for respondent FRED  
 19 FOULK, that the hearing on respondent's Motion to Dismiss be continued from  
 20 October 8, 2014 to October 29, 2014. This stipulation is based upon the  
 21 attached declaration of BARRY MORRIS.

22 Dated: September 15, 2014

23 /s/ Barry Morris  
 24 Attorney for Petitioner  
 25 WILLIAM R. DYE

26 /s/Max Feinstat  
 27 Attorney for Respondent  
 28 FRED FOULK

1 **Declaration of Barry Morris**

2 I, BARRY MORRIS, do hereby declare under penalty of perjury that the  
3 following is true and correct:

4 1. I am an attorney licensed to practice law in all the courts of the State  
5 of California, the United States District Court for the Northern, Central, and  
6 Eastern Districts of California, the United States Court of Appeals for the Ninth  
7 Circuit, and the United States Supreme Court. I represent the petitioner in the  
8 above-entitled action;

9 2. I am in the process of preparing a response to Respondent’s Motion  
10 to Dismiss. Initially I concentrated on the relation-back issue, but as I turned  
11 my attention to newly-discovered evidence issue (§2244(d)(1)(D) “the date on  
12 which the factual predicate of the claim or claims presented could have been  
13 discovered through the exercise of due diligence”), I realized that I did not have  
14 all the necessary documents including those referred to by petitioner in his pro  
15 se first amended petition.

16 3. I wrote to petitioner at the beginning of this month for those  
17 documents, but as of this past Friday, I had not received them. Since I was  
18 planning on going to Tahoe that weekend, I drove up to Susanville to see  
19 petitioner. It turned out that he was in administrative segregation and did not  
20 have his legal papers. I went through what I need and he told me that he will  
21 request those documents and send them to me within the next week.

22 4. I am leaving this Friday for a week and will not be able to begin  
23 working with those documents to finish the opposition to the motion to dismiss  
24 until I get back on September 27th.

25 5. Consequently I am asking that the hearing on respondent’s motion  
26 go over until October 29, 2014. Respondent has no objection to this request.  
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Dated: September 16, 2014

/s/Barry Morris  
BARRY MORRIS  
Attorney for Petitioner  
WILLIAM R. DYE

**Order**

GOOD CAUSE APPEARING THEREFOR, it is hereby ordered that the hearing on Respondent's Motion to Dismiss in the above-entitled case be continued from October 8, 2014 to October 29, 2014 at 10:00 a.m.

Dated: September 19, 2014.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE