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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR A. RODRIGUEZ,

Petitioner,

No. C 04-2233 PJH

v.

**ORDER VACATING HEARING DATE
AND SETTING BRIEFING SCHEDULE**

DERRAL ADAMS, Warden,

Respondent.

On June 1, 2011, the court granted Rodriguez's federal habeas petition under 28 U.S.C. § 2254. On June 10, 2011, respondent filed a motion to alter judgment and a request for an evidentiary hearing. The court VACATES the hearing date, and will decide the matter on the papers. Petitioner's opposition brief is due no later than **Friday, July 8, 2011**, and respondent's reply is due no later than **Friday, July 22, 2011**.

In particular, the parties should address the following issues, *in addition to any others* raised by respondent in its opening brief:

- 1) a. Whether this court should now reconsider its June 1, 2011 order granting petitioner relief on his ineffective assistance of counsel claim based on the United States Supreme Court's decision in *Walker v. Martin*, 131 S.Ct. 1120, 1128-29 (Feb. 23, 2011); and
- b. why respondent failed to raise the issue in a more timely fashion following the Supreme Court's February 2011 decision in *Walker* in a

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motion to dismiss, supplemental memorandum, or otherwise, and whether those reasons now excuse respondent's earlier failure to raise the procedural bar issue as an affirmative defense; and

2) whether, as suggested by respondent, this court is permitted to consider in the context of federal habeas proceedings new evidence adduced at an evidentiary hearing before this court, but not presented to the state court, pursuant to the United States Supreme Court's recent decision in *Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (April 4, 2011) ("the record under review must be limited to the record in existence at that same time i.e., the record before the state court").

IT IS SO ORDERED.

Dated: June 13, 2011



PHYLLIS J. HAMILTON
United States District Judge