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 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

<p>15 GRIFFIN, ROBERT LEE,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>18 JAMES GOMEZ,</p> <p style="text-align: right;">Respondent.</p>	<p>9821038JW</p> <p>OPPOSITION TO MOTION IN LIMINE</p> <p>Hearing: August 12, 2008 Time: 1:00 p.m. Location: U.S. District Courthouse Judge: Hon. Nandor J. Vadas</p>
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21 INTRODUCTION

22 On April 4, 2008, the Court issued an order directing the magistrate judge to issue a “report
 23 and recommendation with respect to whether Respondent complied with the writ” that was
 24 granted on June 28, 2006. (Order Referring Motion to Magistrate, filed April 4, 2008, at 2:13-
 25 15.) The Court’s order granting the writ stated:

26 Petitioner’s petition is GRANTED. Respondents are ordered to
 27 release Petitioner from the SHU immediately. On or before July 5,
 2006, Respondents are ordered to file a notice that Petitioner has
 28 been released.

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1 (Order Granting Writ of Habeas Corpus, filed June 28, 2006, at 11.)

2 In the order seeking a report and recommendation, the Court indicated that a report and
3 recommendation is necessary because “the Court does not have a fully developed record of
4 Petitioner’s housing status since its June 28, 2006 Order.” (*Id.* at 2:12-13.) This matter is now
5 set for an evidentiary hearing.

6 Griffin seeks a motion in limine “to exclude from the scheduled evidentiary hearing any
7 evidence, witnesses and defenses that Respondents are precluded from presenting under the legal
8 concepts of res judicata, claim preclusion, issue preclusion, collateral estoppel or equivalent
9 common law doctrines.” (Notice of Motion and Motion In Limine, filed July 25, 2008, at 1.)

10 The motion should be denied because res judicata does not apply in habeas proceedings.
11 Moreover, the purpose of this hearing is not to relitigate past issues, and Respondent has no
12 intention to do so, but rather for the limited purpose of determining whether Respondent
13 complied with the writ.

14 Griffin was released from the SHU and the notice to that effect was filed with the Court.
15 Indeed, Griffin has not been confined in the PBSP SHU for approximately five years. He,
16 however, has now been returned from federal custody to PBSP and he has recently been
17 validated as an active gang member based upon current information and criteria. At the hearing,
18 Respondent will, to the extent necessary to show that Respondent complied with the writ, show
19 that the circumstances have changed regarding both the conditions at the PBSP SHU and
20 Griffin’s custody status, such that his placement in the PBSP SHU would not violate this Court’s
21 earlier order.^{1/}

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28 1. Should Griffin be attempting to litigate anything beyond Respondent’s compliance
with the order granting the petition, he must do so by way of a new petition for writ of habeas
corpus or, depending on the nature of the claims, a civil rights action under 42 U.S.C. § 1983.

1 **ARGUMENT**

2 **I**

3 **RES JUDICATA IS INAPPLICABLE TO THIS EQUITABLE HABEAS**
4 **CORPUS PROCEEDING.**

5 There is ample authority that the principle of res judicata does not apply to habeas
6 proceedings, which are equitable in nature. *See Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("This
7 Court has consistently relied on the equitable nature of habeas corpus to preclude application of
8 strict rules of res judicata."); *Calderon v. United States Dist. Court (Kelly)*, 163 F.3d 530, 537
9 (9th Cir. 1998) (en banc) (rejecting the use of res judicata in a habeas proceeding "because it
10 contravenes the longstanding rule that res judicata has no application in habeas corpus");
11 *Clifton v. Attorney Gen.*, 997 F.2d 660, 663 n.3 (9th Cir. 1993) ("We recognize that, because
12 'conventional notions of finality of litigation have no place where life or liberty is at stake and
13 infringement of constitutional rights is alleged,' the inapplicability of res judicata to habeas is
14 'inherent in the very role and function of the writ.'" (quoting *Sanders v. United States*, 373 U.S.
15 1, 8, (1963)); *see also Phelps v. Alameda*, 366 F.3d 722, 729 n.7 (9th Cir. 2004).

16 To the extent that principles of res judicata might apply here, they are relevant only to the
17 previous circumstances and conditions actually adjudicated. In *Collins v. Loisel*, 262 U.S. 426,
18 430 (1923), Mr. Justice Brandeis, writing for a unanimous Court in a habeas proceeding
19 instituted by a person being held for extradition, said,

20 a judgment in habeas corpus proceedings discharging a prisoner
21 held for preliminary examination may operate as res judicata. But
22 the judgment is res judicata only that he was at the time illegally in
custody, and of the issues of law and fact necessarily involved in
that result.

23 Here, after a five year break, Griffin faces a new SHU term for new conduct which will be
24 served under different conditions. Res judicata does not preclude Respondent from introducing
25 evidence to demonstrate compliance with the Court's order granting the writ. Circumstances
26 have changed since the writ was granted and Respondent cannot be precluded from introducing
27 facts and evidence regarding these items, that were not and could not have been litigated before.

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CONCLUSION

Based on the foregoing, the in limine motion should be denied.

Dated: August 7, 2008

Respectfully submitted,
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