No. 14-6264

In the Supreme Court of the United States

STEPHEN MORELAND REDD,

Petitioner,

v.

KEVIN CHAPPELL, WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the California Supreme Court denied petitioner his federal constitutional rights in refusing to accept for filing a pro se motion to recall the remittitur in his direct appeal.

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STATEMENT

1. During a four-month period in 1994, petitioner Stephen Moreland Redd committed a series of armed robberies, culminating in a grocery store robbery in which he shot and killed store employee Timothy McVeigh. *People v. Redd*, 48 Cal. 4th 691, 697-704 (2010). A jury found petitioner guilty of first degree murder, attempted murder, robbery, and burglary. The jury also found, as a "special circumstance" making petitioner eligible for the death penalty, that the McVeigh murder was committed while petitioner was engaged in robbery and burglary. Following a penalty trial, the jury returned a death verdict. Petitioner was sentenced to death for capital murder and to prison for a term of 111 years for his other crimes. *Id.* 697.

Represented by appointed counsel, petitioner appealed. The California Supreme Court affirmed the judgment and sentence in April 2010. *Redd*, 48 Cal. 4th 691. It issued its remittitur in June.[1] This Court denied petitioner's petition for writ of certiorari from the judgment affirming his conviction in October 2010. *Redd v. California*, 131 S. Ct. 328 (2010). Soon thereafter, on October 10, 2010, the California Appellate Project filed a "shell" habeas corpus petition—that is, a petition stating no claims but apparently intended

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[1] The remittitur is issued when the appellate opinion is final for all purposes. (Cal. Rules of Court, rule 8.272.) When the remittitur issues, it terminates the jurisdiction of the appellate court, and the jurisdiction of the trial court reattaches. 9 Witkin, Cal. Proc. 5th (2008) Appeal, § 844, p. 906.

to toll the statute of limitations for filing a federal habeas petition—on petitioner's behalf in the California Supreme Court.

2. Two years later, in October 2012, petitioner submitted to the California Supreme Court a pro se request for recall of the remittitur in his earlier state-court appeal. Under its established policies, see *In re Barnett*, 31 Cal. 4th 466, 469 (2003), the supreme court declined to file the pro se request because petitioner was represented by counsel. Pet. A-10.

Petitioner also wrote to the California Supreme Court regarding appointment of state habeas corpus counsel. Pet. A-3, A-7 to A-8. In response, the court explained to petitioner that an "'initial' capital-related habeas petition had been filed on his behalf" by the California Appellate Project, although not as petitioner's counsel of record in the habeas corpus case, and informed him that, in "due course, [the] court will appoint either a qualified death penalty habeas corpus practitioner or defense agency to [his] case, as soon as a qualified practitioner or defense agency is willing and available to represent [him] as counsel of record for capital-related state habeas corpus proceedings." Pet. A-12. To date, the supreme court has not appointed state habeas counsel for petitioner.

3. Petitioner filed a pro se petition for writ of habeas corpus in the United States District Court for the Central District of California. See Brief in Opposition, Appendix No. 1. He alleged denials of due process, equal

protection, and access to the courts, based on the California Supreme Court's refusal to accept his request to recall the remittitur and the delay in appointing state habeas counsel. The district court denied the petition under 28 U.S.C. § 2254(b)(1)(B) because petitioner had failed to exhaust available state-court remedies before pursuing federal habeas relief. The district court further concluded that petitioner did not meet the requirements for issuance of a certificate of appealability (COA) because he had not made a substantial showing of the violation of a constitutional right, as required by 28 U.S.C. § 2253(c)(2). The court explained that petitioner's complaint about alleged delay in appointment of counsel for state habeas corpus proceedings failed to state a cognizable federal claim. *Id.*

4. Petitioner filed a notice of appeal. The Ninth Circuit issued an order treating the notice as a request for a certificate of appealabilty and denied it. The order explained that whether a remittitur is recalled in a state-court appeal raises only a question of state law that is not subject to federal habeas review. See Opp. App. No. 2.

ARGUMENT

Petitioner contends that the California Supreme Court unconstitutionally refused to file his pro se motion to recall the remittitur in his direct appeal while it is delaying in appointing him state habeas corpus counsel. Pet. 3-10. As the Ninth Circuit recognized, however, petitioner fails

to present a federal constitutional question cognizable in federal habeas corpus proceedings. See *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). Because petitioner failed to make a "substantial showing of the denial of a constitutional right," the court of appeals correctly denied the COA. See *Slack v. McDaniel*, 529 U.S. 473, 483-844 (2000).

1. There is no federal constitutional right to self-representation in a criminal appeal. *Martinez v. California Court of Appeal*, 528 U.S. 152, 154 (2000). Petitioner likewise had no federal constitutional right to proceed pro se in seeking recall of the remittitur in his state appeal. Petitioner was represented by appointed counsel in that appeal, the California Supreme Court has not relieved counsel of that appointment, and petitioner presents no basis for believing that said counsel no longer represents him or would not entertain a request to file such a motion if it were warranted.

2. Petitioner says that the California Supreme Court has delayed appointing him state habeas corpus counsel, and he implies that the delay somehow has made it impossible for him to seek recall of the remittitur in his appeal through counsel. But, as just explained, and as the California Supreme Court indicated to petitioner in a letter sent both to him and to his appointed appellate counsel (see Pet. A-10), petitioner's court-appointed *appellate* counsel presumably still represents him in that appeal or could resume representation if there were reason to do so. There is no apparent

reason that appointed counsel could not seek recall of the remittitur if there were reason to do so.

Nor, in any event, does the constitution require the state to provide for collateral attacks on its judgments, or to appoint counsel to represent convicted defendants in such collateral attacks to the extent they are allowed. See *Pennsylvania v. Finley*, 481 U.S. 551, 555-57 (1987); *Ross v. Moffitt*, 417 U.S. 600, 610 (1974). Accordingly, the delay of which petitioner complains does not violate any federal right that he may assert through federal habeas proceedings.

California provides ample protections for capital defendants in state appeals and habeas corpus proceedings. See generally, *In re Reno*, 55 Cal. 4th 428, 456-57 (2012), as modified on denial of reh'g (Oct. 31, 2012), cert. denied, 133 S. Ct. 2345 (2013). As part of that system, the California Supreme Court has held:

> Consistent with the general rule that represented parties have no right to present their cases personally alongside counsel – a principle we have recognized in the context of both capital trials and appeals, and noncapital habeas corpus proceedings as well – this court will not file or consider a represented capital inmate's pro se submissions that challenge the legality of the inmate's death judgment or otherwise fall within the scope of counsel's representation. Conversely, we shall file and consider a represented capital inmate's pro se submissions that pertain to matters falling outside the scope of counsel's representation. We shall also file and consider pro se motions limited to matters concerning the inmate's representation. (See *People v. Marsden*

(1970) 2 Cal.3d 118, 84 Cal.Rptr. 156, 465 P.2d 44 (*Marsden*) [motion to substitute counsel].)

In re Barnett, 31 Cal. 4th at 469.

Here, the California Appellate Project already has filed a "shell" habeas corpus petition on petitioner's behalf. In due course the California Supreme Court will appoint habeas counsel for petitioner, and that counsel will be able to amend the shell petition within three years after the appointment. *In re Morgan*, 50 Cal. 4th 932, 940 (2010); *In re Jimenez*, 50 Cal. 4th 951, 958 (2010). At that stage, counsel appointed for petitioner presumably will be able to present, in habeas corpus, any colorable claim of ineffective assistance of trial or appellate counsel.

The denial of petitioner's habeas corpus petition and the denial of a COA were correct. Petitioner has not made a substantial showing of the denial of a constitutional right since his inability to file a pro se motion to recall the remittitur involves a question of state law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: October 15, 2014

APPENDIX

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

STEPHEN MORELAND REDD, Petitioner, vs. KEVIN CHAPPELL, Warden, California State Prison at San Quentin Respondent.	Case No.: CV 13-7238 ABC **DEATH PENALTY CASE** ORDER DENYING AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

I. BACKGROUND

A jury convicted Stephen Moreland Redd of the first degree murder of Timothy McVeigh, the attempted murders of James Shahbakhti and Chris Weidmann , two counts of second degree robbery, and two counts of second degree commercial burglary. The jury found true the special circumstances that the murder was committed while defendant was engaged in the commission of robbery and of burglary. The jury also found true the allegations that defendant personally used a firearm in the commission of each of the seven crimes, and that defendant, with the specific intent to inflict such injury, personally inflicted great bodily injury upon James Shahbakhti. The jury also found that defendant previously had been convicted of five serious or violent felonies. Following the penalty phase of the trial, the jury returned a verdict of death. Defendant moved for a new trial and

for modification of the penalty to life imprisonment without the possibility of parole. The trial court denied these motions and sentenced defendant to death. The court also sentenced defendant to a term of 111 years to life in prison with respect to the other charges of which he was convicted, and ordered restitution in the amount of $ 10,000. *People v. Redd*, 48 Cal. 4th 691, 697 (2010). The California Supreme Court affirmed the conviction and sentence on direct appeal on April 29, 2010. *Id.* at 759. His conviction and sentence became final when his Petition for Writ of Certiorari to the United States Supreme Court was denied on October 4, 2010.[1]

California Supreme Court Policies[2] state that the "appointment of habeas corpus counsel for a person under a sentence of death shall be made simultaneously with appointment of appellate counsel, or at the earliest practicable time thereafter." (Policy 3.2-1.) The policies contemplate different timeliness measures for the filing of the state habeas petition based on the type of appointment that is made. If direct appeal counsel is also appointed as state habeas counsel, then the habeas petition must be filed within 180 days of the date filing of the reply brief on direct appeal. (Policy 3.1-1.2.) On the other hand, if habeas counsel is appointed apart from direct appeal counsel, then the petition is not due until 36 months after the date on which habeas counsel was appointed. (Policy 3.1-1.2.)

Petitioner has not yet had state habeas counsel appointed, though the California Appellate Project filed a habeas petition asserting a limited number of claims (a so called "shell" petition) on his behalf. That petition was filed on October 5, 2010; the day after the United States Supreme Court denied the Petition for Writ of Certiorari. Petitioner has attempted to file pro se motions with the California Supreme Court, primary among them being motions to recall the

[1] The docket in petitioner's case on direct appeal is found on the California Supreme Court website located at: http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=1791273&doc_no=S059531

[2] See www.courts.ca.gov/documents/PoliciesMar2012.pdf - 2012-03-05.

remittitur and reopen briefing on his direct appeal. He has also written letters to the state supreme court requesting the appointment of habeas counsel. The California Supreme Court has rejected Petitioner's pro se filings and has also told him that the court is still attempting to find counsel to appoint for his state habeas case.

II. DISCUSSION

A. Petitioner Has Not Exhausted His State Court Remedies and Has Not Been Subjected to a Suspension of the Writ

AEDPA limits the federal courts' ability to entertain habeas corpus petitions by state prisoners. This Court cannot entertain such a petition unless the petitioner has exhausted all state court remedies available to him. 28 U.S.C. § 2254(b)(1)(A). The only exception to this "complete exhaustion" requirement exists in those cases where the petitioner can demonstrate either that there is an absence of available state corrective process or circumstances exist that render such process ineffective to protect his rights. 28 U.S.C. § 2254(b)(1)(B).

In his pro se filing here, Petitioner cites California State statutory and case law that he believes support the proposition that he should be allowed to recall the remittitur in the state court. He also states, "I now appeal to this court, requesting that the [California Supreme Court] be ordered to accept and timely grant appellate relief." He also states that he believes that he is being denied access to the courts and effective corrective process in violation of his due process rights because it is taking too long for the appointment of his state habeas counsel. This case falls within the statutory scheme established by the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified at 28 U.S.C. § 2254.

These claims are essentially identical to recent pro se prisoner claims made in this District and others that the state court's procedures either amounted to a suspension of the writ or made the filing of state appellate or post-conviction petitions an exercise in futility. *See Brasure v. Martel*, CV 11-5451 PSG, *Reed v.*

People of the State of California, CV 12-0557 JFW, *Shove v. Chappell*, CV 12-2194 R, *Williams v. Chappell*, CV 12-3975 AG, *Gay v. Chappell*, CV 12-4677, *Howard v. Chappell*, CV 12-5222 DOC, and *DeBose v. Chappell*, CV 12-5254 DDP

There is no controlling case law in this Circuit that supports the notion that lengthy appellate delay could support a finding that pending, or yet to be filed, habeas claims have been exhausted. Though decided in terms of an actual habeas claim, and not in relation to an effort to bypass the complete exhaustion requirement, the Court of Appeals decision in *Hayes v. Ayers*, 632 F.3d 500 (9th Cir. 2011) is instructive on how the Court should consider Petitioner's request here. In *Hayes*, the petitioner had been on California's death row for eleven years prior the filing of his opening brief on direct appeal. *Id.* at 523. The petitioner brought a habeas claim for due process violations of his purported right to a speedy appeal. *Id.* Though he cited case law, including law from this circuit, that suggested that such a claim could be viable, the Court of Appeals ultimately determined that such a claim could not be brought because there was no United State Supreme Court precedent finding that such a right existed. *Id.* In addition, the Court of Appeal's found that the petitioner had identified no prejudice that resulted from the eleven year delay. *Id.*

The Court of Appeals reaffirmed this essential holding in *Blair v. Martel*, 645 F.3d 1151 (9th Cir. 2011) when it found that it could not consider the petitioner's habeas claim that his due process rights had been violated by a thirteen year appellate delay. *Id.* at 1158. In like manner, the federal courts cannot compel the state courts to process an appeal except perhaps through consideration of a claim under 42 U.S.C. § 1983. *Id.* at 1157 – 58. These findings are consistent with the United States Supreme Court's holding that the Anti-terrorism and Effective Death Penalty Act of 1996 (AEPDA), codified at 28 U.S.C. § 2254, limits the federal courts' ability to disturb state criminal court judgments. AEDPA's goal is

the promotion of comity, finality, and federalism, giving the state courts the first opportunity to review claims and correct any constitutional infirmities in the first instance. *Cullen v. Pinholster*, 131 S. Ct. 1398, 1401 (2011). Given that only three years have passed since Petitioner's conviction and sentence became final, there is no discernible basis for going forward with this petition and overriding the principles of federalism and comity that inform federal habeas jurisprudence.

If Petitioner is implying that he has fallen victim to a de facto suspension of the writ, he still cannot obtain relief from this Court. Even if he could establish an undue delay by the California courts in processing his habeas petition, federal law still binds this Court's consideration of any suspension allegations. The Suspension Clause states, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const., art. I, § 9, cl. 2. There is very little agreement over the scope and meaning of the Suspension Clause. As the Supreme Court has stated:

> Our case law does not contain extensive discussion of standards defining suspension of the writ or of circumstances under which suspension has occurred. This simply confirms the care Congress has taken throughout our Nation's history to preserve the writ and its function. Indeed, most of the major legislative enactments pertaining to habeas corpus have acted not to contract the writ's protection but to expand it or to hasten resolution of prisoners' claims.

Boumediene v. Bush, 553 U.S. 723, 773 (2008).

Such is the case in California where the State Supreme Court recently extended the presumptive timeliness for filing a petition by doubling the time limits from 90 to 180 days in the case of dual appointment and increasing the time frame by fifty percent from 24 to 36 months in the case of separate appointments. (Policies, Official Notes Nos. 1 & 2.) Moreover, the policies mandate the appointment of habeas counsel in all capital cases in an effort to ensure that potentially meritorious habeas corpus petitions will be presented in a timely fashion. (Policy 3(i).) These policies demonstrate that the state supreme court is cognizant of the time constraints on counsel, the complexity of habeas cases, and

the sometimes arcane nature of habeas law. Of course that court is also fully aware both that its policies impose no limits on the number of times a habeas petitioner can return to the state courts with new theories of relief and that the sheer volume of cases pending before it is high.

That California's policies track with the Supreme Court's observations in *Boumediene* is not, however, the most compelling reason why this Court declines to find that there is a de facto suspension of the writ in the delay in adjudicating Petitioner's state habeas claims. Rather, it is because the Suspension Clause does not apply to the states. *Gasquet v. LaPeyre*, 242 U.S. 367 (1917) (The Suspension Clause is not a limitation on State action); *Geach v. Olsen*, 211 F.2d 682, 684 (7th Cir. 1954) (same); *Harvey v. State of South Carolina*, 310 F. Supp. 83, 85 (D.S.C. 1970) (same). Thus, any obligations arising out of the Suspension Clause fall on Congress and on the federal courts, not on the courts of the State of California. Petitioner cannot claim that the three years that have passed since his conviction and sentence became final amount to a suspension of the writ.

Though suspension of the writ is not the touchstone to a potentially meritorious argument that exhaustion should not be required, Petitioner still must make a substantial showing in order to succeed in doing so. The Court of Appeals has found that a habeas petitioner may forgo the presentation of claims to the state court if doing so would be an "empty gesture." *Rivera v. Pugh*, 133 F.3d 928 (9th Cir. 1997). The First Circuit has found that §2254(b)(1) applies where "a state's highest court has ruled unfavorably on a claim involving facts and issues materially identical to those undergirding a federal habeas petition and there is no plausible reason to believe that a replay will persuade the court to reverse its field." *Allen v. Attorney General of Maine*, 80 F.3d 569, 573 (1st Cir.1996). The Third Circuit followed *Allen in Lines v. Larkins*, 208 F.3d 153 (3d Cir. 2000). These cases demonstrate that to the extent that federal courts are willing to consider the

circumstances under which a petitioner can avoid exhaustion under section 2254(b)(1)(B), he or she must establish that to do so would be pointless.

The Supreme Court has also held that a petitioner may be excused from exhausting state remedies if a return to the state courts would be futile. *See Lynce v. Mathis*, 519 U.S. 433, 436, n.4 (1997). The exact contours of this exception are not entirely clear but both the United States Supreme Court and the Court of Appeals have looked on this exception with disfavor. *See, e.g., Engle v. Isaac*, 456 U.S. 107, 130 (1982); *Noltie v. Peterson*, 9 F.3d 802, 805 (9th Cir. 1993). "[I]f the highest state court has recently addressed the issue raised in the petition and resolved it adversely to petitioner, in the absence of any intervening United States Supreme Court decisions on point or any other indication that the state court intends to depart from its prior decisions," exhaustion may be futile. *Sweet v. Cupp*, 640 F.2d 233, 236 (9th Cir. 1981). For example, when the petitioner's claim is identical to a claim already presented and rejected by the state's highest court, failure to exhaust that claim may be excused as futile. *See Lynce v. Mathis*, 519 U.S. 433, 436 n.4 (1997) (excusing petitioner from presenting his Ex Post Facto Clause claim to the highest state court where that court had decided the identical issue in another case).

The futility doctrine is most appropriately applied when the issue involves pure law rather than an issue of fact or mixed question of law and fact. Compare *Id.* (recognizing that futility excused exhaustion of pure legal issue regarding statutory challenge based on ex post facto violation), with *Noltie*, 9 F.3d at 405 (futility doctrine did not excuse petitioner from failing to raise juror claim in state court even though petitioner had exhausted a claim regarding another juror because facts of both claims were different). The futility doctrine may also excuse exhaustion if the factual or legal basis of the claim was not reasonably available at the time the petitioner pursued his state remedies. *Cf. LaGrand v.Stewart*, 173, F.3d 1144, 1148 (9th Cir. 1999) (excusing procedural default based on futility).

None of these scenarios is present here. In fact, Petitioner's sole basis for filing this petition is that he believes the California Supreme Court is taking too long. Petitioner has an available state court remedy. A shell petition has been submitted on his behalf. The time during which a properly filed state habeas petition is pending tolls the statute of limitation in federal habeas cases. 28 U.S.C. § 2244(d)(2). The State Supreme Court has previously acknowledged the difficulty in finding qualified attorneys to take capital habeas cases and that this has created some significant delays in the appointment of counsel. *In re Jiminez*, 50 Cal. 4th 951, 957 (2010). For this reason it has permitted petitioners to later amend such "shell" petitions with more extensively researched and pleadings, thus making the filing of the "shell" petition timely under state law and thus sufficient to toll the federal statute of limitations. *Id.*

There is no legal or factual support for the filing of this habeas petition. Any delays Petitioner has experienced are not distinct from those experienced by other similarly situated petitioners. Only three years have passed since his conviction and sentences became final. This petition is premature and must be dismissed.

B. <u>The Requirements for a Certificate of Appealability Have Not Been Met</u>

The issuance of certificates of appealability in habeas cases is controlled by 28 U.S.C. § 2253. The statute states that unless a judge issues a certificate of appealability, an appeal may not be taken from the final order in a habeas corpus proceeding in which the determination complained of arises out of a process issued by a State court. 28 U.S.C. § 2253(c)(1)(A). Further, the statute states that a certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). Though Petitioner complains that his due process rights are being violated by the slowness of the state court proceedings, no such claim is cognizable under AEDPA because habeas corpus proceedings exist to test and determine the constitutional viability of

the trial proceedings that led to the petitioner's conviction and sentence and not the fairness of state habeas proceedings. Further, the United States Supreme Court has never held that a due process violation occurs when a state court delays its decision on a direct appeal or habeas petition. For these reasons the Court will not issue a certificate of appealability in this case.

III. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus is DENIED and DISMISSED without prejudice to Petitioner reasserting these claims after the exhaustion requirements set forth in federal statute and controlling case law have been met. In addition, the requirements for the issuance of a certificate of appealability have not been met and therefore, the Court declines to issue the same.

IT IS SO ORDERED.

Dated this 10 of October, 2013

Audrey B. Collins

AUDREY B. COLLINS
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEPHEN MORELAND REDD, Petitioner - Appellant, v. KEVIN CHAPPELL, Warden, of the California State Prison at San Quentin, Respondent - Appellee.	No. 14-55004 D.C. No. 2:13-cv-07238-ABC Central District of California, Los Angeles ORDER

Before: WARDLAW and W. FLETCHER, Circuit Judges

The district court denied a certificate of appealabilty (COA) after dismissing Petitioner's pro se habeas petition as premature due to the failure to exhaust state remedies. Petitioner appeals. We construe the notice of appeal as a request for a COA. *See* 28 U.S.C. § 2253(c)(1) (a COA is required for a habeas appeal).

Petitioner in 1997 was sentenced to death following his conviction for first degree murder. The California Supreme Court in 2010 affirmed the conviction and sentence. *See People v. Redd*, 229 P.3d 101 (Cal. 2010). Petitioner has yet to be appointed counsel for his state habeas proceedings. *See In re Redd*, S187007 (petition filed 10/5/10 by California Appellate Project); *see also In re Morgan*, 237 P.3d 993 (Cal. 2010).

Petitioner pro se now seeks a federal court order mandating that the California Supreme Court accept and file his pro se motion to recall the remittitur on direct appeal for consideration of eyewitness identification and search issues. Petitioner insists the California Supreme Court's alleged refusal to consider his recall of the remittitur motion violates his rights to due process, equal protection, and access to the courts.

Whether a remittitur is recalled on direct appeal raises an issue of state law that is not cognizable on federal habeas. *Cf. Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (alleged errors of state law are not cognizable on federal habeas review).

Accordingly, a COA is denied. In forma pauperis status is denied as moot. The Clerk shall close this docket. No more filings will be accepted in this closed case.

No. 14-6264

In the Supreme Court of the United States

STEPHEN MORELAND REDD, *Petitioner,*

v.

KEVIN CHAPPELL, WARDEN, *Respondent.*

CERTIFICATE OF SERVICE BY MAIL

I, Stephen McGee, Legal Secretary, on behalf of Supervising Deputy Attorney General Holly D. Wilkens, Counsel of Record for Respondent and a member of the Bar of this Court, hereby certify that on October 15, 2014, a copy of the **BRIEF IN OPPOSITION** in the above-entitled case were mailed, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, first class postage thereon fully prepaid, addressed as follows:

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I further certify that all parties required to be served have been served.

I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct and that this declaration was executed on October 15, 2014, at San Diego, California.

STEPHEN MCGEE
Legal Secretary

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