

10-72977

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MATTHEW CATE, Secretary of the
California Department of Corrections and
Rehabilitation, et al.,

Petitioners,

v.

UNITED STATES DISRICT COURT
for the NORTHERN DISTRICT of
CALIFORNIA

Respondents,

MICHAEL MORALES and ALBERT
GREENWOOD BROWN,

Real Parties in Interest.

D.C. No. 5-6-cv-219-JF-HRL

DEATH PENALTY CASE

USDC No. 5:06-cv-00219-JF-HRL
Honorable Jeremy Fogel

**MOTION FOR VOLUNTARY DISMISSAL OF
PETITION FOR WRIT OF MANDAMUS**

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**MOTION FOR VOLUNTARY DISMISSAL OF PETITION FOR
WRIT OF MANDAMUS**

In light of the Order of the Supreme Court of California issued today in *California Department of Corrections and Rehabilitation, et al. v. Superior Court County of Marin*, CSC No. S186751 (copy attached), no execution of Albert Greenwood Brown can occur on September 30, 2010, as a matter of state law. Accordingly, the mandamus proceedings initiated in this Court to vacate the Order of the District Court in *Morales, et al. v. Cate, et al.*, N.D. Cal. No. 06-926 JF HRL, will, upon expiration of the warrant and associated reprieve, be moot. Under these circumstances, petitioners respectfully move this Court to dismiss the petition for writ of mandamus.

Dated: September 29, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
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MATTHEW CATE, Secretary of the
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UNITED STATES DISRICT COURT
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GREENWOOD BROWN,

Real Parties in Interest.

D.C. No. 5-6-cv-219-JF-HRL

DEATH PENALTY CASE

STATEMENT OF RELATED CASES

To the best of our knowledge, there are no related cases.

Dated: September 28, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
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ROCHELLE C. EAST
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THOMAS S. PATTERSON
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s/ Ronald S. Matthias
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Attorneys for Defendants and Appellees

**CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR 05-99014**

I certify that: (check (x) appropriate option(s))

1. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached **opening/answering/reply/cross-appeal** brief is

Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

2. The attached brief is **not** subject to the type-volume limitations of Fed.R.App.P. 32(a)(7)(B) because

This brief complies with Fed.R.App.P 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages.

or

This brief complies with a page or size-volume limitation established by separate court order dated _____ and is

Proportionately spaced, has a typeface of 14 points or more and contains _____ words,

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ pages or ___ words or ___ lines of text.

3. Briefs in **Capital Cases**.
This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is

Proportionately spaced, has a typeface of 14 points or more and contains 119 words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words; reply briefs must not exceed 9,800 words).

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

4. **Amicus Briefs.**

Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

or is

Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,

or is

Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

9/29/10

Dated

s/ Ronald S. Matthias

Ronald S. Matthias

Senior Assistant Attorney General

CERTIFICATE OF SERVICE

Case Name: Morales and Sims v. CDC, et al. No. 10-72977

I hereby certify that on **September 29, 2010**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MOTION FOR VOLUNTARY DISMISSAL OF PETITION FOR WRIT OF MANDAMUS

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On **September 29, 2010**, I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **September 29, 2010**, at San Francisco, California.

M.M. Argarin
Declarant

s/ M.M. Argarin
Signature