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6  
7 UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10	TARAY T. MORRIS	)	Case No.: C 06-7409
11	Petitioner,	)	
12	vs.	)	PETITIONER'S NOTICE OF
13	TONY MALFI, Warden, et al.	)	MOTION AND MOTION
14	Respondent.	)	TO STAY FILING OF TRAVERSE
		)	PENDING INVESTIGATION,
		)	AND PROPOSED ORDER
		)	Judge: Hon. Susan Ilston

15  
16 To: Respondent Warden Tony Malfi, Attorney General Edmund G. Brown, Jr.,  
17 and Deputy Attorney General Michael D. O'Reilly

18 Petitioner TARAY T. MORRIS hereby moves this Court to stay the Order  
19 directing him to file a Traverse 30 days after the respondent's filing of the Answer,<sup>1</sup> to  
20 enable him to obtain additional evidence to support his claims. This Motion is being  
21 submitted without setting a hearing date, unless the Court wishes to hear argument from  
22 the parties.

23 In this Court's order denying the respondent's motion to dismiss the Amended  
24 Petition, the Court found that the petition was filed timely. In the context of that

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26  
27 <sup>1</sup>This Court's Order filed July 21, 2008 directed the respondent to file his  
28 Answer by August 11, 2008 and petitioner to file a Traverse by September 11, 2008. However, respondent obtained an unopposed extension of time and filed the Answer on September 9, 2008. Accordingly, the Traverse would be due on October 9, 2008.

1 determination, the Court found that respondent did not point to any evidence that  
2 petitioner was not mentally ill after November 17, 2004, the last date prison psychiatric  
3 professionals issued a finding that petitioner was mentally healthy. The Court noted  
4 that petitioner referred himself to the psychiatric staff on February 10, 2005, based on  
5 auditory hallucinations and paranoid ideation, and that on May 17, 2005 he was  
6 diagnosed with head injury psychosis and/or paranoid schizophrenia. (7/21/08 Order  
7 p.2.) Based on medical evidence already submitted, petitioner suffered two head  
8 injuries in his childhood (he received severe blunt trauma injuries to the head in a car  
9 accident at age 5, and was shot in the head at age 13), and undisputably severe brain  
10 trauma from a violent assault on February 18, 1999, which placed him in a three-week-  
11 long coma and caused permanent traumatic brain injury. All of these head injuries  
12 occurred prior to the commission in October 1999, six months after his discharge from  
13 long-term rehabilitative hospitalization, of the murder and carjacking that led to the two  
14 other life sentences which petitioner is serving, and certainly prior to the April 27, 2004  
15 plea and conviction for the assault offense that is the underlying case under attack in  
16 this habeas case. Petitioner has asserted that his illness predated the conviction in this  
17 case, and that his illness was responsible for his failure to disclose, and prison officials'  
18 failure to detect his illness. In particular, the hallucinations directed petitioner not to tell  
19 anyone about the voices he was hearing, and otherwise directed and controlled his  
20 behavior. As the Court has noted, Mr. Morris's illness has never abated, and he remains  
21 subject to auditory and visual hallucinations despite the involuntary medication  
22 protocol, although the degree of intrusiveness of the hallucinations is somewhat abated  
23 by the medication.

24         Petitioner will submit a separate ex parte request for expert funding to  
25 accomplish this evidence-gathering, upon selecting the appropriate and qualified expert,  
26 hopefully within 14 days of this filing. Petitioner is seeking leave to expend CJA funds  
27 to retain a psychiatric expert to evaluate the information provided by the prison  
28

1 psychiatric staff and to examine petitioner to determine the probable state of his mental  
2 health on April 27, 2004. Petitioner remains incarcerated at California State Prison  
3 Sacramento, serving his consecutive life sentences. Deputy Attorney General Michael  
4 O'Reilly has advised the undersigned that he has no objection to extending petitioner's  
5 time to file the Traverse, but that this does not mean that he supports CJA funding for  
6 further psychiatric evaluations.

7 Therefore, is requested that petitioner's obligation to file his Traverse be delayed  
8 for a reasonable time while the expert investigation takes place, with petitioner's  
9 counsel to provide a status report to the Court within 45 days after the approval of CJA  
10 funds, if such approval is granted.

11 DATED: September 22, 2008

Respectfully submitted,

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14 /S/ Suzanne A. Luban  
SUZANNE A. LUBAN  
15 Counsel for TARAY T. MORRIS  
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17  
18 ORDER

19 For Good Cause Shown, IT IS SO ORDERED.

20  
21 Dated:

22   
23 HON. SUSAN ILLSTON  
U.S. District Court Judge  
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