

# SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,) CAPTIAL CASE

Plaintiff and Respondent,

) S093803

vs.

ROPATI SEUMANU,

) Alameda No.

) No. H24057A

Defendant and Appellant.

SUPREME COURT  
FILED

AUG 04 2014

Frank A. McGuire Clerk

Deputy

APPELLANT'S SUPPLEMENTAL BRIEF  
PURSUANT TO CALIFORNIA RULES OF COURT,  
RULES 8.630(d) and 8.520(d)(1)

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DEATH PENALTY

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**APPELLANT’S SUPPLEMENTAL BRIEF  
PURSUANT TO CALIFORNIA RULES OF COURT,  
RULES 8.630(d) and 8.520(d)(1)**

**INTRODUCTION**

On July 16, 2014, the District Court for the Central District of California issued an order and opinion declaring California’s death penalty unconstitutional under the Eighth Amendment of the United States Constitution. The opinion and

order, from the case of *Jones v. Chapell* (2014, C.D. Cal.) 2014 U.S. Dist. LEXIS 97254 is attached to this pleading.<sup>1</sup>

California Rules of Court, Rule 8.630(d) allows for the filing of supplemental briefs in this Court “as provided in rule 8.520(d).” Rule 8.520(d)(1) provides that “[a] party may file a supplemental brief limited to new authorities, new legislation, or other matters that were not available in time to be included in the party’s brief on the merits.” This brief is proffered for filing on this basis insofar as *Jones v. Chappell* is a “new matter” or “authority” that was “not available in time to be included in” the “brief on the merits in this case.”

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<sup>1</sup> It is permissible to cite unpublished federal decisions, and if they are available in electronic form they must be attached to the pleading in which they are cited. (*Californians for Disability Rights v. Mervyn’s LLC* (2008) 165 Cal.App.4<sup>th</sup> 571, 589, fn. 8; cf. Cal. Rules of Court, Rule 8.1115(c).)

## SUPPLEMENTAL ARGUMENT

### THE ARBITRARINESS AND UNCERTAINTY OF ACTUAL EXECUTION OF A DEATH SENTENCE IN CALIFORNIA RENDERS THAT CAPITAL REGIMEN UNCONSTITUTIONAL UNDER THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION

The Court in *Jones v. Chapell*, *supra*, 2014 U.S. Dist. LEXIS 97254 undertook an extensive examination of the current death penalty system in California. The Court found that systemic delay rendered the infliction of the death penalty in California arbitrary and capricious, and therefore in violation of the Eighth Amendment proscription of cruel and unusual punishment. (*Id.*, at pp. 1-2, 46-47, 51.) The delay in appointment of counsel for the direct appeal, the time required for briefing by both parties, the hiatus between briefing and oral argument and decision, all rendered an average time of 12 to 14 years for completion of the direct appeal. (*Id.*, at pp. 12-15.) Habeas counsel for collateral review, if available at all, is usually appointed about ten years after imposition of the death judgment; a petition, to be presumptively timely, has to be filed within 6 months of the reply brief on direct appeal or three years from appointment of habeas counsel, whichever is longer; and once a petition is filed, it takes this Court approximately five years to issue an order, usually denying the petition. (*Id.*, at pp. 16-21.) State review is followed by federal habeas corpus, which will take, on average, another ten years. (*Id.*, at p. 22.)

Of the 900 individuals who have, since 1978, received a capital judgment, only 13 have been actually executed. There are currently, however, 748 inmates on Death Row, for 94 of the 900 have died of causes other than execution by the State, and 39 have been granted relief from their death sentences by the federal courts and have not been resentenced to death. Currently of the 81 who, since 1978, have completed federal review, there are now 17 awaiting execution, each one of whom has been on Death Row for more than 25 years, while 8 of them

have been there for more than 30 years. (*Id.*, at pp. 2-3, 24.) There has not been an execution in California since 2006. (*Id.*, at p. 24.)

The upshot, according to the Court in *Jones*, is a death penalty system that

“ . . . has resulted, and will continue to result, in an inordinate and unpredictable period of delay preceding . . . actual execution. Indeed, for most, systemic delay has made their execution so unlikely that the death sentence carefully and deliberately imposed by the jury has been quietly transformed into one no rational jury or legislature could ever impose: *life in prison, with the remote possibility of death*. As for the random few for whom execution does become a reality, they will have languished for so long on Death Row that their execution will serve no retributive or deterrent purpose and will be arbitrary.” (*Id.*, at pp. 1-2, emphasis in original.)

The Court in *Jones* also found that the delays that render this system uncertain and arbitrary are not attributable to the efforts of the defendants to inject delay into the system:

“On the record before it, the Court finds that much of the delay in California’s post-conviction review process is created by the State itself, not by the inmates’ own interminable efforts to delay.[fn. omitted.] Most Death Row inmates wait between three and five years for counsel to be appointed for their direct appeal. After the issues are briefed on direct appeal, another two to three years are spent waiting for oral argument to be scheduled before the California Supreme Court. On state habeas review, far from meeting the ideal goal of appointing state habeas counsel shortly after the death verdict, at least eight to ten years elapse between the death verdict and appointment of habeas counsel. When that counsel is appointed by the State, investigation of potential claims is hampered by underfunding, which in turn slows down the federal habeas process. Then, after state habeas briefs are submitted, another four years elapse before the California Supreme Court issues a generally conclusory denial of the inmate’s claims. This lack of a reasoned opinion further slows adjudication of inmates’ federal habeas claims. Finally, even after filing a petition for federal habeas review, many

inmates, often because of deficiencies rooted in the State's process, must stay their federal cases to exhaust claims in state court.

“These delays – exceeding 25 years on average – are inherent to California's dysfunctional death penalty system, not the result of individual inmates' delay tactics, except perhaps in isolated cases. . . .” (*Id.*, at pp. 43-44.)

The Court went on to note various proposed reform recommendations that could, without curtailing the rights of defendants to fairness in their postconviction proceedings, bring the time between sentence and execution down to between 11 and 14 years, more in line with, and even below, the national average, which is about 15 or 16 years. (*Id.*, at p. 45.)

But what is the legal consequence of this situation? Under United States Supreme Court precedent, the death penalty is excessive under the Eighth Amendment if it is grossly disproportionate to the crime or when “it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes.” (*Kennedy v. Louisiana* (2008) 554 U.S. 407, 441.) The purposes of deterrence and retribution cannot be served if the infliction of a sentence of a death is “so wantonly and freakishly imposed” as to conform to the description of “arbitrary and capricious.” (*Gregg v. Georgia* (1976) 428 US. 153, 188; *Furman v. Georgia* (1972) 408 U.S. 238, 310, (Stewart, J., concurring; See *Jones v. Chapell, supra*, 2014 U.S. Dist. LEXIS 97254, pp. 28-29.) By this measure, the state of the death penalty as administered in California violates the Eighth Amendment:

“[F]or too long now, the promise [that the death penalty will actually be carried out] has been an empty one. Inordinate and unpredictable delay has resulted in a death penalty system in which very few of the hundreds of individuals sentenced to death have been, or even will be, executed by the State. It has resulted in a



system in which arbitrary factors, rather than legitimate ones, like the nature of the crime or the date of the death sentence, determine whether an individual will actually be executed. And it has resulted in a system that serves no penological purpose. Such a system is unconstitutional.” (*Id.*, at pp. 28-29; but see *People v. Anderson* (2001) 25 Cal.4<sup>th</sup> 543, 606.)

The facts pertinent to Mr. Seumanu’s case fall within the empirical outline set forth by the Court in *Jones*. Judgment of death was imposed in Mr. Seumanu’s case on December 12, 2000. He was without counsel for four years until, on December 14, 2004, counsel was appointed to represent him on direct appeal to this Court. A little over two and a half years after appointment of counsel, an opening brief was filed on July 31, 2007. The Attorney General took 13 months to file a responsive brief on September 3, 2008, while a reply brief was filed seven months later on April 14, 2009. As of July, 2014, over five years later, no oral argument has been scheduled. Mr. Seumanu’s direct appeal has already equaled the average 14 years it takes for a *completed* direct appeal. If habeas counsel is usually appointed ten years after imposition of the death judgment, Mr. Seumanu’s counsel was appointed in less than nine years, on July 8, 2009. A presumptively timely petition for writ of habeas corpus was filed on July 9, 2012, and informal briefing on the petition was completed a year and a half later on March 3, 2014.<sup>2</sup>

From this point, Mr. Seumanu is well on his way to at least a thirty-year sojourn on Death Row before the *possibility* of execution even arises. For if the five-year average for a disposition on the habeas petition holds, Mr. Seumanu’s habeas will have been decided by 2019 or 2020. Assuming further that he obtains a resolution of his direct appeal before that time, the time between judgment and completion of state review of his death sentence will be 19 or 20 years. With

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<sup>2</sup> It is worth noting that a confidential request for further funding for habeas investigation was filed in this Court insofar as the funds allowed by this Court for habeas investigation had been exhausted.

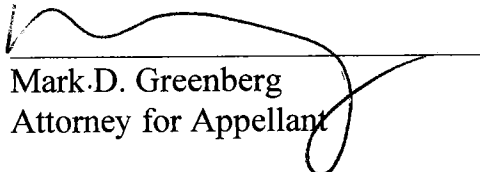
another ten years for federal habeas, he will have been on Death Row for 30 years before all levels of review of his sentence have been exhausted. And then he will await execution, which, in accord with historical experience, will *still* have no certain, predictable date of infliction. As the Court in *Jones* demonstrated, this renders the California death penalty unconstitutional under the Eighth Amendment, and the judgment of death imposed on Mr. Seumanu must be reversed. (*Jones v. Chappell, supra*, 2014 U.S. Dist. LEXIS 97254, p. 51.)

## CONCLUSION

For the foregoing reasons, judgment of death must be reversed.

Dated: July 28, 2014

Respectfully submitted,

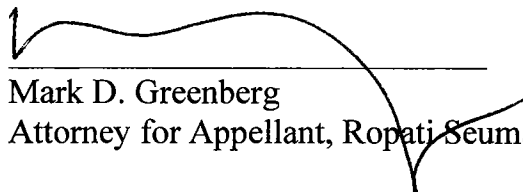


Mark.D. Greenberg  
Attorney for Appellant

## CERTIFICATION OF WORD-COUNT

I am attorney for appellant in the above-titled action. This document has been produced by computer, and in reliance on the word-count function of the computer program used to produce this document, I hereby certify that, exclusive of the table of contents, the proof of service, and this certificate, this document contains 1853 words.

Dated: July 28, 2014



Mark D. Greenberg  
Attorney for Appellant, Ropati Seumanu



**ATTACHED COPY OF  
*JONES V. CHAPPELL* (2014, C.D. Cal.) 2014U.S. Dist. LEXIS 97254  
(Cal. Rules of Court, Rule 8.1115(c))**





**ERNEST DEWAYNE JONES, Petitioner, vs. KEVIN CHAPPELL, Warden of California State Prison at San Quentin, Respondent.**

**Case No.: CV 09-02158-CJC**

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**2014 U.S. Dist. LEXIS 97254**

**July 16, 2014, Decided**

**PRIOR HISTORY:** *People v. Jones*, 29 Cal. 4th 1229, 131 Cal. Rptr. 2d 468, 64 P.3d 762, 2003 Cal. LEXIS 1544 (2003)

**OPINION BY:** CORMAC J. CARNEY

**OPINION**

**COUNSEL:** [\*1] For Ernest DeWayne Jones, Petitioner: Cliona R Plunkett, Michael Laurence, LEAD ATTORNEYS, Habeas Corpus Resource Center, San Francisco, CA.

**ORDER DECLARING CALIFORNIA'S DEATH PENALTY SYSTEM UNCONSTITUTIONAL AND VACATING PETITIONER'S DEATH SENTENCE**

For Kevin Chappell, Respondent: Herbert S Tetef, LEAD ATTORNEY, CAAG - Office of Attorney General of California, Los Angeles, CA; James W Bilderback , II, Sarah Jean Farhat, CAAG - Office of the Attorney General, California Department of Justice, Los Angeles, CA.

On April 7, 1995, Petitioner Ernest DeWayne Jones was condemned to death by the State of California. Nearly two decades later, Mr. Jones remains on California's Death Row, awaiting his execution, but with complete uncertainty as to when, or even whether, it will ever come. Mr. Jones is not alone. Since 1978, when the current death penalty system was adopted by California voters, over 900 people have been sentenced to death for their crimes. Of them, only 13 have been executed. For the rest, the dysfunctional administration of

**JUDGES:** CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE.



California's death penalty system has resulted, and will continue to result, in an inordinate and [\*2] unpredictable period of delay preceding their actual execution. Indeed, for most, systemic delay has made their execution so unlikely that the death sentence carefully and deliberately imposed by the jury has been quietly transformed into one no rational jury or legislature could ever impose: *life in prison, with the remote possibility of death*. As for the random few for whom execution does become a reality, they will have languished for so long on Death Row that their execution will serve no retributive or deterrent purpose and will be arbitrary.

That is the reality of the death penalty in California today and the system that has been created to administer it to Mr. Jones and the hundreds of other individuals currently on Death Row. Allowing this system to continue to threaten Mr. Jones with the slight possibility of death, almost a generation after he was first sentenced, violates the *Eighth Amendment's* prohibition against cruel and unusual punishment.

## BACKGROUND

### A. Delay in California's Death Penalty System

California juries have imposed the death sentence on more than 900 individuals since 1978.<sup>1</sup> Yet only 13 of those 900 have been executed by the State. Of the remainder, 94 have died [\*3] of causes other than execution by the State, 39 were granted relief from their death sentence by the federal courts and have not been resentenced to death, and 748 are currently on Death Row, having their death sentence evaluated by the courts or awaiting their execution.<sup>2</sup>

1 In 1977, five years after the California Supreme Court first invalidated the State's death penalty statute, *see People v. Anderson*, 6 Cal. 3d 628, 100 Cal. Rptr. 152, 493 P.2d 880 (1972), the California Legislature acted to reinstate the punishment. One year later, the current death penalty system took form, when voters passed Proposition 7, known as the Briggs Initiative, amending the death penalty statute and significantly expanding the circumstances under which prosecutors could seek the death penalty. *See California Commission on the Fair Administration of Justice, Final Report 120* (Gerald Uelmen ed., 2008) ["Commission Report"], available at <http://www.ccfaj.org/documents/CCFAJFinalReport.pdf> ("Under the death penalty statute now in effect, 87% of California's first degree murders are 'death eligible' . . .").

2 *See Cal. Dep't of Corr. & Rehab., Condemned Inmate List* (July 2014), available at [http://www.cdcr.ca.gov/capital\\_punishment/docs/condemnedinmatelistsecure.pdf](http://www.cdcr.ca.gov/capital_punishment/docs/condemnedinmatelistsecure.pdf). [\*4] Despite having been granted relief by the federal courts, 10 of the 39 individuals are listed by the CDCR as being among the 748 inmates currently on Death Row. *See id.* In at least some of these cases, this may be explained by the State's intention to again seek the death penalty against these inmates in a new trial.

The simplest explanation for the size of California's Death Row is that in each year since 1978, more individuals have been sentenced to death than have been removed

from Death Row. *See* Commission Report at 121 (showing historical growth in the size of California's Death Row). As the size of California's Death Row grows larger and larger, so too do the delays associated with it. Of the 748 inmates currently on California's Death Row, more than 40 percent, including Mr. Jones, have been there longer than 19 years.<sup>3</sup> Nearly all of them are still litigating the merits of their death sentence, either before the California Supreme Court or the federal courts.<sup>4</sup> *See* Appendix A.<sup>5</sup>

3 *See* Cal. Dep't of Corr. & Rehab., Condemned Inmate Summary List at 2 (June 2014) ["CDCR Summary"], available at [http://www.cdcr.ca.gov/Capital\\_Punishment/docs/CondemnedInmateSummary.pdf](http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateSummary.pdf).

4 Those sentenced [\*5] to death in California proceed through a post-conviction review process that begins with a mandatory automatic appeal to the California Supreme Court. If that appeal is denied, an inmate may seek collateral review of the death sentence, again from the California Supreme Court. If state habeas relief is denied, an inmate may then pursue collateral review of the death sentence from the federal courts. If relief is denied at each of these levels, then the inmate may be executed.

5 Between 1978 and 1997, 591 new death judgments were issued in California. *See* Cal. Dep't of Justice, Criminal Justice Statistics Center, Homicide in California, 2011 at tbl. 35, available at <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/homicide/hm11>

/hm11.pdf. Appendix A describes the current case status of 511 individuals sentenced in that time period. It does not include individuals whose death sentences were overturned by the California Supreme Court, unless subsequently reinstated. Because most of the death sentences overturned by the California Supreme Court were overturned in the period between 1979 and 1986, inclusion of those sentences in Appendix A would not accurately reflect the current [\*6] state of affairs in the California death penalty system. *See* Commission Report at 120 n.21 (noting that between 1979 and 1986, the California Supreme Court reversed 59 of 64 death judgments it reviewed, but that since that time, it has reversed death judgments less than 10 percent of the time). Appendix A also does not include individuals whose post-conviction proceedings have been stayed based on their lack of mental competency to face the death penalty. Finally, Appendix A does not include individuals sentenced to death after 1997 because state proceedings are ongoing for all but a small handful, and none have completed the federal habeas process.

For those whose challenge to the State's death sentence is ultimately denied at each level of review, the process will likely take 25 years or more. *See* Gerald Uelman, *Death Penalty Appeals and Habeas Proceedings: The California Experience*, 93 *Marq. L. Rev.* 495, 496 (2009) ("Typically, the lapse of time between sentence and execution is twenty-five years, twice the national average, and is growing wider each year."). The majority of that time will likely

be spent litigating before the California Supreme Court. *See* Dkt. No. 109-3, Exh. 15 [\*7] ["Laurence Decl."] ¶ 15 (noting that for inmates who had their state habeas petitions decided between 2008 and 2014, the average delay between sentencing and disposition of the petition was 17.2 years). There is no evidence to suggest that the trend is reversing.

Of course, the vast majority of those sentenced to death in California will not actually be executed by the State. Indeed, the most common way out of California's Death Row is not death by State execution, but death by other means. Of the 511 individuals sentenced to death between 1978 and 1997, 79 died of natural causes, suicide, or causes other than execution by the State of California. *See* Appendix A. Another 15 sentenced after 1997--or two more than the total number of inmates that have been executed by California since the current death penalty system took form--have died of non-execution causes.<sup>6</sup> As California's Death Row population gets older, that number is sure to rise. *See* CDCR Summary at 1 (showing that nearly 20 percent of California's current Death Row population is over 60 years old).

6 *See* Cal. Dep't of Corr. & Rehab., *Condemned Inmates Who Have Died Since 1978* (2014) (showing that since 1978, 63 inmates have died [\*8] of natural causes, 22 have committed suicide, 8 have died of other causes, including drug overdose or violence on the exercise yard, and 1 has been executed by another state), *available at* [MATESWHOHAVEDIED-SINCE1978.pdf.](http://www.cdcr.ca.gov/Capital_Punishment/docs/CONDEMNEDIN-</a></p>
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For those that survive the extraordinary wait for their challenge to be both heard and decided by the federal courts, there is a substantial chance that their death sentence will be vacated. As of June 2014, only 81 of the 511 individuals sentenced to death between 1978 and 1997 had completed the post-conviction review process. Of them, 32 were denied relief by both the state and federal courts--13 were executed, 17 are currently awaiting execution, and two died of natural causes before the State acted to execute them.<sup>7</sup> *See* Appendix A. The other 49--or 60 percent of all inmates whose habeas claims have been finally evaluated by the federal courts--were each granted relief from the death sentence by the federal courts.<sup>8</sup> *See id.*

7 These 17 inmates are awaiting execution because since 2006, federal and state courts have enjoined executions by California. In 2006, the federal district court for the Northern District of [\*9] California enjoined the State from executing Death Row inmate Michael Morales on grounds that, as administered, the State's lethal injection protocol "create[d] an undue and unnecessary risk that an inmate will suffer pain so extreme" that it violated the *Eighth Amendment's* prohibition against cruel and unusual punishment. *See Morales v. Tilton*, 465 F. Supp. 2d 972, 974, 976-77 (N.D. Cal. 2006). The State subsequently amended the protocol, but because those amendments were not promulgated in compliance with the State's Administrative Procedures Act

(APA), the Marin County Superior Court enjoined executions under them. *See Morales v. Cal. Dep't of Corr. & Rehab.*, 168 Cal. App. 4th 729, 732, 85 Cal. Rptr. 3d 724 (2008). In response to the ruling, the State undertook to promulgate a lethal injection protocol through the APA's rulemaking process. After the regulations went into effect in August 2010, Death Row inmate Mitchell Sims sued to enjoin executions under the amended protocol, again for failure to comply with the APA. The state court agreed, invalidating the regulations for substantial failure to comply with the requirements of the APA, and permanently enjoining executions in California until the State [\*10] is able to adopt an execution protocol that complies with its own procedural law. *See Sims v. Dep't of Corr. & Rehab.*, 216 Cal. App. 4th 1059, 157 Cal. Rptr. 3d 409 (2013). California is therefore without any execution protocol by which to execute the 17 Death Row inmates who have been finally denied relief by both the state and federal courts, or to execute any other inmates who may similarly be denied relief in the near future.

8 The State resentenced 10 of these individuals to death, thus starting anew the post-sentencing appeal process on the renewed sentences, though two have since died while on post-conviction review for the second time. *See Appendix A.*

## **B. The Nature of Delay in California's System**

The nature of the delay in California's administration of its death penalty system has been comprehensively studied, including by the State itself. In 2004, the California State Legislature established the California Commission on the Fair Administration of Justice (the "Commission"), and tasked it with conducting a comprehensive review of the State's justice system, including its administration of the death penalty. *See Commission Report* at 113-14. The Commission, a bipartisan panel which was composed of prosecutors, [\*11] criminal defense attorneys, law enforcement officials, academics, representatives of victim's rights organizations, elected officials, and a judge, issued its Final Report in June 2008. Its conclusion was a stern indictment of the State's death penalty system:

California's death penalty system is dysfunctional. The system is plagued with excessive delay in the appointments of counsel for direct appeals and habeas corpus petitions, and a severe backlog in the review of appeals and habeas petitions before the California Supreme Court.

*Id.* at 114-15.<sup>9</sup> The Commission is not alone in reaching this determination. In 2008, then-Chief Justice of the California Supreme Court Ronald M. George offered the same assessment. *See Ronald M. George, Reform Death Penalty Appeals*, L.A. Times, Jan. 7, 2008 ("The existing system for handling capital appeals in California is dysfunctional and needs reform. The state has more than 650 inmates on death row,

and the backlog is growing.") (cited in Commission Report at 164-65 n.3). Ninth Circuit Court of Appeals Senior Judge Arthur L. Alarcón has suggested the same in his study of the issue. *See* Arthur L. Alarcón & Paula M. Mitchell, *Executing the Will of the [\*12] Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle*, 44 *Loy. L.A. L. Rev.* 541, 561 (2011) (describing California's "broken" death penalty system).

9 Even the commissioners who dissented from the Commission Report agreed "wholeheartedly" that "delay on appeal and in habeas corpus in state and federal court is excessive and frustrates the effective administration of the death penalty." Commission Report at 164 (separate statement of Commissioners Totten, Boscovich, Cottingham, Dunbar, and Hill).

In reaching these conclusions, the Commission and others have documented the source and nature of the delay in California's death penalty system. Their studies confirm that delay is evident at each stage of the post-conviction review process, including from the time the death sentence is issued.

### 1. Delay on Direct Appeal

In California's death penalty system, delay sets in at the first step of post-conviction review--direct appeal. California law mandates that after a death sentence is imposed, it must be automatically appealed to the California Supreme Court for review. *See Cal. Penal Code* § 1239. To pursue that appeal, indigent Death Row inmates [\*13] are

entitled to the assistance of court-appointed counsel.<sup>10</sup> *See Cal. Penal Code* § 1240. But inmates must wait years--on average, between three and five years--until counsel is appointed to represent them. *See* Commission Report at 122. Indeed, as of June 2014, there were 71 Death Row inmates awaiting appointment of counsel for their direct appeal. Dkt. No. 116 ["Laurence Supplemental Decl."] ¶ 3. Unsurprisingly, until such counsel is appointed, there is effectively no activity on the inmate's case.

10 That a Death Row inmate is indigent is essentially a foregone conclusion. Of the 670 inmates on California's Death Row in 2008, each was indigent and therefore entitled to the assistance of court-appointed counsel in the post-conviction review process. *See* Commission Report at 121.

This delay is likely due to the severe shortage of qualified attorneys available to accept appointment as counsel on direct appeal. To be appointed, attorneys must have at least four years of active law practice, experience in felony appeals, completion of training, and demonstrated proficiency in appellate skills. Commission Report at 132 (citing *Cal. Rule of Court Rule 8.605(d)*). Notably, however, the Commission [\*14] did not find a general dearth of lawyers able to meet these qualifications or willing to take on the representation of Death Row inmates. Rather, the Commission found the State's underfunding of its death penalty system to be a key source of the problem. *Id.* For example, the Commission noted that despite the high volume of applicants willing to represent Death Row inmates from the security of an agency setting, the Office of the State Public Defender's budget has

been cut and its staff reduced. *Id.* (recommending that "[t]he most direct and efficient way to reduce the backlog of death row inmates awaiting appointment of appellate counsel would be to again expand the Office of the State Public Defender"). Similarly, as to appointments of private counsel, the Commission found that the low rate at which private appointed counsel are paid by the State is "certainly a significant factor in the decline of the pool of attorneys available to handle death penalty appeals." *Id.*; see also Arthur L. Alarcón, *Remedies for California's Death Row Deadlock*, 80 *S. Cal. L. Rev.* 697, 734 (2007) ["Alarcón Study"] ("Private practitioners who can bear the financial sacrifice of accepting court-appointment [\*15] at the present hourly rates are scarce.").

Once counsel is eventually appointed, that counsel must learn the trial record, which often totals more than 9,000 pages, must research the law, and must file an opening brief with the California Supreme Court. See Commission Report at 131. Including the time spent by the State to file a responsive brief, and by counsel for the inmate to file a reply brief, the briefing process will typically consume under four years. *Id.* The parties must then wait for the case to be scheduled for argument before the California Supreme Court. On average, the California Supreme Court generally hears between 20 and 25 death penalty appeals per year, and so another two to three years will likely pass before arguments are scheduled and the case is subsequently decided. *Id.* Taken together then, from the sentence of death to the California Supreme Court's disposition of the automatic appeal, between 11.7 and 13.7 years will have elapsed, see *id.*, with inmates spending

much of that time waiting for counsel to be appointed and for oral argument to be scheduled.

## 2. Delay on State Collateral Review

Whereas on direct review the inmate challenges issues raised at the trial [\*16] and sentencing, on collateral review the inmate may attack the legality of his confinement based on issues that normally cannot be determined in the direct appeal process, including claims of ineffective assistance of counsel at trial. As on direct appeal, indigent Death Row inmates are entitled to the assistance of state-appointed counsel to pursue their habeas petitions. See *Cal. Gov't Code* § 68662. Unless the inmate requests that the same counsel provide representation both on direct appeal and during collateral review, California law directs that different counsel be appointed at each stage. *Cal. Gov't Code* § 68663. The majority of counsel appointed in capital habeas cases are private attorneys, though a number of inmates receive the assistance of the Habeas Corpus Resource Center ("HCRC"), the entity created by the Legislature to provide habeas representation to Death Row inmates.<sup>11</sup> See Laurence Decl. ¶ 11 (in fiscal years 2005 to 2012, the HCRC was appointed, on average, in 43 percent of state habeas cases).

11 Whether an inmate receives the assistance of the HCRC or a private attorney may significantly affect the extent of delays in the inmate's post-conviction review proceedings. [\*17] Whereas the HCRC may be able to provide continuous representation in both the inmate's state and federal habeas claims, the same is not true of

private attorneys appointed to represent Death Row inmates in their state habeas proceedings, who generally do not continue to provide representation in federal proceedings as well. *See* Commission Report at 137. As the Commission found, "[c]ontinuity of representation by the same lawyer in both state and federal habeas corpus proceedings helps to reduce many of the delays that now occur in state and federal habeas proceedings." *Id.*

The California Supreme Court has noted that "[i]deally, the appointment of habeas corpus counsel should occur shortly after an indigent defendant's judgment of death" so as to "enable habeas corpus counsel to investigate potential claims for relief and to prepare a habeas corpus petition at roughly the same time that appellate counsel is preparing an opening brief on appeal." *In re Morgan*, 50 Cal. 4th 932, 937, 114 Cal. Rptr. 3d 591, 237 P.3d 993 (2010). An expeditious appointment "would ensure the filing of a habeas corpus petition soon after completion of the briefing on the appeal." *Id.* Yet as of June 2014, 352 inmates--nearly half of Death Row--were [\*18] without habeas corpus counsel. *See* Laurence Decl. ¶ 7. And that number is up from 291 inmates awaiting appointment of habeas counsel in 2008. *See* Commission Report at 134; *see also* Laurence Decl. tbl. 1 (showing that in all but one year since 1999, the total number of Death Row inmates awaiting the appointment of habeas counsel has increased). The growing backlog of appointments can again be traced to underfunding issues similar to those on direct appeal. *See* Commission Report at 135 (describing the below-market rates at which appointed habeas counsel are paid, and the

low cap on funds made available to conduct habeas investigations and retain necessary experts); Alarcón Study at 738 (same). And unless the State is able to reverse the current trend, the backlog of Death Row inmates awaiting habeas counsel will only continue to grow. *See* Laurence Supplemental Decl. ¶ 5 (noting that over the past five years, the State has issued an average of 22.8 death judgments per year compared with only 9.4 annual appointments of habeas counsel over the same period).

The Commission found in 2008 that, far from meeting the California Supreme Court's ideal, habeas counsel is generally not appointed [\*19] until between eight and ten years after the imposition of the death sentence. *See* Commission Report at 134. And the length of delay is growing. Currently, of the 352 inmates without habeas counsel, 159 have been awaiting appointment of such counsel for more than ten years. *See* Laurence Supplemental Decl. ¶ 4; Laurence Decl. ¶ 8. Further, there are 76 inmates whose direct appeals have been fully denied by the California Supreme Court but still lack habeas counsel. *See* Laurence Supplemental Decl. ¶ 4. They have already waited an average of 15.8 years after the imposition of their death sentence for habeas counsel to be appointed, and are still waiting. *Id.*

Once habeas counsel is appointed, that counsel must learn the trial record, investigate any potential constitutional or statutory claims, and file the habeas petition with the California Supreme Court.<sup>12</sup> To be presumed timely, the petition must be filed either within 180 days after the final due date for filing the appellant's reply brief on direct appeal or within 36 months after the appointment of habeas counsel, whichever is

later.<sup>13</sup> Then, in most cases, the State will only file an informal reply to the petition before it is decided [\*20] by the California Supreme Court. *See* Laurence Decl. ¶ 17 (noting that of the 729 habeas petitions resolved on the merits by the California Supreme Court since 1978, the court has issued orders to show cause, requiring the Attorney General to formally respond to the petition, in only 99 cases, and held evidentiary hearings only 45 times).

12 Given that habeas petitions at both the state and federal level often include claims of ineffective assistance of counsel, the appointed habeas counsel is often required to reinvestigate the inmate's case to discover whether any additional mitigating evidence might have been presented to the jury, but was not for lack of adequate representation during the guilt and penalty phases of the inmate's trial. *See* Commission Report at 133-34. As noted above, however, such investigation may be hampered by underfunding, which may in turn further delay the federal habeas process. *See id.* at 135; Alarcón Study at 738.

13 *See* Supreme Court Policies Regarding Cases Arising from Judgments of Death, Policy 3, Timeliness Standard 1-1.1 (as amended Nov. 30, 2005), available at <http://www.courts.ca.gov/documents/PoliciesMar2012.pdf>. At the time Mr. Jones filed his state [\*21] habeas petition in 2002, the Policy required the petition to be filed within 90 days after the final due date for the filing of the appellant's reply brief on direct appeal or within 24 months af-

ter the appointment of habeas counsel, whichever is later.

In 2008, the Commission estimated that after a habeas petition was filed, it would take the California Supreme Court 22 months on average to decide it. *See* Commission Report at 134. But that delay has more than doubled since the Commission's report was issued. Of the 176 capital habeas petitions currently pending before the California Supreme Court, the average amount of time that has elapsed since each petition was filed is 49 months. Laurence Supplemental Decl. ¶ 6. Similarly, of the 68 capital habeas petitions the court has decided since 2008, it has taken an average of 47.8 months for the California Supreme Court to issue a decision once each petition was fully briefed. Laurence Decl. ¶ 14. In all, by the time the inmate's state habeas petition is decided, he will likely have spent a combined 17 years or more litigating his direct appeal and petition for state habeas review before the California Supreme Court.<sup>14</sup> *See id.* ¶ 15.

14 When [\*22] the California Supreme Court does rule on a capital habeas petition, it usually does so by way of a summary unpublished opinion. For example, the California Supreme Court denied Mr. Jones's habeas petition in a mere 202 words, excluding citations. *See* Jones (Ernest Dewayne) on H.C., No. S110791 (Cal. Mar. 11, 2009, amended Mar. 16, 2009), available at [http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc\\_id=1842470&doc\\_no=S110791](http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1842470&doc_no=S110791). The Commission noted that much of the delay in federal habeas proceedings



"is attributable to the absence of a published opinion and/or an evidentiary hearing in the state courts" because "[o]ften, the federal courts cannot ascertain why state relief was denied." Commission Report at 123.

### 3. Delay on Federal Collateral Review

When an inmate's state habeas petition is denied, the inmate may seek relief in federal court by alleging that the State has violated his federal constitutional rights. Federal habeas proceedings are significantly affected by the habeas proceedings before the state court. Federal courts are generally limited in their review by the legal and factual determinations of the state court. 28 U.S.C.  $\beta$  2254(d). Moreover, if [\*23] an inmate discovers new facts in the federal proceeding that were not before the California Supreme Court when it decided the state habeas petition, that inmate must generally halt the federal proceeding and return to the California Supreme Court by way of an exhaustion petition to present to it the new facts and exhaust the state remedy. See 28 U.S.C.  $\beta$  2254(b).

As of 2008, the complete federal habeas review process, including initial review by the district court, appeal to the Ninth Circuit, and possible petitions for en banc and Supreme Court review, took an average of 10.4 years. See Commission Report at 123, 137. While certainly lengthy, "[m]uch of the delay in federal habeas corpus proceedings . . . is attributable to the need to exhaust state remedies and to conduct investigations." Alarc n Study at 750. For example, since 1978, Death Row inmates have filed 268 exhaustion petitions in the California Supreme Court after initiating federal habeas proceedings. Laurence Supple-

mental Decl.  $\partial$  7; see also Alarc n Study at 749 (noting that approximately 74 percent of federal habeas proceedings are stayed at some point during the proceeding for exhaustion of state remedies). The average [\*24] time that elapses before that exhaustion petition is decided by the California Supreme Court is 3.2 years. Laurence Supplemental Decl.  $\partial$  7; see also Alarc n Study at 749 (finding that, as of 2007, "[t]he average delay for the exhaustion of state remedies before the California Supreme Court [was] 2.8 years").

Ultimately, since 1978 only 81 inmates--of the more than 900 individuals sentenced to death in California--have received a final determination on the merits of their federal habeas petitions.<sup>15</sup> Less than half of those 81 have been denied relief at all levels, and only 13 have actually been executed. See Appendix A. Of the 17 that are currently awaiting their execution, each has been on Death Row for more than 25 years, and eight have been there for more than 30 years. *Id.* More inmates will ultimately be denied relief at each stage of review, but when or whether they will be executed is unclear. Indeed, not one inmate has been executed in California since 2006. See *id.*

15 This number includes two inmates who technically never had their petitions decided by the federal courts because they voluntarily withdrew their petitions, choosing to be executed immediately by the State rather than [\*25] have their habeas petitions finally decided by the federal courts.

### C. Mr. Jones's Claim

After Mr. Jones was sentenced to death in April 1995, he waited approximately four

years before the State appointed counsel to represent him in his direct appeal. Then, another four years later, on March 17, 2003, the California Supreme Court affirmed Mr. Jones's conviction. *People v. Jones*, 29 Cal. 4th 1229, 131 Cal. Rptr. 2d 468, 64 P.3d 762 (2003). After certiorari was denied by the United States Supreme Court, the judgment became final on October 21, 2003. *Jones v. California*, 540 U.S. 952, 124 S. Ct. 395, 157 L. Ed. 2d 286 (2003). In total, Mr. Jones spent about eight years litigating his direct appeal before the California Supreme Court--considerably less time than the 12 to 14 years spent by most individuals on California's Death Row.

Mr. Jones's state habeas counsel was appointed on October 20, 2000, five years after he was sentenced to death and while he was still litigating his direct appeal. By October 21, 2002, Mr. Jones's counsel--the Habeas Corpus Resource Center, which continues to represent him in this federal habeas proceeding--filed his state habeas petition. Six and a half years later, and over five years after the petition was fully briefed, on March [\*26] 11, 2009 the California Supreme Court denied Mr. Jones's petition in an unpublished order. No hearing was conducted, and no briefing was provided by the State beyond an informal reply.

Finally, on March 10, 2010, Mr. Jones filed his petition for federal habeas relief. See Dkt. No. 26. Briefing on the petition was completed in January 2014, and the Court is reviewing his claims. On April 28, 2014, Mr. Jones amended Claim 27 of his petition to broaden the nature of his claim of unconstitutional delay in California's administration of its death penalty system. See Dkt. No. 105 ["First Am. Pet."]. Mr.

Jones's new claim asserts that as a result of systemic and inordinate delay in California's post-conviction review process, only a random few of the hundreds of individuals sentenced to death will be executed, and for those that are, execution will serve no penological purpose. *Id.*

## ANALYSIS

The *Eighth Amendment* prohibits the imposition of cruel and unusual punishment by the state. Although reasonable people may debate whether the death penalty offends that proscription, no rational person can question that the execution of an individual carries with it the solemn obligation of the government [\*27] to ensure that the punishment is not arbitrarily imposed and that it furthers the interests of society. As the American tradition of law has long recognized, death is a punishment different in kind from any other. , *Harmelin v. Michigan*, 501 U.S. 957, 995, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991) (noting the "qualitative difference between death and all other penalties"); *Coleman v. McCormick*, 874 F.2d 1280, 1288 (9th Cir. 1989) ("The finality and severity of a death sentence makes it qualitatively different from all other forms of punishment."). Indeed, in its finality, the punishment of death "differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305, 96 S. Ct. 2978, 49 L. Ed. 2d 944 (1976).

Recognizing that solemn obligation, in 1972 the United States Supreme Court in-

validated the death sentences of the three petitioners appearing before it, and signaled that as it was then being imposed across much of the country, the death penalty violated the *Eighth Amendment*. See *Furman v. Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) [\*28] (per curiam). In *Furman*, the Court encountered state sentencing schemes by which judges and juries were afforded virtually untrammelled discretion to decide whether to impose the ultimate sanction. The result was that the death penalty was being imposed in an at best random manner against some individuals, with "no meaningful basis for distinguishing the few cases in which it [was] imposed from the many cases in which it [was] not." See *id.* at 313 (White, J., concurring). While no majority opinion controlled in *Furman*, the Supreme Court agreed that such an outcome was abhorrent to the Constitution, holding that the death penalty "could not be imposed under sentencing procedures that created a substantial risk that it would be inflicted in an arbitrary and capricious manner." See *Gregg v. Georgia*, 428 U.S. 153, 188, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) (plurality opinion) (describing *Furman's* holding). Put another way, the Constitution quite simply "cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed." *Furman*, 408 U.S. at 310 (Stewart, J., concurring). In the 40 years since *Furman*, the Supreme Court has never retreated [\*29] from that fundamental principle.

The *Furman* decision was rooted in part in the Court's recognition that arbitrary imposition of the death penalty could not justly further the penological goals of society--deterrence and retribution. See *id.* at 312

(White, J., concurring) ("At the moment that [the death penalty] ceases realistically to further these purposes, . . . its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the *Eighth Amendment*."). Indeed, in *Gregg v. Georgia*, when the Supreme Court lifted what had become *Furman's* de facto moratorium on the death penalty, it did so with the understanding that such punishment should serve these "two principal social purposes." 428 U.S. at 183. Since that time, the Supreme Court has harkened back to these twin purposes to guide its evaluation of challenges to the death penalty under the *Eighth Amendment*. See *Kennedy v. Louisiana*, 554 U.S. 407, 441, 128 S. Ct. 2641, 171 L. Ed. 2d 525 (2008) ("[C]apital punishment is excessive when it is grossly out of proportion [\*30] to the crime or it does not fulfill the two distinct social purposes served by the death penalty: retribution and deterrence of capital crimes."). They are bedrock principles of the Constitution's promise to not permit the infliction of cruel and unusual punishment by the State.

#### **A. Arbitrariness in California's Death Penalty System**

California's death penalty system is so plagued by inordinate and unpredictable delay that the death sentence is actually carried out against only a trivial few of those sentenced to death. Of the more than 900 individuals that have been sentenced to death since 1978, only 13 have been executed. For every one inmate executed by

California, seven have died on Death Row, most from natural causes. The review process takes an average of 25 years, and the delay is only getting longer. Indeed, no inmate has been executed since 2006, and there is no evidence to suggest that executions will resume in the reasonably near future. Even when executions do resume, the current population of Death Row is so enormous that, realistically, California will still be unable to execute the substantial majority of Death Row inmates. In fact, just to carry out the sentences of the [\*31] 748 inmates currently on Death Row, the State would have to conduct more than one execution a week for the next 14 years. Such an outcome is obviously impossible for many reasons, not the least of which is that as a result of extraordinary delay in California's system, only 17 inmates currently on Death Row have even completed the post-conviction review process and are awaiting their execution. *See* Appendix A. For all practical purposes then, a sentence of death in California is a sentence of life imprisonment with the remote possibility of death--a sentence no rational legislature or jury could ever impose.

Of course, for an arbitrarily selected few of the 748 inmates currently on Death Row, that remote possibility may well be realized. Yet their selection for execution will not depend on whether their crime was one of passion or of premeditation, on whether they killed one person or ten, or on any other proxy for the relative penological value that will be achieved by executing that inmate over any other. Nor will it even depend on the perhaps neutral criterion of executing inmates in the order in which they arrived on Death Row. Rather, it will depend upon a factor largely outside [\*32] an

inmate's control, and wholly divorced from the penological purposes the State sought to achieve by sentencing him to death in the first instance: how quickly the inmate proceeds through the State's dysfunctional post-conviction review process.

Mr. Jones's case is illustrative. Mr. Jones is now in his fifth year of federal review, and given that the final briefing on the merits of his claims was completed in January, a decision from this Court could be rendered by the end of the year. On average, review at the Ninth Circuit will take another 2.2 years. *See* Commission Report at 123. Accounting then for the time spent seeking en banc review from the Circuit and certiorari from the United States Supreme Court, and assuming relief is denied at every level, the federal stay on Mr. Jones's execution could be lifted and he could be ready for execution within three or four years--about 23 years after he was first sentenced to death.

By comparison, of the 380 inmates included in Appendix A who are currently on Death Row, 285 have been there longer than Mr. Jones. *See* Appendix A; *see also* CDCR Summary at 2 (showing that about 40 percent of all inmates have been on Death Row longer than Mr. Jones). [\*33] Over a third of them are engaged in state court proceedings. *See* Appendix A (showing that 109 of the 285 inmates who have been on Death Row longer than Mr. Jones have state proceedings ongoing). In all likelihood, given the delays in the post-conviction review process, most of them will never face execution as a realistic possibility, unlike Mr. Jones. Similarly, of the 38 Death Row inmates who like Mr. Jones were sentenced to death in 1995, only 7, including Mr. Jones, have completed the

state habeas review process. *See id.* Were his petition denied today, Mr. Jones would be one of three inmates sentenced in 1995 to have his federal habeas petition under review by the Ninth Circuit, effectively the last available stage before execution. Again, because of the inordinate delays inherent in California's system, many of the rest will never be executed. They will instead live out their lives on Death Row. *See* Gerald Uelmen, *Death Penalty Appeals and Habeas Proceedings: The California Experience*, 93 *Marq. L. Rev.* 495, 496 (2009) ("For all practical purposes, a sentence of death in California is a sentence of life imprisonment without the possibility of parole.").

For Mr. Jones to be executed [\*34] in such a system, where so many are sentenced to death but only a random few are actually executed, would offend the most fundamental of constitutional protections-- that the government shall not be permitted to arbitrarily inflict the ultimate punishment of death. *See Furman*, 408 *U.S.* at 293 (Brennan, J., concurring) ("When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system."). To be sure, *Furman* specifically addressed arbitrariness in the selection of who gets sentenced to death. But the principles on which it relied apply here with equal force. The *Eighth Amendment* simply cannot be read to proscribe a state from randomly selecting which few members of its criminal population it will sentence to death, but to allow that same state to randomly select which trivial few of those condemned it will actually execute. Arbitrariness in execution is still arbitrary, re-

gardless of when in the process the arbitrariness arises.

**B. The Penological Purpose of California's Death Penalty System**

The systemic delay and [\*35] dysfunction that result in the arbitrary execution of California's Death Row inmates give rise to a further constitutional problem with the State's administration of its death penalty system. In California, the execution of a death sentence is so infrequent, and the delays preceding it so extraordinary, that the death penalty is deprived of any deterrent or retributive effect it might once have had. Such an outcome is antithetical to any civilized notion of just punishment.

**1. Deterrence**

Whether the death penalty has any deterrent effect when administered in a functional system is a widely contested issue upon which no clear empirical consensus has been reached. But even when administered in a functional system, few could dispute that long delays preceding execution frustrate whatever deterrent effect the death penalty may have. Indeed, the law, and common sense itself, have long recognized that the deterrent effect of *any* punishment is contingent upon the certainty and timeliness of its imposition. , *Harmelin*, 501 *U.S.* at 989 ("[D]eterrent effect depends not only upon the amount of the penalty but upon its certainty . . . ."); *United States v. Panico*, 308 *F.2d* 125, 128 (2d Cir. 1962) [\*36] ("There can be little doubt that the effectiveness of punishment as a deterrent is related not only to the quality of the possible punishment but to the certainty and promptness as well."), *vacated on other grounds*, 375 *U.S.* 29, 84 *S. Ct.* 19, 11 *L.*

*Ed. 2d 1 (1963)*; see also Commission Report at 115 n.8 (agreeing that "[i]f there is a deterrent value [to the death penalty], . . . it is certainly dissipated by long intervals between judgment of death and its execution"). In the death penalty context, where finality of punishment is not achieved until the actual execution of the inmate, the case is no different.

In California, the system in which the death penalty is administered can only be described as completely dysfunctional. The delay inherent in California's system is so extraordinary that it alone seriously undermines the continued deterrent effect of the State's death penalty. See *Chief Justice Ronald George Reflects on Death Penalty, Prop. 8*, The California Report, Dec. 6-8, 2013 ("[O]ne of the rationales for the death penalty is a deterrent effect that it . . . has on a certain number of cases, . . . and when there's so much delay as there is now--25 years' worth is the average stay on death row--I think it [\*37] loses its justification."<sup>16</sup> But delay is not the only problem. Executions by the State are so few and far between that since 1978, of the 900 individuals sentenced to death in California, only 13 have been executed. The reasonable expectation of an individual contemplating a capital crime in California then is that if he is caught, it does not matter whether he is sentenced to death--he realistically faces only life imprisonment. Under such a system, the death penalty is about as effective a deterrent to capital crime as the possibility of a lightning strike is to going outside in the rain.<sup>17</sup>

16 Available at <http://www.californiareport.org/archive/R201312061630/c>.

17 In 1995, the same year Mr. Jones was sentenced to death, now-Chief Judge of the Ninth Circuit Court of Appeals Alex Kozinski commented that as it then existed in the United States, the "death penalty . . . has no deterrent value because it is imposed so infrequently and so freakishly." See Alex Kozinski & Sean Gallagher, *Death: The Ultimate Run-On Sentence*, Lecture, 46 *Case W. Res. L. Rev.* 1, 25 (Fall 1995). In the nearly 20 years since, the evidence is clear that the problem has only gotten worse. California has made true [\*38] then-Justice Rehnquist's remark--perhaps hyperbolic at the time--that "the existence of the death penalty in this country is virtually an illusion." See *Coleman v. Balkcom*, 451 U.S. 949, 957-58, 101 S. Ct. 2031, 68 L. Ed. 2d 334 (1981) (Rehnquist, J., dissenting from the denial of certiorari).

## 2. Retribution

Just as inordinate delay and unpredictability of executions eliminate any deterrent effect California's death penalty might have, so too do such delay and unpredictability defeat the death penalty's retributive objective. It is true that the Supreme Court has consistently affirmed the view that retribution, as "an expression of society's moral outrage at particularly offensive conduct," is a constitutionally permissible aim of capital sentencing schemes. See *Gregg*, 428 U.S. at 183. But no reasonable jurist could dispute that inordinate delay frustrates that aim. See *Coleman*, 451 U.S. at 960 (Rehnquist, J., dissenting from the denial of certiorari) ("There can be little doubt that delay in the enforcement of capital

punishment frustrates the purpose of retribution."); *Ceja v. Stewart*, 134 F.3d 1368, 1374 (9th Cir. 1998) (Fletcher, J., dissenting) ("[T]he ability of an execution to provide moral and emotional closure [\*39] to a shocked community diminishe[s] as the connection between crime and punishment [becomes] more attenuated and more arbitrary."); Lewis Powell, *Capital Punishment*, Commentary, 102 *Harv. L. Rev.* 1035, 1041 (1989) ("The retributive value of the death penalty is diminished as imposition of sentence becomes ever farther removed from the time of the offense.").

In California, a Death Row inmate will likely wait at least 25 years before his execution becomes even a realistic possibility. Were such lengthy delay an isolated, or even necessary, circumstance of a system that otherwise acts purposefully to give meaning to society's moral outrage, the retributive purpose of the death penalty might continue to be served. Here, however, the delay is systemic, and the State itself is to blame. The State has allowed such dysfunction to creep into its death penalty system that the few executions it does carry out are arbitrary. Whereas few have been or will eventually be executed by California, the vast majority of individuals sentenced to death--each of whom, in the State's view, committed crimes sufficiently reprehensible to warrant death--will effectively serve out terms of life imprisonment. See [\*40] Appendix A. This reality of delay and dysfunction created by the State simply cannot be reconciled with the asserted purpose of retribution. See *Furman*, 408 U.S. at 304-05 (Brennan, J., concurring) ("The asserted public belief that murderers . . . deserve to die is flatly inconsistent with the execution of a random few."); *id.* at 311 (White, J.,

concurring) ("[W]hen imposition of the [death] penalty reaches a certain degree of infrequency, it would be very doubtful that any existing general need for retribution would be measurably satisfied.").

### C. Petitioners' Fault in Creating Delay

As the State correctly notes, courts have thus far generally not accepted the theory that extraordinary delay between sentencing and execution violates the *Eighth Amendment*. , *People v. Anderson*, 25 *Cal. 4th* 543, 606, 106 *Cal. Rptr. 2d* 575, 22 *P.3d* 347 (2001) ("[A]ppellate delay in a capital case is not cruel and unusual punishment."). When courts have rejected the theory, however, they have often not addressed whether any penological purpose of the death penalty continues to be served more than two decades after the death sentence was imposed. Rather, courts often rely on two justifications for rejecting the theory: first, that the delay [\*41] is reasonably related to the state's effort to safeguard the inmate's constitutional rights by ensuring the accuracy of its death conviction and sentence, and second, that the delay is caused by the petitioner himself, and therefore cannot be constitutionally problematic.<sup>18</sup> The facts here, however, show that at least as to California's administration of its death penalty system, such assumptions are simply incorrect.

18 For example, in *Anderson*, the California Supreme Court found that "the automatic appeal process following judgments of death is a constitutional safeguard, not a constitutional defect." 25 *Cal. 4th* at 606. Similarly, Justice Clarence Thomas, concurring in the Supreme Court's denial of certiorari in *Thompson v. McNeil*, argued

that "[i]t makes 'a mockery of our system of justice . . . for a convicted murderer, who, through his own interminable efforts of delay . . . has secured the almost-indefinite postponement of his sentence, to then claim that the almost-indefinite postponement renders his sentence unconstitutional.' " 556 U.S. 1114, 129 S. Ct. 1299, 1301, 173 L. Ed. 2d 693 (2009) (Thomas, J., concurring in the denial of certiorari) (quoting *Turner v. Jabe*, 58 F.3d 924, 933 (4th Cir. 1995) [\*42] (Luttig, J., concurring in judgment)).

The Court pauses first to note the arguments that the State is not making in opposition to Mr. Jones's claim. The State is not arguing that the delay in Mr. Jones's execution is an isolated incident in a system that otherwise operates as expeditiously as possible to execute those sentenced to death.<sup>19</sup> Nor does the State argue that it is rational or necessary for it to take more than two decades to provide Death Row inmates with the process required to ensure that their death sentence comports with constitutional requirements. Indeed, the State cannot reasonably make these arguments.

19 Unlike Mr. Jones's claim here, in previous instances where federal courts have been presented claims of unconstitutional delay preceding execution, they have generally appeared in the context of claims brought by inmates in whose *individual* cases the delay was extraordinary. , *Lackey v. Texas*, 514 U.S. 1045, 115 S. Ct. 1421, 131 L. Ed. 2d 304 (17 years of delay); *Smith v. Mahoney*, 611 F.3d 978 (9th Cir. 2010) (25 years of de-

lay). In those cases, however, the petitioner did not argue, as does Mr. Jones here, that his execution would be arbitrary and serve no penological purpose because of system-wide [\*43] dysfunction in the post-conviction review process.

On the record before it, the Court finds that much of the delay in California's post-conviction review process is created by the State itself, not by inmates' own interminable efforts to delay.<sup>20</sup> Most Death Row inmates wait between three and five years for counsel to be appointed for their direct appeal. After the issues are briefed on direct appeal, another two to three years are spent waiting for oral argument to be scheduled before the California Supreme Court. On state habeas review, far from meeting the ideal goal of appointing state habeas counsel shortly after the death verdict, at least eight to ten years elapse between the death verdict and appointment of habeas counsel. When that counsel is appointed by the State, investigation of potential claims is hampered by underfunding, which in turn slows down the federal habeas review process. Then, after state habeas briefs are submitted, another four years elapse before the California Supreme Court issues a generally conclusory denial of the inmate's claims. This lack of a reasoned opinion further slows adjudication of inmates' federal habeas claims. Finally, even after filing a [\*44] petition for federal habeas review, many inmates, often because of deficiencies rooted in the State's process, must stay their federal cases to exhaust claims in state court.

20 Indeed, in Mr. Jones's case, there is no evidence of frivolous filings or



unreasonable delay caused by Mr. Jones. Rather, the unnecessary delay in his case--as in the cases of most other Death Row inmates--is attributable to structural problems inherent in California's death penalty system.

These delays--exceeding 25 years on average--are inherent to California's dysfunctional death penalty system, not the result of individual inmates' delay tactics, except perhaps in isolated cases. *See generally* Appendix A (showing that very few of California's Death Row inmates have completed the state and federal post-conviction review process, even 20 years after being sentenced to death). That such delays are not reasonably necessary to the fair administration of justice is evident. In 2008, the Commission recommended a series of related reforms that, in its view, would help alleviate delay inherent in California's death penalty system. The Commission's recommendations included more adequately funding the system and removing [\*45] the requirement that death penalty appeals must be automatically heard by the California Supreme Court rather than the state's intermediate courts of appeal. *See* Commission Report at 124. Through its proposed reforms, the Commission estimated that the delay between sentencing and execution of a Death Row inmate could be reduced to between 11 and 14 years.<sup>21</sup> *See id.* So reducing California's time to execution would bring California closer to, or even below, the national average, which between 2000 and 2012 was approximately 12.5 years, and in 2012 was 15.8 years.<sup>22</sup>

21 Whether the State adopts the Commission's proposed reforms, or any others, is a policy question be-

yond the scope of this proceeding. But the proposals are relevant to supporting Mr. Jones's claim that the delay in California is of a structural and systemic nature, and are cited here for that purpose.

22 United States Dep't of Justice, Bureau of Justice Statistics, NCJ 245789, Capital Punishment, 2012--Statistical Tables (May 2014) at 14, *available* *at* <http://www.bjs.gov/content/pub/pdf/cp12st.pdf>.

The Commission's proposal, and the experience of other states across the country--which, on average, take substantially less than 20 [\*46] years, let alone 25 or 30 years, to adjudicate their post-conviction review process--demonstrate that the inordinate delay in California's death penalty system is not reasonably necessary to protect an inmate's rights. Moreover, there is no basis to conclude that inmates on California's Death Row are simply more dilatory, or have stronger incentives to needlessly delay the capital appeals process, than are those Death Row inmates in other states. Most of the delay in California's post-conviction process then is attributable to California's own system, not the inmates themselves.

Of course, the Court's conclusion should not be understood to suggest that the post-conviction review process should be curtailed in favor of speed over accuracy. Indeed, it bears noting that in more than half of all cases in which the federal courts have reviewed a California inmate's death sentence on habeas review, the inmate has been granted relief from the death sentence. *See* Appendix A. The post-conviction review process is, therefore, vitally important. It

serves both the inmate's interest in not being improperly executed, as well as the State's interest in ensuring that it does not improperly execute [\*47] any individual. Nevertheless, the Court holds that where the State permits the post-conviction review process to become so inordinately and unnecessarily delayed that only an arbitrarily selected few of those sentenced to death are executed, the State's process violates the *Eight Amendment*. Fundamental principles of due process and just punishment demand that any punishment, let alone the ultimate one of execution, be timely and rationally carried out.

#### **D. Procedural Bars to Federal Collateral Review**

The State argues that Mr. Jones's claim is procedurally barred. Specifically, the State contends that Mr. Jones has not exhausted available state remedies as required under the Anti-Terrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2254(b). Federal courts generally may not grant habeas relief to an individual in state custody unless that individual has first exhausted the remedies available in state court. *See* 28 U.S.C. § 2254(b)(1)(A). However, where "circumstances exist that render [the state] process ineffective to protect the rights of the applicant," exhaustion is not required. 28 U.S.C. § 2254(b)(1)(B)(ii). The Court has determined that systemic delay caused by the dysfunctional [\*48] state review process has resulted in the arbitrary selection of a small handful of individuals for execution, and has therefore rendered Mr. Jones's death sentence unconstitutional. Requiring Mr. Jones to return to the California Supreme Court to exhaust his claim would only compound the delay that has

already plagued his post-conviction review process. *See* Laurence Decl. ¶ 16 (noting that, on average, 3.19 years elapse before an exhaustion petition in a capital habeas case is decided by the California Supreme Court). More importantly, it would require Mr. Jones to have his claim resolved by the very system he has established is dysfunctional and incapable of protecting his constitutional rights. Special circumstances clearly exist such that Mr. Jones need not return to the California Supreme Court to exhaust his claim. *Cf. Phillips v. Vasquez*, 56 F.3d 1030, 1035 (9th Cir. 1995) ("[E]xtraordinary delay in the state courts can render state corrective processes 'ineffective' within the meaning of section 2254(b) [such] that exhaustion is not required . . .") (citation omitted); *Jones v. Tubman*, 360 F. Supp. 1298, 1300 (S.D.N.Y. 1973) ("[E]xhaustion is not mandated where the state consideration [\*49] would be either futile or where state procedures do not provide swift review of petitioner's claims.").

While not specifically addressed by the State, the Court considers a second procedural defense commonly raised to avoid federal habeas review: that the petitioner's claim seeks the announcement of a new rule on collateral review and is therefore barred under *Teague v. Lane*, 489 U.S. 288, 306, 109 S. Ct. 1060, 103 L. Ed. 2d 334 (1989).<sup>23</sup> The rule Mr. Jones seeks to have applied here--that a state may not arbitrarily inflict the death penalty--is not new. Rather, it is inherent in the most basic notions of due process and fair punishment embedded in the core of the *Eighth Amendment*. *See Furman*, 408 U.S. at 274-77 (Brennan, J., concurring) (describing the principle that "the State must not arbitrarily inflict a se-

vere punishment" as "inherent in the [Cruel and Unusual Punishment] Clause" and tracing its application in Anglo-American jurisprudence); *see also id.* at 242 (Douglas, J., concurring) ("There is evidence that the provision of the English *Bill of Rights* of 1689, from which the language of the *Eighth Amendment* was taken, was concerned primarily with selective or irregular application of harsh penalties and that its [\*50] aim was to forbid arbitrary and discriminatory penalties of a severe nature."). This rule is certainly one "so deeply embedded in the fabric of due process that everyone takes it for granted." *Dyer v. Calderon*, 151 F.3d 970, 984 (9th Cir. 1998) (en banc). It is therefore not a new rule for *Teague* purposes. *See id.* ("[A] rule needs to be announced for purposes of *Teague* only if it's new.").

23 Because there is no underlying state court ruling on the merits of Mr. Jones's claim of arbitrariness in California's death penalty system, the Court does not consider the claim under AEDPA's deferential standard of review. *See 28 U.S.C. § 2254(d)*.

\* \* \*

When an individual is condemned to death in California, the sentence carries with it an implicit promise from the State that it will actually be carried out. That promise is made to the citizens of the State, who are investing significant resources in furtherance of a punishment that they believe is necessary to achieving justice. It is made to jurors who, in exercise of their civic responsibility, are asked to hear about and see evidence of undeniably horrific crimes, and then participate in the agonizing deliberations over whether the perpetra-

tors [\*51] of those horrific crimes should be put to death. It is made to victims and their loved ones, for whom just punishment might provide some semblance of moral and emotional closure from an otherwise unimaginable loss. And it is made to the hundreds of individuals on Death Row, as a statement their crimes are so heinous they have forfeited their right to life.

But for too long now, the promise has been an empty one. Inordinate and unpredictable delay has resulted in a death penalty system in which very few of the hundreds of individuals sentenced to death have been, or even will be, executed by the State. It has resulted in a system in which arbitrary factors, rather than legitimate ones like the nature of the crime or the date of the death sentence, determine whether an individual will actually be executed. And it has resulted in a system that serves no penological purpose. Such a system is unconstitutional. Accordingly, the Court hereby VACATES Mr. Jones's death sentence.

DATED: July 16, 2014

/s/ Cormac J. Carney

CORMAC J. CARNEY

UNITED STATES DISTRICT JUDGE

**Appendix A: Death Sentences in California, 1978 - 1997<sup>1</sup>**

1

The chart does not describe the case status of any individual sentenced after [\*52] 1997 because for all but a small handful of those individuals, state

proceedings are still ongoing, and none have completed the federal habeas process. In total, 397 of the 748 inmates currently on California's Death Row were sentenced to death between 1978 and 1997. *See* CDCR Condemned Inmate List; CDCR Summary at 2.

Between 1978 and 1997, 591 new death judgments were imposed by the State of California. This chart describes the current case status of the 511 individuals sentenced in that time period whose death sentences have not been overturned by the California Supreme Court (unless subsequently reinstated) and whose post-conviction proceedings have not been stayed based on their lack of mental competency to face the death penalty.<sup>2</sup> Of these 511 individuals, 13 were executed by the State (Red), 17 had relief denied by the federal courts but have had their executions stayed (Pink), 39 were granted relief from their death sentences by the federal courts and have not been resentenced to death<sup>3</sup> (Blue), 79 died on Death Row from causes other than execution by the State of California (Orange), 169 are currently having their habeas petitions evaluated by federal district courts (Green) [\*53] or the Ninth Circuit Court of Appeals (Purple), and 194 are still having their appeals reviewed by the California Supreme Court, either on direct or collateral review (Yellow). The chart is current to June 2014.<sup>4</sup>

Because most of the death sentences overturned by the California Supreme Court were overturned in the period between 1979 and 1986, inclusion of these sentences in Appendix A would not accurately reflect the current state of affairs in California's death penalty system. *See* Commission Report at 120 n.21 (noting that between 1979 and 1986, the California Supreme Court reversed 59 of 64 death judgments it reviewed, but that since that time, it has reversed death judgments less than 10 percent of the time).

Despite having been granted relief by the federal courts, 10 of these 39 individuals are listed by the CDCR as being among the 748 inmates currently on Death Row. *See* CDCR Condemned Inmate List. In at least some of these cases, this fact may be explained by the State's intention to again seek the death penalty against these inmates in a new trial.

4

The chart was compiled using publicly available information from the court dockets of the four federal judicial districts in California, [\*54] the public

docket of the California Supreme Court, and the CDCR's Condemned Inmate List (July 2014) and List of Inmates Who Have Died Since 1978 (2014).

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Lavell Frierson	8/14/1978	92-06251 DDP	Central	10/19/1992	Relief Granted (2007)	--
Doug Stankewitz	10/12/1978	91-00616 AWI	Eastern	11/15/1991	Relief Granted (2012)	--
Ronald Bell	3/2/1979	99-20615 RMW	Northern	4/12/1991	CD Cal Petition Pending	35
Robert Harris	3/9/1979	90-00380 E	Southern	3/26/1990	Executed (1992)	--
Earl Jackson	3/19/1979	95-03286 ER	Central	5/17/1995	Relief Granted (2008) / Re-sentenced to Death (2010) / State Proceedings Pending	35
Keith Williams	4/13/1979	89-00160 REC	Eastern	2/22/1989	Executed (1996)	--
David Murtishaw	4/27/1979	91-00508 OWW	Eastern	9/10/1991	Relief Granted (2001) / Re-sentenced to Death / Deceased (2011)	--
Robert Massie	5/25/1979	99-02861 CAL	Northern	6/14/1999	Executed (2001)	--
Richard Chase	6/8/1979				Deceased (1980)	--
Stevie Fields	8/29/1979	92-00465 AHM	Central	1/23/1992	Relief Denied (2007) / Execution Stayed	35
David Ghent	10/30/1979	90-02763 RMW	Northern	9/26/1990	Relief Granted (2002)	--
Richard Montiel	11/20/1979	96-05412 LJO	Eastern	4/22/1996	ED Cal Petition Pending	35
James Anderson	11/30/1979	03-07948 JLS	Central	11/4/2003	CD Cal Petition Pending	35
Steven Ainsworth	1/30/1980	90-00329 LKK	Eastern	3/16/1990	Relief Granted (2001)	--
Richard Phillips	2/20/1980	92-05167 AWI	Eastern	3/4/1992	Relief Granted (2012)	--
Alejandro Ruiz	2/21/1980	89-04126 FMC	Central	7/11/1989	Deceased (2007)	--
Fermin Ledesma	3/14/1980	07-02130 PJH	Northern	4/17/2007	State Proceedings Pending	34
David Moore	4/30/1980				Deceased (1980)	--
Melvin Turner	8/20/1980	96-02844 DOC	Central	4/22/1996	State Proceedings Pending	34

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Marvin Walker	9/8/1980	94-01997 PJH	Northern	6/7/1994	ND Cal Petition Pending	34
Donald Griffin	12/3/1980				State Proceedings Pending	34
Darrell Rich	1/23/1981	89-00823 EJG	Eastern	6/12/1989	Executed (2000)	--
Jerry Bunyard	2/2/1981				State Proceedings Pending	33
Bernard Hamilton	3/2/1981	92-00474 B	Southern	3/31/1992	Relief Granted (1994) / Re-sentenced to Death (1996) / State Proceedings Pending	
Lawrence Bit-taker	3/22/1981	91-01643 TJH	Central	3/27/1991	CD Cal Petition Pending	33
Harvey Heish-man	3/30/1981	90-01815 VRW	Northern	6/26/1990	Relief Denied (2010) / Exe-cution Stayed	33
Eric Kimble	4/6/1981	90-04826 SVW	Central	9/7/1990	CD Cal Petition Pending	33
Stanley Wil-liams	4/15/1981	89-00327 SVW	Central	1/18/1989	Executed (2006)	--
Robert McLain	5/12/1981	89-03061 JGD	Central	5/18/1989	Relief Granted (1998)	--
Joe Johnson	5/28/1981				State Proceedings Pending	33
Anthony Bean	7/20/1981	90-00648 WBS	Eastern	5/18/1990	Relief Granted (1998)	--
Stephen Ander-son	7/24/1981	92-00488 JGD	Central	1/24/1992	Executed (2002)	--
Oscar Gates	8/7/1981	88-02779 WHA	Northern	7/14/1988	ND Cal Petition Pending	33
Michael Bur-gener	9/4/1981	10-03399 GHK	Central	5/6/2010	State Proceedings Pending	33
Ronald Hawkins	9/20/1981				Deceased (1983)	--
Billy Ray Ham-ilton	10/16/1981	89-03758 THE	Northern	10/4/1989	Deceased (2007)	--
John Davenport	11/4/1981	96-06883 DSF	Central	9/30/1996	State Proceedings Pending	33
Russell Coleman	11/20/1981	89-01906 RMW	Northern	6/2/1989	Relief Granted (2000)	--
Edgar Hendricks	12/4/1981	89-02901 EFL	Northern	8/7/1989	Relief Granted (1995)	--
Gary Guzman	12/22/1981				Deceased (1991)	--
Fernando Caro	1/5/1982	93-04159 JW	Northern	11/23/1993	Relief Granted (2002)	--
Bluford Hayes Jr.	1/22/1982	92-00603 DFL	Eastern	4/14/1992	Relief Granted (2005)	--
Phillip Lucero	1/26/1982	01-02823 VAP	Central	3/27/2001	CD Cal Petition Pending	32
Richard Hovey	2/10/1982	89-01430 MHP	Northern	4/26/1989	Relief Granted (2006)	--
Carlos Avena	2/12/1982	96-08034 GHK	Central	11/15/1996	Circuit Appeal Pending	32
Albert Brown	2/22/1982	94-08150 ABC	Central	12/5/1994	Relief Denied (2008) / Exe-cution Stayed	32

Name	Date Sentenced <sup>2</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Willie Branner	2/26/1982	90-03219 DLJ	Northern	11/9/1990	ND Cal Petition Pending	32
Rondald Sanders	3/3/1982	92-05471 LJO	Eastern	7/13/1992	ED Cal Petition Pending	32
William Payton	3/5/1982	94-04779 R	Central	7/18/1994	Relief Denied (2011) / Execution Stayed	32
William Bonin	3/12/1982	91-00693 ER	Central	2/7/1991	Executed (1996)	--
Benjamin Silva	3/15/1982	90-03311 DT	Central	6/26/1990	Relief Granted (2005)	--
Darnell Lucky	4/7/1982	91-00583 TJH	Central	2/1/1991	CD Cal Petition Pending	32
Richard Boyde	4/20/1982	91-02522 GPS	Central	5/9/1991	Relief Granted (2008)	--
Melvin Wade	5/21/1982	89-00173 R	Central		Relief Granted (1994)	--
George Carpenter	5/21/1982				Deceased (1984)	--
Gary Howard	5/27/1982	88-07240 WJR	Central	12/8/1988	Relief Granted (1996)	--
Richard Grant	5/28/1982	90-00779 JAM	Eastern	6/18/1990	Relief Granted (2010)	--
John Brown	6/15/1982	90-02815 AHS	Central	6/1/1990	CD Cal Petition Pending	32
Manuel Babbitt	7/8/1982	89-01407 WBS	Eastern	8/1/1989	Executed (1999)	--
Mose Willis	7/26/1982				Deceased (1988)	--
Prentice Snow	8/31/1982				State Proceedings Pending	32
Adam Miranda	9/17/1982	89-07130 JLS	Central	12/11/1989	State Proceedings Pending	32
James Karis	9/17/1982	89-00527 LKK	Eastern	4/13/1989	Relief Granted (1998) / Re-sentenced to Death / Deceased (2013)	--
Brett Pensinger	9/20/1982	92-01928 DSF	Central	3/30/1992	Circuit Appeal Pending	32
Fernando Belmontes	10/6/1982	89-00736 JAM	Eastern	5/25/1989	Relief Denied (2010) / Execution Stayed	32
Bronte Wright	10/29/1982	92-06918 AHM	Central	11/20/1992	Deceased (2000)	--
Ronald Deere	11/10/1982	92-01684 CAS	Central	3/18/1992	Circuit Appeal Pending (Relief Denied / Certiorari Pending)	32
Joseph Poggi	11/12/1982				Deceased (1990)	--
Clarence Allen	11/22/1982	88-01123 FCD	Eastern	8/31/1988	Executed (2006)	--
Ricardo Sanders	12/3/1982	96-07429 JFW	Central	10/22/1996	Circuit Appeal Pending	32
Craig Ross	12/10/1982	96-02720 SVW	Central	4/16/1996	CD Cal Petition Pending	32
Steven Champion	12/10/1982	96-02845 SVW	Central	4/22/1996	State Proceedings Pending	32
Michael Hamilton	12/17/1982	90-00363 OWW	Eastern	6/12/1990	Relief Granted (2009)	--

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Maurice Keenan	1/21/1983	89-02167 DLJ	Northern	6/22/1989	Relief Granted (2001)	--
Ronald Fuller	2/3/1983				Deceased (1989)	--
Douglas Clark	3/16/1983	92-06567 PA	Central	11/3/1992	CD Cal Petition Pending	31
James Melton	3/18/1983	89-04182 RMT	Central	7/13/1989	Relief Granted (2007)	--
Michael Williams	4/1/1983	90-01212 R	Southern	8/31/1990	Relief Granted (1993)	--
Jaturun Siripongs	4/22/1983	89-06530 WDK	Central	11/9/1989	Executed (1999)	--
Malcolm Robbins	5/12/1983	91-04748 TJH	Central	9/4/1991	CD Cal Petition Pending	31
Larry Roberts	5/27/1983	93-00254 TLN	Eastern	2/18/1993	ED Cal Petition Pending	31
Larry Webster	6/9/1983	93-00306 LKK	Eastern	2/25/1993	ED Cal Petition Pending	31
Michael Morales	6/14/1983	91-00682 DT	Central	2/6/1991	Relief Denied (2005) / Execution Stayed	31
Kevin Malone	6/14/1983	96-04040 WJR	Central	6/7/1996	Executed by Missouri (1999)	--
Gerald Gallego	6/21/1983	92-00653 SBA	Northern	2/4/1992	Deceased (2002)	--
William Proctor	6/28/1983	96-01401 JAM	Eastern	7/31/1996	ED Cal Petition Pending	31
George Marshall	6/28/1983	97-05493 AWI	Eastern	5/12/1997	Deceased (2001)	--
Martin Gonzalez	7/8/1983				Deceased (1990)	--
Keith Adcox	7/11/1983	92-05830 LJO	Eastern	12/1/1992	State Proceedings Pending	31
Francis Hernandez	7/12/1983	90-04638 RSWL	Central	8/28/1990	Circuit Appeal Pending	31
Albert Howard	8/3/1983	93-05726 LJO	Eastern	10/25/1993	Deceased (2009)	--
James Odle	8/12/1983	88-04280 MMC	Northern	10/25/1988	Relief Granted (2001)	--
Douglas Mickey	9/23/1983	93-00243 RMW	Northern	1/22/1993	Relief Denied (2010) / Execution Stayed	31
Alfred Dyer	9/26/1983	93-02823 VRW	Northern	7/29/1993	Relief Granted (1998)	--
Demetrie Mayfield	9/30/1983	94-06011 ER	Central	9/2/1994	Relief Granted (2001)	--
Constantino Carrera	10/7/1983	90-00478 AWI	Eastern	7/31/1990	Relief Granted (2008)	--
John Visciotti	10/21/1983	97-04591 R	Central	6/23/1997	Circuit Appeal Pending	31
Donald Miller	11/10/1983	91-02652 NM	Central	5/16/1991	Deceased (2005)	--
Robert Thompson	12/6/1983	90-06605 CBM	Central	12/5/1990	Deceased (2006)	--
David Mason	1/27/1984		Eastern		Executed (1993)	--
Jackson Daniels	1/31/1984	92-04683 JSL	Central	8/5/1992	Relief Granted (2006) / Re-	30



Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
					sentenced to Death (2010) / State Proceedings Pending	
Mark Reilly	2/1/1984	93-07055 JAK	Central	11/22/1993	CD Cal Petition Pending	30
Andrew Robertson	2/3/1984	90-04850 CBM	Central	9/10/1990	Deceased (1998)	--
Gerald Stanley	2/7/1984	95-01500 JAM	Eastern	8/17/1995	ED Cal Petition Pending	30
Donald Beardslee	3/13/1984	92-03990 SBA	Northern	10/1/1992	Executed (2005)	--
Michael Jennings	3/27/1984	89-01360 JW	Northern	3/19/1989	Relief Granted (2003)	--
Michael Hunter	3/28/1984	90-03275 JW	Northern	11/13/1990	Relief Granted (2001)	--
Charles Moore	5/16/1984	91-05976 KN	Central	11/1/1991	Relief Granted (1997) / Re-sentenced to Death (1998) / State Proceedings Pending	30
Michael Jackson	5/21/1984	91-04249 R	Central	8/8/1991	Relief Granted (2001) / Re-sentenced to Death (2002) / State Proceedings Pending	30
Scott Pinholster	6/4/1984	95-06240 GLT	Central	9/19/1995	Relief Denied (2011) / Execution Stayed	30
Jesse Andrews	6/8/1984	02-08969 R	Central	11/21/2002	Circuit Appeal Pending	30
Robert Diaz	6/15/1984	93-06309 TJH	Central	10/19/1993	Deceased(2010)	--
Stephan Mitcham	7/6/1984	97-03825 LHK	Northern	8/10/1994	ND Cal Petition Pending	30
Robert Bloom	7/23/1984	90-02581	Central	5/22/1990	Relief Granted (1997) / Re-sentenced to Death (2001) / State Proceedings Pending	30
Jay Kaurish	7/27/1984	92-01623 DT	Central	3/16/1992	Deceased(1992)	--
William Kirkpatrick	8/14/1984	96-00351 WDK	Central	1/18/1996	Circuit Appeal Pending	30
Thomas Thompson	8/17/1984	89-03630 DT	Central	6/15/1989	Executed (1998)	--
Watson Allison	10/2/1984	92-06404 CAS	Central	10/26/1992	Relief Granted (2010)	--
Charles McDowell	10/23/1984	90-04009 MRP	Central	7/30/1990	Relief Granted (1998) / Re-sentenced to Death (1999) / State Proceedings Pending	30
Robert Lewis	11/1/1984				State Proceedings Pending	30
David Carpenter	11/16/1984	98-02444 MMC	Northern	6/19/1998	ND Cal Petition Pending	30
Kenneth Lang	12/5/1984	91-04061 MMM	Central	7/29/1991	CD Cal Petition Pending	30
Richard Boyer	12/14/1984	06-07584 GAF	Central	11/29/2006	Circuit Appeal Pending	30
Thaddaeus Turner	12/21/1984	91-00153 LJO	Eastern	4/1/1991	Relief Granted (2009)	--
William Clark	2/1/1985	95-00334	Central	1/18/1995	Relief Granted (2006)	--

Name	Date Sentenced <sup>2</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
		DOC				
Earl Jones	2/22/1985	94-00816 TJH	Central	2/7/1994	Deceased(2006)	--
Ward Weaver	4/4/1985	02-05583 AWI	Eastern	5/17/2002	ED Cal Petition Pending	29
Fred Douglas	4/5/1985	91-03055 RSWL	Central	6/6/1991	Relief Granted (2003)	--
Patrick Gordon	5/3/1985	91-00882 LKK	Eastern	7/5/1991	ED Cal Petition Pending	29
Kevin Cooper	5/15/1985	92-00427 H	Southern	3/24/1992	Relief Denied (2009) / Execution Stayed	29
Charles Whitt	5/23/1985	94-07960 WJR	Central	11/23/1994	Deceased (2004)	--
Andre Burton	6/4/1985	91-01652 AHM	Central	3/27/1991	Circuit Appeal Pending	29
Brian Mincey	6/14/1985	93-02554 PSG	Central	5/3/1993	CD Cal Petition Pending	29
Randy Haskett	6/28/1985	92-06192 GAF	Central	10/15/1992	Relief Granted (2009)	--
Duane Holloway	7/8/1985	05-02089 KJM	Eastern	10/19/2005	ED Cal Petition Pending	29
Robert Stansbury	7/15/1985	95-08532 WMB	Central	12/11/1995	Deceased(2003)	--
Richard Ramierz	8/8/1985	91-03802 CBM	Central	7/15/1998	Relief Granted (2009)	--
Raynard Cummings	9/20/1985	95-07118 CBM	Central	10/20/1995	Circuit Appeal Pending	29
Kenneth Gay	9/20/1985	01-05368 GAF	Central	6/18/2001	State Proceedings Pending	29
Michael Cox	11/26/1985	04-00065 MCE	Eastern	1/5/2004	ED Cal Petition Pending	29
Jeffrey Sheldon	12/19/1985	96-05545 TJH	Central	8/13/1996	CD Cal Petition Pending	29
Stephen DeSantis	2/3/1986	93-01083 FCD	Eastern	7/1/1993	Deceased (2002)	--
Michael Mattson	2/7/1986	91-05453 FMC	Central	10/8/1991	Deceased (2009)	--
Anderson Hawthorne	2/18/1986	95-07709 CBM	Central	11/13/1995	State Proceedings Pending	28
Denny Mickle	4/17/1986	92-02951 THE	Northern	7/30/1992	ND Cal Petition Pending	28
Tiequon Cox	4/30/1986	92-03370 CBM	Central	6/4/1992	Relief Denied (2011) / Execution Stayed	28
Henry Duncan	5/5/1986	92-01403 AHS	Central	3/4/1992	Relief Granted (2008)	--
Ronald McPeters	5/7/1986	95-05108 LJO	Eastern	2/13/1995	ED Cal Petition Pending	28
Chay'im Ben-Sholom	5/9/1986	93-05531 AWI	Eastern	8/10/1993	Relief Granted (2012)	--

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Freddie Taylor	5/30/1986	92-01627 EMC	Northern	4/30/1992	ND Cal Petition Pending	28
Ralph Thomas	6/4/1986	93-00616 MHP	Northern	2/18/1993	Relief Granted (2013)	--
Horace Kelly	6/25/1986	93-02951 TJH	Central	5/21/1993	CD Cal Petition Pending	28
Curtis Price	7/10/1986	93-00277 PJH	Northern	1/25/1993	ND Cal Petition Pending	28
Barry Williams	7/11/1986	00-10637 DOC	Central	10/4/2000	CD Cal Petition Pending	28
Anthony Sully	7/15/1986	92-00829 WHA	Northern	2/21/1992	Relief Denied (2013) / Execution Stayed	28
Troy Ashmus	7/25/1986	93-00594 THE	Northern	2/17/1993	ND Cal Petition Pending	28
Royal Hayes	8/8/1986	01-03926 MHP	Northern	10/18/2001	Relief Denied (2011) / Execution Stayed	28
Mauricio Silva	8/11/1986				State Proceedings Pending	28
Rodney Alcala	8/20/1986	94-1424 SVW	Central	3/4/1994	Relief Granted (2003) / Re-sentenced to Death (2010) / State Proceedings Pending	28
Antonio Espinoza	9/17/1986	94-01665 LKK	Eastern	10/13/1994	ED Cal Petition Pending	28
Wilbur Jennings	11/12/1986	91-00684 AWI	Eastern	12/16/1991	Deceased (2014)	--
Robert Danielson	11/13/1986	95-02378 SI	Northern	7/8/1994	Deceased (1995)	--
Thomas Edwards	12/11/1986	93-07151 CJC	Central	11/26/1993	Relief Denied (2009) / Deceased (2009)	--
Theodore Frank	2/23/1987	91-06287 AHS	Central	11/18/1991	Deceased (2001)	--
Teofilio Medina	2/25/1987	94-01892 RSWL	Central	3/25/1994	Circuit Appeal Pending	27
Christopher Day	3/3/1987				Deceased (1994)	--
David Breaux	3/12/1987	93-00570 JAM	Eastern	4/6/1993	ED Cal Petition Pending	27
Conrad Zapien	3/23/1987	94-01455 WDK	Central	3/7/1994	Circuit Appeal Pending	27
Richard Benson	4/30/1987	94-05363 AHM	Central	8/8/1994	Circuit Appeal Pending	27
Robert Nicolaus	6/23/1987	95-02335 MMC	Northern	9/17/1992	Deceased (2003)	--
Alfred Sandoval	6/30/1987	94-08206 R	Central	12/7/1994	Relief Granted (2001)	--
Steven Livaditis	7/8/1987	96-02833 SVW	Central	4/22/1996	CD Cal Petition Pending	27
Harold Memro (Reno)	7/17/1987	96-02768 CBM	Central	4/18/1996	CD Cal Petition Pending	27
George Wharton	7/22/1987	92-03469 CJC	Central	6/9/1992	Circuit Appeal Pending	27
Robert Garceau	7/30/1987	95-05363	Eastern	5/12/1995	Deceased (2004)	--

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Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
		OWW				
Willie Johnson	8/5/1987	98-04043 SI	Northern	10/21/1998	ND Cal Petition Pending	27
Timothy Pride	8/6/1987	93-00926 GEB	Eastern	6/9/1993	Deceased (1994)	--
Bruce Morris	8/27/1987	92-00483 EJH	Eastern	3/27/1992	Relief Granted (2007)	--
Jeffrey Wash	9/1/1987	95-01133 CAL	Northern	4/3/1995	Deceased (1996)	--
Donrell Thomas	9/10/1987				Deceased (1992)	--
Mitchell Sims	9/11/1987	95-05267 GHK	Central	8/8/1995	Relief Denied (2006) / Execution Stayed	27
Martin Kipp	9/18/1987	99-04973 ABC	Central	5/10/1999	CD Cal Petition Pending	27
Paul Tuilaepa	9/25/1987	95-04619 DDP	Central	7/13/1995	CD Cal Petition Pending	27
Fred Freeman	10/7/1987	99-20614 JW	Northern	9/22/1995	Deceased (2009)	--
Kenneth Clair	12/4/1987	93-01133 CAS	Central	2/26/1993	Circuit Appeal Pending	27
Keith Fudge	12/11/1987	95-05369 RGK	Central	8/11/1995	CD Cal Petition Pending	27
Richard Clark	12/18/1987	97-20618 WHA	Northern	8/5/1994	Circuit Appeal Pending	27
Michael Wader	1/5/1988	96-05482 HLH	Central	8/9/1996	Deceased (1997)	--
Michael Hill	1/21/1988	94-00641 CW	Northern	2/24/1994	ND Cal Petition Pending	26
William Nogueira	1/29/1988	94-06417 CAS	Central	9/23/1994	CD Cal Petition Pending	26
Horace Kelly	3/24/1988	98-02722 TJH	Central	4/6/1998	CD Cal Petition Pending	26
Laverne Johnson	4/1/1988	95-00305 THE	Northern	1/26/1995	ND Cal Petition Pending	26
Lance Osband	4/8/1988	97-00152 KJM	Eastern	1/30/1997	ED Cal Petition Pending	26
Marcelino Ramos	4/27/1988	98-02037 AHS	Central	3/20/1988	Deceased (2007)	--
David Rogers	5/2/1988				State Proceedings Pending	26
Dennis Brewer (Mayfield)	5/4/1988	97-03742 FMO	Central	5/19/1997	CD Cal Petition Pending	26
Bill Bradford	5/11/1988	98-05799 RSWL	Central	7/20/1998	Deceased (2008)	--
Curtis Fauber	5/16/1988	95-06601 GW	Central	10/3/1995	CD Cal Petition Pending	26
David Raley	5/17/1988	93-02071 JW	Northern	6/1/1993	Relief Denied (2007) / Execution Stayed	26
Theodore Wrest	5/18/1988	95-00214 DDP	Central	1/11/1995	CD Cal Petition Pending	26
William Hart	5/27/1988	05-03633 MMM	Central	5/16/2005	CD Cal Petition Pending	26
Armenia Cudjo	5/31/1988	99-08089	Central	8/9/1999	Relief Granted (2013)	--

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
		JFW				
Joselito Cinco	6/10/1988				Deceased (1988)	--
David Carpenter	6/27/1988	00-03706 MMC	Northern	10/6/2000	ND Cal Petition Pending	26
Richard Samayoa	6/28/1988	00-02118 W	Southern	10/16/2000	Relief Denied (2012) / Execution Stayed	26
Guy Rowland	6/29/1988	94-03037 WHA	Northern	8/26/1994	Circuit Appeal Pending	26
Gary Hines	7/8/1988	98-00784 TLN	Eastern	5/1/1998	ED Cal Petition Pending	26
Tracy Cain	7/12/1988	96-2584 ABC	Central	4/11/1996	Circuit Appeal Pending	26
Dennis Webb	8/15/1988	97-00956 VAP	Central	2/13/1997	CD Cal Petition Pending	26
William Dennis	9/6/1988	98-021027	Northern	10/9/1998	ND Cal Petition Pending	26
Jerry Frye	9/12/1988	99-00628 LKK	Eastern	3/29/1999	ED Cal Petition Pending	26
Daniel Jenkins	10/6/1988	07-01918 JGB	Central	3/22/2007	State Proceedings Pending	26
Charles Riel	10/14/1988	01-00507 LKK	Eastern	3/14/2001	ED Cal Petition Pending	26
Richard Turner	10/19/1988	09-07449 BRO	Central	10/14/2009	State Proceedings Pending	26
Jose Rodrigues	10/21/1988	96-01831 CW	Northern	5/17/1996	ND Cal Petition Pending	26
Sammy Marshall	10/27/1988				Deceased(1997)	--
Teddy Sanchez	10/31/1988	97-06134 AWI	Eastern	11/20/1997	ED Cal Petition Pending	26
Aurthur Halvorsen	11/18/1988				State Proceedings Pending	26
Rodney Berryman	11/28/1988	95-05309 AWI	Eastern	4/27/1995	Circuit Appeal Pending	26
Max Barnett	11/30/1988	99-02416 JAM	Eastern	12/8/1999	State Proceedings Pending	26
Manuel Mendoza	1/6/1989	03-06194 SJO	Central	8/29/2003	CD Cal Petition Pending	25
Herbert Codrington	1/20/1989	01-01290 KJM	Eastern	7/3/2001	ED Cal Petition Pending	25
Reynaldo Ayala	2/9/1989	01-00741 BTM	Southern	4/27/2001	Circuit Appeal Pending	25
Lester Ochoa	3/20/1989	99-11129 DSF	Central	10/22/1999	CD Cal Petition Pending	25
Drax Quartermain	4/10/1989				Deceased(2005)	--
Rodney Beeler	5/5/1989	96-00606 GW	Central	1/29/1996	CD Cal Petition Pending	25
James Scott	5/18/1989	03-00978 ODW	Central	2/10/2003	CD Cal Petition Pending	25
Jeffrey Kolmetz	5/18/1989				Deceased(1996)	--
Noel Jackson	6/2/1989	97-03531 MWF	Central	5/9/1997	State Proceedings Pending	25

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Steven Crittenden	6/12/1989	95-01957 KJM	Eastern	10/26/1995	Circuit Appeal Pending	25
Jack Farnam	6/15/1989	06-00917 SJO	Central	2/15/2006	State Proceedings Pending	25
Albert Cunningham	6/16/1989	02-07170 GHK	Central	9/13/2002	Relief Denied (2013) / Execution Stayed	25
Louis Craine	6/27/1989				Deceased (1989)	--
George Smithey	7/18/1989				Deceased (2010)	--
David Welch	7/25/1989	00-20242 RMW	Northern	2/28/2000	State Proceedings Pending	25
Ronald Seaton	7/27/1989	04-09339 FMO	Central	11/12/2004	CD Cal Petition Pending	25
Clarence Ray	7/28/1989	96-06252 LJO	Eastern	11/8/1996	State Proceedings Pending	25
James Blair	8/9/1989	06-04550 VAP	Central	7/20/2006	CD Cal Petition Pending	25
Cynthia Coffman	8/31/1989	06-07304 ABC	Central	11/15/2006	CD Cal Petition Pending	25
Robert Fairbank	9/5/1989	98-01027 CRB	Northern	3/16/1998	Relief Denied (2011) / Execution Stayed	25
Manuel Alvarez	9/14/1989	97-01895 GEB	Eastern	10/8/1997	ED Cal Petition Pending	25
David Lucas	9/19/1989				State Proceedings Pending	25
David Rundle	9/21/1989	08-01879 TLN	Eastern	8/13/2008	ED Cal Petition Pending	25
Robert Maury	10/27/1989	12-01043 WBS	Eastern	4/19/2012	ED Cal Petition Pending	25
Terry Bemore	11/2/1989	08-00311 LAB	Southern	2/15/2008	Circuit Appeal Pending	25
Richard Ramirez	11/7/1989	07-08310 BRO	Central	12/26/2007	Deceased (2013)	--
Stanley Davis	11/15/1989				State Proceedings Pending	25
Randy Kraft	11/29/1989	01-04623 AG	Central	5/23/2001	CD Cal Petition Pending	25
Hector Ayala	11/30/1989	01-01322 IEG	Southern	7/20/2001	Circuit Appeal Pending	25
Jeffrey Hawkins	1/31/1990	96-01155 TLN	Eastern	6/19/1996	ED Cal Petition Pending	24
Dean Carter	2/6/1990	06-04532 RGK	Central	7/20/2006	Circuit Appeal Pending	24
Jon Dunkle	2/7/1990	06-04115 PJH	Northern	6/30/2006	ND Cal Petition Pending	24
Alfredo Padilla	2/7/1990	01-06305 LJO	Eastern	10/4/2001	Deceased (2008)	--
Pedro Arias	2/22/1990	99-00627 WBS	Eastern	3/29/1999	ED Cal Petition Pending	24
Dennis Lawley	2/26/1990	08-01425 LJO	Eastern	9/23/2008	Deceased (2012)	--
Larry Davis Jr.	3/8/1990	96-002443 DT	Central	4/5/1996	Relief Denied (2004) / Deceased (2005)	--

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Mario Gray	3/14/1990	07-05935 DSF	Central	9/12/2007	Deceased (2013)	--
Mark Schmeck	4/5/1990	13-05415 RS	Northern	11/21/2013	ND Cal Petition Pending	24
Tracey Carter	4/20/1990	04-06524 DDP	Central	8/6/2004	State Proceedings Pending	24
Christopher Tobin	4/24/1990				State Proceedings Pending	24
Richard Letner	4/24/1990				State Proceedings Pending	24
Jerry Bailey	5/16/1990				Deceased (1998)	--
John Holt	5/30/1990	97-06210 AWI	Eastern	12/15/1997	State Proceedings Pending	24
Maureen McDermott	6/8/1990	04-00457 DOC	Central	1/26/2004	CD Cal Petition Pending	24
Mark Bradford	7/3/1990	97-06221 TJH	Central	8/19/1997	CD Cal Petition Pending	24
Steven Catlin	7/6/1990	07-01466 LJO	Eastern	10/5/2007	ED Cal Petition Pending	24
Ralph Yeoman	7/10/1990				Deceased (2014)	--
Raymond Steele	7/24/1990	03-00143 GEB	Eastern	1/24/2003	ED Cal Petition Pending	24
Jarvis Masters	7/30/1990				State Proceedings Pending	24
Kurt Michaels	7/31/1990	04-00122 JAH	Southern	1/16/2004	SD Cal Petition Pending	24
Roland Comtois	7/31/1990				Deceased (1994)	--
Joseph Muselwhite	9/25/1990	01-01443 LKK	Eastern	7/26/2001	Deceased (2010)	--
Kristin Hughes	10/2/1990	03-02666 JSW	Northern	6/6/2003	ND Cal Petition Pending	24
Evan Nakahara	11/6/1990	05-04604 DDP	Central	6/24/2005	CD Cal Petition Pending	24
Isaac Gutierrez Jr.	11/14/1990	05-03706 DOC	Central	5/18/2005	Deceased (2008)	--
Paul Brown	11/16/1990				Deceased (2004)	--
Jackie Ray Hovarter	11/30/1990				State Proceedings Pending	24
Milton Lewis	12/6/1990	02-00013 TLN	Eastern	1/3/2002	ED Cal Petition Pending	24
Ramon Salcido	12/17/1990	09-00586 MMC	Northern	2/9/2009	State Proceedings Pending	24
Raymond Gure	12/19/1990				Deceased (2007)	--
Carmen Ward	1/28/1991	06-02009 PA	Central		State Proceedings Pending	23
James Majors	2/4/1991	99-00493 MCE	Eastern	3/12/1999	ED Cal Petition Pending	23
Christopher Box	2/22/1991	04-00619 AJB	Southern	3/26/2004	State Proceedings Pending	23
Paul Bolin	2/25/1991	99-05279 LJO	Eastern	3/11/1999	ED Cal Petition Pending	23
Raymond Lewis	3/6/1991	03-06775	Eastern	12/9/2003	ED Cal Petition Pending	23

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
		LJO				
Tauro Waidla	3/8/1991	01-00650 AG	Central	1/22/2001	CD Cal Petition Pending	23
Richard Moon	5/19/1991	08-08327 JAK	Central	12/17/2008	State Proceedings Pending	23
Robert McDonald	5/31/1991				Deceased (1993)	--
Ronald Jones	6/4/1991	98-10318 JLS	Central	12/28/1998	CD Cal Petition Pending	23
John Sapp	6/21/1991	04-04163 JSW	Northern	9/30/2004	State Proceedings Pending	23
Paul Watson	6/27/1991				State Proceedings Pending	23
Curtis Ervin	6/28/1991	00-01228 CW	Northern	4/10/2000	ND Cal Petition Pending	23
Clifford Bolden	7/19/1991	09-02365 PJH	Northern	5/28/2009	State Proceedings Pending	23
Jesse Gonzalez	7/28/1991	95-02345 JVS	Central	4/12/1995	State Proceedings Pending	23
Martin Navarette	8/14/1991	11-07066 VAP	Central	8/26/2011	State Proceedings Pending	23
Anthony Townsel	9/13/1991				State Proceedings Pending	23
Allen Morrison	10/30/1991				State Proceedings Pending	23
James O'Malley	11/21/1991				State Proceedings Pending	23
Michael Slaughter	11/27/1991	05-00922 AWI	Eastern	7/18/2005	ED Cal Petition Pending	23
Michael Jones	12/13/1991	04-02748 ODW	Central	4/20/2004	CD Cal Petition Pending	23
Dellano Cleveland	12/19/1991	05-03822 SVW	Central	5/24/2005	CD Cal Petition Pending	23
Deondre Staten	1/16/1992	01-09178 MWF	Central	10/24/2001	CD Cal Petition Pending	22
Richard Farley	1/17/1992				State Proceedings Pending	22
Chauncey Veasley	1/21/1992	05-03822 SVW	Central	4/12/2005	CD Cal Petition Pending	22
Robert Taylor	1/30/1992	07-06602 FMO	Central	10/11/2007	CD Cal Petition Pending	22
Edward Bridges	2/20/1992				Deceased (2008)	--
Ricky Earp	2/21/1992	00-06508 MMM	Central	6/19/2000	CD Cal Petition Pending	22
Colin Dickey	2/27/1992	06-00357 AWI	Eastern	3/31/2006	ED Cal Petition Pending	22
Billy Waldon	2/28/1992				State Proceedings Pending	22
Jose Casares	3/13/1992				State Proceedings Pending	22
Richard Viera	3/30/1992	05-01492 AWI	Eastern	11/22/2005	ED Cal Petition Pending	22
Gregory Smith	4/3/1992	05-08017 DSF	Central	11/9/2005	State Proceedings Pending	22
Franklin Lynch	4/28/1992				State Proceedings Pending	22
James Marlow	5/8/1992	05-06477 ABC	Central	8/31/2005	CD Cal Petition Pending	22
Paul Watkins	5/11/1992				State Proceedings Pending	22



Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Thomas Walker	5/12/1992				Deceased (1997)	--
Andrew Brown	5/21/1992	04-03931 AG	Central	6/2/2004	CD Cal Petition Pending	22
Alfredo Valdez	5/22/1992	10-05252 BRO	Central	7/16/2010	State Proceedings Pending	22
Marchand Elliott	6/3/1992				State Proceedings Pending	22
Morris Solomon	9/16/1992				State Proceedings Pending	22
Alfredo Prieto	6/18/1992	05-07566 AG	Central	10/20/2005	CD Cal Petition Pending	22
Jack Friend	6/19/1992				State Proceedings Pending	22
Maria Alfaro	7/14/1992	07-07072 CJC	Central	10/30/2007	CD Cal Petition Pending	22
Stephen Cole	7/16/1992	05-04971 DMG	Central	7/7/2005	CD Cal Petition Pending	22
Gregory Smith	8/14/1992	04-03436 JSW	Northern	8/19/2004	ND Cal Petition Pending	22
Rodney San Nicolas	8/31/1992	06-00942 LJO	Eastern	7/20/2006	ED Cal Petition Pending	22
Jessie Ray Mof-fett	9/2/1992				Deceased (1998)	--
Richard Stitley	9/14/1992				State Proceedings Pending	22
Charles Richardson	10/7/1992				State Proceedings Pending	22
James Tulk	10/9/1992				Deceased (2006)	--
Dannie Hill-house	10/13/1992	03-00142 MCE	Eastern	1/24/2003	ED Cal Petition Pending	22
Alphonso Howard	10/20/1992	08-06851 DDP	Central	10/17/2008	CD Cal Petition Pending	22
Rudolph Roybal	10/20/1992	99-02152 JM	Southern	10/5/1999	SD Cal Petition Pending	22
David Williams	10/20/1992	12-03975 AG	Central	5/7/2012	State Proceedings Pending	22
Gerald Cruz	10/26/1992				State Proceedings Pending	22
James Beck	10/27/1992				State Proceedings Pending	22
Richard Tully	12/4/1992				State Proceedings Pending	22
Sergio Ochoa	12/10/1992	02-07774 RSWL	Central	10/4/2002	CD Cal Petition Pending	22
George Williams	12/21/1992				State Proceedings Pending	22
Ricardo Roldan	12/29/1992	09-06589 DOC	Central	9/10/2009	State Proceedings Pending	22
William Ramos	1/8/1993	05-03752 SI	Northern	9/16/2005	ND Cal Petition Pending	21
John Lewis	3/3/1993	11-06395 JAK	Central	8/3/2011	CD Cal Petition Pending	21
Gregory Tate	3/5/1993				State Proceedings Pending	21
Joseph Danks	4/2/1993	11-00223 LJO	Eastern	2/9/2011	State Proceedings Pending	21
Erik Chatman	4/9/1993	07-00640 WHA	Northern	1/31/2007	State Proceedings Pending	21
Maurice Boyette	5/7/1993	13-04376 WHO	Northern	9/20/2013	ND Cal Petition Pending	21
Omar Martinez	5/10/1993	04-09090 PA	Central	11/3/2004	CD Cal Petition Pending	21
Anthony Oliver	5/21/1993	10-08404 ODW	Central	11/4/2010	CD Cal Petition Pending	21

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Albert Lewis	5/21/1993	11-00766 ODW	Central	1/26/2011	State Proceedings Pending	21
Keone Wallace	5/27/1993				State Proceedings Pending	21
Latwon Weaver	5/28/1993				State Proceedings Pending	21
Warren Bland	5/28/1993				Deceased (2001)	--
Catherine Thompson	6/10/1993				State Proceedings Pending	21
Vincente Benavides	6/16/1993				State Proceedings Pending	21
Michael Combs	6/21/1993	05-0 4777 ODW	Central	6/30/2005	CD Cal Petition Pending	21
Robert Curl	7/15/1993				State Proceedings Pending	21
Mark Crew	7/22/1993	12-04259 YGR	Northern	8/13/2012	ND Cal Petition Pending	21
Charles Stevens	7/30/1993	09-00137 WHA	Northern	1/12/2009	ND Cal Petition Pending	21
Christian Monterroso	8/12/1993	12-07888 DMG	Central	9/13/2012	CD Cal Petition Pending	21
Corvin Emdy	8/19/1993				Deceased (1993)	--
Richard Dehoyos	8/27/1993				State Proceedings Pending	21
Cedric Harrison	8/30/1993	09-05045 JW	Northern	10/22/2009	Deceased (2009)	--
Enrique Zambrano	9/8/1993	09-04917 LHK	Northern	10/15/2009	ND Cal Petition Pending	21
Eric Houston	9/20/1993	13-05609 WHA	Northern	12/4/2013	ND Cal Petition Pending	21
Robert Smith	9/24/1993	11-03062 EJD	Northern	6/21/2011	State Proceedings Pending	21
James Heard	9/28/1993				State Proceedings Pending	21
Cleophus Prince	11/5/1993				State Proceedings Pending	21
Abelino Manriquez	11/16/1993				State Proceedings Pending	21
Herbert Koontz	11/19/1993	03-01613 FCD	Eastern	7/31/2003	Deceased (2007)	--
Jose Guerra	11/22/1993				State Proceedings Pending	21
Eric Hinton	12/10/1993	10-06714 DMG	Central	9/9/2010	CD Cal Petition Pending	21
Michael Huggins	12/17/1993	06-07254 YGR	Northern	11/22/2006	State Proceedings Pending	21
Jerry Kennedy	12/20/1993	13-02041 LKK	Eastern	10/1/2013	ED Cal Petition Pending	21
Lanell Harris	1/12/1994				State Proceedings Pending	20
Steven Bell	3/7/1994				State Proceedings Pending	20
Robert Wilson	4/8/1994	07-00519 MWF	Central	1/22/2007	CD Cal Petition Pending	20
Christopher Sattiewhite	4/25/1994				State Proceedings Pending	20
Tim Depriest	5/27/1994	07-06025 JLS	Central	9/17/2007	CD Cal Petition Pending	20
Delaney Marks	6/3/1994	11-02458	Northern	5/19/2011	ND Cal Petition Pending	20

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
LHK						
Brian Johnsen	6/9/1994				State Proceedings Pending	20
Milton Pollock	6/10/1994	05-01870 SI	Northern	5/5/2005	State Proceedings Pending	20
James Robinson	6/17/1994				State Proceedings Pending	20
Jaime Hoyos	7/11/1994	09-00388 L	Southern	2/26/2009	SD Cal Petition Pending	20
Phillip Jablonski	8/12/1994	07-03302 SI	Northern	6/22/2007	State Proceedings Pending	20
Walter Cook	9/2/1994				State Proceedings Pending	20
Tomas Cruz	9/9/1994	13-02792 JST	Northern	6/18/2013	ND Cal Petition Pending	20
Joseph Cook	9/16/1994	12-08142	Central	9/20/2012	State Proceedings Pending	20
		CJC				
Mary Samuels	9/16/1994	10-03225	Central	4/29/2010	CD Cal Petition Pending	20
		SJO				
Shaun Burney	9/16/1994	10-00546	Central	1/26/2010	State Proceedings Pending	20
		RGK				
Bryan Jones	9/19/1994				State Proceedings Pending	20
Ronnie Dement	9/26/1994				State Proceedings Pending	20
Robert Jurado	10/1/1994	08-01400 JLS	Southern	7/31/2008	SD Cal Petition Pending	20
Billy Riggs	10/28/1994	09-04624	Central	6/26/2009	State Proceedings Pending	20
		JAK				
Carl Powell	11/10/1994				State Proceedings Pending	20
Celeste Carrington	11/23/1994	10-04179 RS	Northern	9/16/2010	ND Cal Petition Pending	20
Steven Bonilla	1/20/1995	08-00471 CW	Northern	1/22/2008	ND Cal Petition Pending	19
Anthony Bankston	1/20/1995				State Proceedings Pending	19
Edgardo Sanchez-Fuentes	1/20/1995				State Proceedings Pending	19
Danny Horning	1/26/1995	10-01932	Eastern	7/21/2010	State Proceedings Pending	19
		JAM				
Randall Wall	1/30/1995				State Proceedings Pending	19
Steven Homick	1/31/1995				State Proceedings Pending	19
Royal Clark	2/3/1995	12-00803	Eastern	5/16/2012	State Proceedings Pending	19
		LJO				
Raymond Johns	2/8/1995				Deceased (2004)	--
Keith Loker	2/10/1995				State Proceedings Pending	19
Johnny Avila	3/21/1995	11-01196	Eastern	7/19/2011	State Proceedings Pending	19
		AWI				
Randy Garcia	3/23/1995				State Proceedings Pending	19
Hooman Panah	3/26/1995	05-07606	Central	10/21/2005	Circuit Appeal Pending	19
		RGK				
Ernest Jones	4/7/1995	09-002158	Central	3/27/2009	CD Cal Petition Pending	19
		CJC				
Glen Cornwell	4/21/1995	06-00705	Eastern	3/31/2006	ED Cal Petition Pending	19
		TLN				
Mark Thornton	5/15/1995				State Proceedings Pending	19
Greg Demetrulias	5/22/1995	07-01335	Central	2/28/2007	Circuit Appeal Pending	19
		DOC				
Kerry Dalton	5/23/1995				State Proceedings Pending	19
Ignacio Tafoya	6/6/1995				State Proceedings Pending	19

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
Regis Thomas	6/15/1995				State Proceedings Pending	19
Lester Virgil	6/29/1995				State Proceedings Pending	19
Johnaton George	7/17/1995				State Proceedings Pending	19
Christopher Geier	7/21/1995	10-04676 R	Central	6/24/2010	State Proceedings Pending	19
Charles Rountree	8/11/1995				State Proceedings Pending	19
Christopher Lightsey	8/15/1995				State Proceedings Pending	19
Sergio Nelson	9/9/1995				State Proceedings Pending	19
Thomas Lenart	10/6/1995	05-01912 MCE	Eastern	9/21/2005	State Proceedings Pending	19
John Beames	10/11/1995	10-01429 AWI	Eastern	8/9/2010	ED Cal Petition Pending	19
Paul Hensley	10/13/1995				State Proceedings Pending	19
Loi Vo	10/18/1995				State Proceedings Pending	19
Stephen Hajek	10/18/1995				State Proceedings Pending	19
Donald Smith	10/19/1995				State Proceedings Pending	19
Leroy Wheeler	10/19/1995				State Proceedings Pending	19
Stanley Bryant	10/19/1995				State Proceedings Pending	19
William Suff	10/26/1995				State Proceedings Pending	19
Caroline Young	10/27/1995				Deceased (2005)	--
Douglas Kelly	11/8/1995				State Proceedings Pending	19
Ernest Dykes	11/30/1995	11-04454 SI	Northern	9/7/2011	ND Cal Petition Pending	19
Demetrius Howard	12/7/1995				State Proceedings Pending	19
John Cunningham	1/12/1996				State Proceedings Pending	18
Alfredo Valencia	1/23/1996				State Proceedings Pending	18
Valamir Morelos	2/21/1996				State Proceedings Pending	18
Jerry Rodriguez	2/21/1996				State Proceedings Pending	18
Steven Brown	2/23/1996				State Proceedings Pending	18
Dexter Williams	2/28/1996	12-01344 LJO	Eastern	8/17/2012	ED Cal Petition Pending	18
Richard Gamache	4/2/1996				State Proceedings Pending	18
Andre Alexander	4/23/1996	11-07404 JAK	Central	9/8/2011	State Proceedings Pending	18
Frank Carter	4/25/1996				Deceased (2001)	--
Robert Cowan	5/8/1996				State Proceedings Pending	18
Dennis Ervine	5/31/1996				State Proceedings Pending	18
Keith Taylor	6/5/1996				State Proceedings Pending	18
Eric Leonard	6/13/1996				State Proceedings Pending	18
Keith Doolin	6/18/1996	09-01453 AWI	Eastern	8/17/2009	State Proceedings Pending	18
Daniel Whalen	6/24/1996				State Proceedings Pending	18
Edward Morgan	7/19/1996				State Proceedings Pending	18
Clifton Perry	7/26/1996	11-01367	Eastern	8/16/2011	State Proceedings Pending	18

Name	Date Sentenced <sup>2</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
AWI						
Raymond Butler	7/29/1996				State Proceedings Pending	18
Lamar Barnwell	8/9/1996				State Proceedings Pending	18
Freddie Fuiava	8/19/1996	12-10646	Central	12/12/2013	CD Cal Petition Pending	18
VAP						
Orlando Romero	8/28/1996				State Proceedings Pending	18
Christopher Self	8/28/1996				State Proceedings Pending	18
Albert Jones	9/20/1996				State Proceedings Pending	18
John Riccardi	9/20/1996				State Proceedings Pending	18
Bob Williams	9/20/1996	09-01068	Eastern	6/17/2009	State Proceedings Pending	18
AWI						
Richard Davis	9/26/1996	13-00408	Northern	1/29/2013	ND Cal Petition Pending	18
EMC						
Richard Leon	10/1/1996				State Proceedings Pending	18
Richard Parson	10/11/1996				Deceased (2011)	--
Darrel Lomax	10/16/1996	11-01746	JLS Central	2/28/2011	State Proceedings Pending	18
Michael Whisenhut	10/21/1996				State Proceedings Pending	18
Charles Case	10/25/1996				State Proceedings Pending	18
James Thompson	10/26/1996				State Proceedings Pending	18
Michael Elliot	10/31/1996				State Proceedings Pending	18
Christopher Spencer	11/7/1996				State Proceedings Pending	18
Brandon Taylor	11/13/1996				State Proceedings Pending	18
George Contreras	12/11/1996				State Proceedings Pending	18
Dewayne Carey	12/16/1996				State Proceedings Pending	18
Michael Pearson	12/18/1996				State Proceedings Pending	18
Scott Collins	12/19/1996	13-07334	Central	10/3/2013	CD Cal Petition Pending	18
JFW						
Maurice Harris	12/20/1996	13-04026	PA Central	6/5/2013	CD Cal Petition Pending	18
Richard Foster	12/31/1996				State Proceedings Pending	18
Michael Ihde	1/3/1997				Deceased (2005)	--
Eric Bennet	1/9/1997				State Proceedings Pending	17
Herbert McClain	1/21/1997				State Proceedings Pending	17
Karl Holmes	1/21/1997				State Proceedings Pending	17
Lorenzo Newborn	1/21/1997				State Proceedings Pending	17
Stephen Redd	2/28/1997				State Proceedings Pending	17
Jeffery Mills	3/10/1997				State Proceedings Pending	17
Joseph Montes	3/18/1997				State Proceedings Pending	17
Johnny Mungia	4/7/1997				State Proceedings Pending	17
Johnathan D'Arcy	4/11/1997				State Proceedings Pending	17
Gene McCurdy	4/22/1997				State Proceedings Pending	17
Jimmy Palma	6/11/1997				Deceased (1997)	--
Richard Valdez	6/11/1997				State Proceedings Pending	17
Daniel Silveria	6/13/1997				State Proceedings Pending	17

Name	Date Sentenced <sup>5</sup>	Federal Case Number	Federal	Date Federal Habeas Proceedings Initiated <sup>6</sup>	Current Case Status	Years Since Sentenced
John Travis	6/13/1997				State Proceedings Pending	17
Robert Scully	6/13/1997				State Proceedings Pending	17
Ramon Rogers	6/30/1997				State Proceedings Pending	17
Lawrence Bergman	7/8/1997				Deceased (2009)	--
Bobby Lopez	7/11/1997				State Proceedings Pending	17
Michael Martinez	8/29/1997				State Proceedings Pending	17
Carlos Hawthorne	9/5/1997				State Proceedings Pending	17
John Famalaro	9/5/1997				State Proceedings Pending	17
Michael Bramit	9/15/1997				State Proceedings Pending	17
Royce Scott	9/17/1997				State Proceedings Pending	17
John Abel	9/26/1997				State Proceedings Pending	17
Ronald Mendoza	10/27/1997				State Proceedings Pending	17
Terrance Page	10/31/1997				Deceased (2008)	--
Frank Becerra	10/31/1997				State Proceedings Pending	17
Sean Vines	11/7/1997				State Proceedings Pending	17
Herminio Serna	11/21/1997				State Proceedings Pending	17
James Trujeque	11/21/1997				State Proceedings Pending	17
Frank Abilez	12/4/1997				Deceased (2012)	--
Gunner Lindberg	12/12/1997	09-05509 MWF	Central	7/28/2009	State Proceedings Pending	17
Floyd Smith	12/14/1997				State Proceedings Pending	17
Bill Poyner	12/16/1997				Deceased (1998)	--
Martin Mendoza	12/23/1997				State Proceedings Pending	17
William Clark	12/29/1997				State Proceedings Pending	17

5 For [\*55] inmates still on Death Row, the sentencing date listed on the chart is the sentencing date provided in CDCR's Condemned Inmate List.

6 Federal habeas proceedings are initiated when the petitioner seeks appointment of federal habeas counsel,

not when the petitioner's federal writ of habeas corpus is filed. Some individuals that have initiated federal habeas proceedings may still have state proceedings pending for exhaustion purposes. In such cases, the federal petition is effectively stayed while the state proceedings are completed.



[CCP Sec. 1013A(2)]

The undersigned certifies that he is an active member of the State Bar of California, not a party to the within action, and his business address is 484 Lake Park Avenue, No. 429, Oakland, California; that he served a copy of the following documents:

APPELLANT'S SUPPLEMENTAL BRIEF

by placing same in a sealed envelope, fully prepaying the postage thereon, and depositing said envelope in the United States mail at Oakland, California on JULY 28, 2014 addressed as follows:

Nanette Winaker  
Deputy Attorney General  
455 Golden Gate Ave., Ste. 11000  
San Francisco, CA 94102-7004

District Attorney, Alameda County  
1225 Fallon St., Rm. 900  
Oakland, CA 94612-4203

Alameda County Superior Court  
1225 Fallon St., Rm. 107  
Oakland, CA 94612-4293

California Appellate Project  
101 Second St., Ste. 600  
San Francisco, CA 94105-3672  
ATTN: LINDA ROBERTSON

Ropati Afatia Seumanu, T-02150  
San Quentin State Prison  
San Quentin, CA 94974

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 28, 2014 at Oakland, California.

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Mark D. Greenberg  
Attorney at Law