

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 EDWARD V. RAY, JR.,

No. C 10-01582 SI (PR)

4 Petitioner,

Related Case No. C 11-01604 YGR (PR)

5 vs.

**REASSIGNMENT ORDER**

6 J. SCHOMIG, Warden,

7 Respondent.  
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9 On April 14, 2010, Petitioner Edward V. Ray, Jr. (Ray, Jr.), a state prisoner currently  
10 incarcerated at the Tallahatchie County Correctional Facility (TCCF) in Tutwiler, Mississippi, filed  
11 a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in Case No. C 10-01582 SI (PR),  
12 which is currently assigned to the Honorable Susan Illston. On April 15, 2011, Judge Illston granted  
13 Respondent's motion to dismiss for failure to exhaust state remedies and gave Ray, Jr. various  
14 options as to how to proceed. On June 21, 2011, Judge Illston granted Ray, Jr.'s motion to stay the  
15 proceedings in order for him to exhaust the unexhausted claims, and she administratively closed that  
16 case. Ray, Jr.'s case is still administratively closed. However, currently pending is Ray, Jr.'s motion  
17 to reopen his case, lift the stay, and move forward with only the claims deemed exhausted by Judge  
18 Illston in her April 15, 2011 Order (docket no. 30 in Case No. C 10-01582 SI (PR)). To date, Judge  
19 Illston has not yet ruled on Ray, Jr.'s pending motion.

20 On April 1, 2011, Petitioner Edward V. Ray, III (Ray, III), who is Ray, Jr.'s son and is also a  
21 state prisoner currently incarcerated at TCCF, filed a petition for a writ of habeas corpus pursuant to  
22 28 U.S.C. § 2254 in Case No. C 11-01604 YGR (PR), which is currently assigned to the undersigned  
23 judge. Originally, this case was assigned to the Honorable Claudia Wilken, who issued an Order to  
24 Show Cause on August 16, 2011, directing Respondent to answer all the claims Ray, III raised. On  
25 October 28, 2011, Ray, III moved for leave to file an amended petition, and he attached a proposed  
26 amended petition (docket no. 9 in Case No. C 11-01604 YGR (PR)). His proposed amended petition  
27 appears to raise the same eleven claims as the original one. It differs from the original one in that  
28 include various supporting documents and an appendix of those documents. To date, neither Judge

1 Wilken nor the undersigned judge has ruled on Ray, III's motion for leave to file an amended  
2 petition.

3 On November 29, 2011, Judge Illston issued a Related Case Order, in which she found both  
4 Ray, Jr.'s and Ray, III's cases to be related.

5 On January 18, 2012, the undersigned judge issued a Reassignment Order, ordering Ray, III's  
6 case to be assigned to her and directing the parties to file case management statements. There was  
7 no reassignment order filed in Ray, Jr.'s case, possibly because that case had been administratively  
8 closed.

9 On February 9, 2012, Respondent filed a case management statement in Ray, III's case. In  
10 the case management statement, Respondent expresses confusion as to which judge is handling Ray,  
11 Jr.'s case and states that there is overlap in the two cases, as follows:

12 At least some of the claims raised by Ray, III, overlap with those raised by Ray, Jr.  
13 They include: (1) Ray III's claim #2 (speedy trial), corresponding to Ray Jr.'s claim  
14 #3; (2) Ray III's claim #5 (*Brady*<sup>1</sup> violation), corresponding to Ray Jr.'s, claim #5;  
15 and (3) Ray III's claim #7 (challenging modified CALCRIM 3515), corresponding  
16 to Ray Jr.'s, claim #11. There may be overlap in other claims as well. Since 12  
17 claims from Ray Jr. remain, and Ray III has raised 11, the identified three-issue  
18 overlap means that the cases together raise between 12 and 20 claims.

19 (CMC Statement in Case No. C 11-01604 YGR (PR) at 3-4 (footnote added).)

20 On February 21, 2012, Ray, III filed his case management statement, in which he also  
21 expresses confusion as to the which judge is handling his case and Ray, Jr.'s case.

22 On March 7, 2012, Respondent filed a "Motion to Dismiss Petition as Untimely or in the  
23 Alternative To Dismiss All But Two Claims As Procedurally Defaulted" in Ray, III's case (docket  
24 no. 32 in Case No. C 11-01604 YGR (PR)). Ray, III filed an opposition to the motion to dismiss.  
25 He has also filed a motion to strike the motion to dismiss as well as various other motions (docket  
26 nos. 7, 16, 22, 29, 34 in Case No. C 11-01604 YGR (PR)), all of which have not yet been ruled on.

27 Because Ray, Jr.'s case (Case No. C 10-01582 SI (PR)) has previously been related to Ray,  
28 III's case (Case No. C 11-01604 YGR (PR)), these related cases should be assigned to the same  
judge pursuant to Northern District Local Rule 3-12. Accordingly, the Clerk of the Court is hereby  
directed to reassign Ray, Jr's case (Case No. C 10-01582 SI (PR)) to the undersigned judge.

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

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The undersigned judge will rule on the pending motions in these related cases in a separate written Order and only after the reassignment takes place.

The Clerk shall file this Order in both cases, Case Nos. C 10-01582 SI (PR) and C 11-01604 YGR (PR), and shall send a copy of it to each of the parties in both cases.

IT IS SO ORDERED.

DATED: April 11, 2012

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE