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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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ANTHONY T. DAVIS,

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Petitioner,

No. C 02-0538 PJH

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v.

**ORDER TO SHOW CAUSE**

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D.L. RUNNELS, WARDEN,

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Respondent.

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On March 27, 2007, petitioner Anthony Davis ("Davis") notified the court that the California Supreme Court denied his petition for review on his Confrontation Clause claim under *Crawford v. Washington*, 541 U.S. 36 (2004), and suggested that the court set the matter for hearing. However, the court does not believe that a hearing is necessary.

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Additionally, given the United States Supreme Court's recent decision in *Whorton v. Bockting*, 127 S. Ct. 1173 (Feb. 28, 2007), in which the Court held that *Crawford* does not apply retroactively, Davis' Confrontation Clause claim is therefore governed by *Ohio v. Roberts*, 448 U.S. 56, 65 (1980). See *Bolton v. Knowles*, 2007 WL 793200 at \*1 (9th Cir. Mar. 13, 2007) (noting that habeas petitioner's Confrontation Clause claim is governed by the standards set forth in *Ohio v. Roberts*); accord *Miller v. Fleming*, 2007 WL 840981 (9th Cir. Mar. 19, 2007). Although this court suggested in its March 8, 2005 abeyance order that it would permit further briefing following exhaustion of the claim, the recent case law renders such briefing unnecessary. That is because the claim was already fully briefed under *Ohio v. Roberts* at the time of the abeyance. In fact, Davis' entire habeas petition, including the Confrontation Clause claim, were

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1 fully briefed as of November 11, 2002. It was only the Supreme Court's subsequent  
2 decision in *Crawford* which required the prior supplemental briefing and state court  
3 proceedings. Now that *Crawford* does not apply, further briefing on the issue would not  
4 assist the court.

5 Accordingly, the court believes that the matter is ready for final adjudication. To  
6 the extent that either party disagrees, the parties are ORDERED TO SHOW CAUSE  
7 why the matter should not be finally adjudicated within **ten days of the date of this**  
8 **order**. Respondent is also ORDERED to submit to the court a copy of the California  
9 Supreme Court's recent order denying Davis' petition for review.

10 **IT IS SO ORDERED.**

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12 Dated: March 28, 2007



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PHYLLIS J. HAMILTON  
United States District Judge

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