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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KYLE J. RODNEY,

Case No. 3:13-cv-00323-RCJ

Petitioner,

v.

ORDER

WILLIAM GITTERE, et al.,

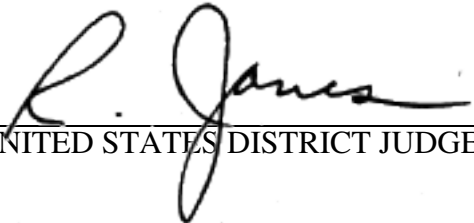
Respondents.

On March 1, 2019, the United States Court of Appeals for the Ninth Circuit issued an opinion vacating this court's final order denying habeas relief and remanding the case for additional proceedings. *Rodney v. Filson*, 916 F.3d 1254 (9<sup>th</sup> Cir. 2019). The order denying relief was vacated because the court of appeals determined this court erred by not conducting an analysis of the substantiality of Rodney's ineffective-assistance-of-counsel (IAC) claims pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012). *Id.* at 1259-60. At the center of these IAC claims are unresolved questions both as to the severity of injuries Rodney's victim, Ralph Monko, sustained as a result of Rodney's criminal conduct and as to defense counsel's performance in relation the medical evidence presented (or not presented) at trial. *Id.* at 1258, 1261. Accordingly, the court of appeals suggested that this court further develop the record by allowing discovery and, if necessary, holding an evidentiary hearing. *Id.* at 1262.

1 On September 22, 2020, this court entered an order allowing for the parties to conduct  
2 discovery in accordance with the Ninth Circuit’s remand. ECF No. 73. The order further  
3 provided that, at the conclusion of discovery, the court would entertain “briefing on the question  
4 of cause and prejudice under *Martinez* and the underlying merits of the claims of ineffective  
5 assistance of counsel.” *Id.* at 5. On July 8, 2021, the parties filed a joint status report stating that  
6 “[d]iscovery is now complete, and the parties request that the Court set a briefing schedule on the  
7 issue of cause and prejudice under *Martinez* and the merits of Mr. Rodney’s claims of ineffective  
8 assistance.” ECF No. 77 at 2.

9 **IT IS THEREFORE ORDERED** that petitioner shall file, within **45 days** of the date of  
10 this order, an opening brief in support of his claim that his procedural defaults should be excused  
11 under *Martinez* and that he is entitled to habeas relief on his remaining claims of ineffective  
12 assistance of counsel. Respondents shall have **45 days** from the date petitioner’s brief is filed to  
13 file a responsive brief. Petitioner shall thereafter have **30 days** to file a reply brief.

14 DATED THIS 13<sup>th</sup> day of July, 2021.

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17 UNITED STATES DISTRICT JUDGE  
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