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11 **UNITED STATES DISTRICT COURT**

12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

13
14 JOSE ARNALDO RODRIGUES,) CASE NO. 4:96-cv-01831-CW
15 Petitioner,) **DEATH PENALTY CASE**
16 v.) **PETITIONER'S FORTY-SECOND STATUS**
17 ROBERT K. WONG, Warden of the California) **REPORT RE: ATKINS PROCEEDINGS;**
State Prison at San Quentin,) **REQUEST FOR STATUS CONFERENCE**
18 Respondent.)
19)

20
21 TO: THE HONORABLE CLAUDIA WILKEN, UNITED STATES DISTRICT JUDGE FOR THE
22 NORTHERN DISTRICT OF CALIFORNIA:

23 Pursuant to this Court's order of September 25, 2002, petitioner files his Forty-Second Status
24 Report Re: *Atkins* proceedings.

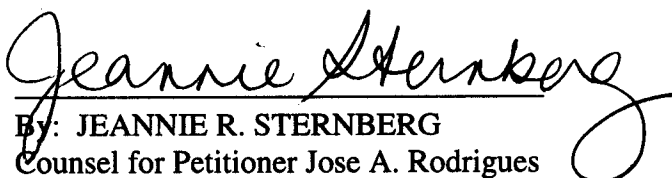
25 On September 9, 2009, the California Supreme Court issued an Order to Show Cause,
26 returnable to the San Mateo County Superior Court, on the *Atkins* claim raised in petitioner's Petition
27 for Writ of Habeas Corpus. On February 8, 2010, upon stipulation of the San Mateo County District
28 Attorney and counsel for petitioner, the Honorable Phrasel L. Shelton, judge of the San Mateo

1 Superior Court (retired), granted the habeas corpus petition finding that petitioner sustained his burden
2 of proof that he is mentally retarded within the meaning of *Atkins*, vacated petitioner's sentence of
3 death, and sentenced petitioner to life imprisonment without the possibility of parole. After the filing
4 of the last status report, counsel learned that Judge Shelton approved and signed the parties'
5 stipulation, and counsel received a filed-stamped copy of that order, a copy of which is attached to this
6 status report.

7 The Superior Court's order does not resolve fully the pending § 2254 petition. Mr.
8 Rodrigues's Amended Petition, which remains pending before this Court, alleges constitutional
9 violations that were not resolved by the state court's resolution pursuant to *Atkins*. The penalty phase
10 relief granted by petitioner's resentencing to life without parole resolves several, but not all, of the
11 claims in the Amended Petition. In light of the above, petitioner requests that this Court set the matter
12 for a status conference, with the parties to submit a Joint Status Report prior to that conference.

13
14 Dated: May 3, 2010

Respectfully submitted,
JOHN R. GRELE, ESQ.
JEANNIE R. STERNBERG, ESQ.

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18 BY: JEANNIE R. STERNBERG
19 Counsel for Petitioner Jose A. Rodrigues

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ALBERT ANTHONY SERRATO, State Bar No 122586
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FILED
SAN MATEO COUNTY
FEB - 8 2010

Clerk of the Superior Court
Karen Deane
DEPUTY CLERK

Attorneys for the People of the State of California

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Attorneys for Jose Arnaldo Rodriguez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

PEOPLE OF THE STATE OF CALIFORNIA

CAPITAL CASE

v.

San Mateo County Superior Court No. SC-18140-01

JOSE ARNALDO RODRIGUES

Related to California Supreme Court No. S133554

In re JOSE ARNALDO RODRIGUEZ,

On Habeas Corpus

**[PROPOSED] STIPULATION AND ORDER
VACATING SENTENCE OF DEATH**

Petitioner Jose Arnaldo Rodriguez, through his counsel of record, and the People of the State of California, through the Office of the District Attorney of San Mateo County, hereby

1 stipulate and agree as follows:

2 1. On July 25, 1988, Mr. Rodriguez¹ was convicted of first degree murder with special
3 circumstances and, on October 21, 1988, was sentenced to death in San Mateo County, Court Case
4 No. SC-18140-01.

5 2. On February 13, 2003, Petitioner filed a Petition for Writ of Habeas Corpus in the
6 California Supreme Court, Case No. S113554, seeking relief from the sentence of death on the
7 ground that he is mentally retarded within the meaning of *Atkins v. Virginia*, 536 U.S. 304 (2002).
8

9 3. In support of this Petition, Petitioner submitted 94 exhibits, including: records of IQ
10 and achievement testing which occurred in 1965, 1970, 1987, and 1994; educational, institutional,
11 medical, mental health, criminal justice, and juvenile records; declarations from family, friends,
12 teachers, acquaintances, former attorneys, and former juvenile probation or parole officers; and
13 declarations of psychologists, psychiatrists, and other mental health professionals who evaluated
14 Mr. Rodriguez at the time of trial and during post-conviction proceedings.
15

16 4. On September 9, 2009, the California Supreme Court issued an Order directing the
17 Director of the California Department of Corrections and Rehabilitation to show cause in the San
18 Mateo County Superior Court why Petitioner's death sentence should not be vacated and Petitioner
19 sentenced to life imprisonment without the possibility of parole on the ground that he is mentally
20 retarded within the meaning of *Atkins v. Virginia*, as alleged in paragraph XVII of the petition for
21 writ of habeas corpus. The Order denied on the merits all other claims set forth in the petition for
22 writ of habeas corpus.
23

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26
27 ¹ The correct spelling of Mr. Rodriguez's surname is with a "z" at the end. However, because
28 his surname was spelled with an "s" during all trial proceedings, the parties have included that
spelling in the case caption so it will mirror the title of the case at trial.

1 5. The materials filed and provided by Petitioner were examined by Dr. Daniel Martell,
2 a qualified mental health professional acting on behalf of the San Mateo County District Attorney's
3 Office.

4 6. Based on the evidence presented by Petitioner, and the opinion of Dr. Martell, the
5 People believe that a substantial risk exists that Petitioner will be found, based on the evidence
6 accumulated to date, to have sustained his burden of proof by a preponderance of the evidence that
7 he is mentally retarded within the meaning of *Atkins*. The parties believe it is in the interests of
8 justice to avoid further litigation and implement the mandates of *Atkins, In re Hawthorne* 35 Cal.4th
9 40 (2005), and California Penal Code section 1376.

11 7. Based on the foregoing considerations and the state of the evidence, the People
12 choose not to show cause why Mr. Rodriguez's death sentence should not be vacated and Mr.
13 Rodriguez sentenced to life imprisonment without the possibility of parole.

14 8. Mr. Rodriguez's sentence of death should be vacated and he should be sentenced to
15 life imprisonment without the possibility of parole. This sentencing is not intended to, and shall not
16 have any effect on the sentence imposed on Mr. Rodriguez for his convictions on Counts II through
17 IV of the Amended Information.

19 9. Upon entry of an order vacating Petitioner's sentence of death and imposing a
20 sentence of life imprisonment without the possibility of parole, neither party will appeal any order
21 in the proceeding on the Order to Show Cause issued by the California Supreme Court, Case No.
22 S113554, except such appeals or other proceedings as may be related to enforcement of the terms of
23 this Stipulation.

25 10. The signatories to this Stipulation have full authority to enter into this Stipulation on
26 behalf of all parties and their counsel in San Mateo Superior Court No. SC-18140-01 and California

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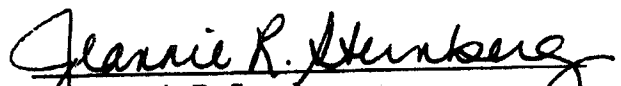
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Supreme Court No. S113554, and to bind the respective parties.

IT IS SO STIPULATED AND AGREED.

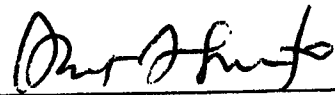
DATED: February 4, 2010

HABEAS CORPUS RESOURCE CENTER
LAW OFFICES OF JOHN R. GRELE


By: Jeannie R. Sternberg
Counsel for Petitioner Jose Arnaldo Rodriguez

DATED: February 5, 2010

SAN MATEO COUNTY DISTRICT ATTORNEY


By: Albert A. Serrato, Deputy District Attorney
Counsel for the People of the State of California

ORDER

This matter is before the Court as a result of the Order to Show Cause issued by the California Supreme Court on September 9, 2009 in California Supreme Court Case No. S113554 and made returnable to this Court. Pursuant to the foregoing Stipulation and Agreement by the parties, and for good cause appearing, the Court finds and orders:

1. Petitioner's Petition for Writ of Habeas Corpus, California Supreme Court Case No. S113554 is hereby GRANTED.
2. Petitioner has sustained his burden of proof, by a preponderance of the evidence, that he is mentally retarded within the meaning of *Atkins v. Virginia* 536 U.S. 304(2002), *In re Hawthorne*, 35 Cal.4th 40 (2005) and California Penal Code section 1376.
3. Petitioner's sentence of death is hereby VACATED.


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4. Pursuant to California Penal Code section 1376, Petitioner is SENTENCED in *People v. Jose Arnaldo Rodrigues*, San Mateo Superior Court Case No SC-18140-01 to life imprisonment without the possibility of parole.

IT IS SO ORDERED.

DATED: FEB 08 2010


THE HONORABLE PHRASEL L. SHELTON
JUDGE (RET.) OF THE SUPERIOR COURT