

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Michael Angelo MORALES,  
Plaintiff,

v.

James E. TILTON, Secretary of the California  
Department of Corrections and Rehabilitation, et  
al.,  
Defendants.

Case Number 5-6-cv-219-JF-RS  
Case Number 5-6-cv-926-JF-RS

DEATH-PENALTY CASE

ORDER FOLLOWING GRANT OF  
CERTIORARI IN *BAZE V. REES*

PACIFIC NEWS SERVICE,  
Plaintiff,

v.

James E. TILTON, Secretary of the California  
Department of Corrections and Rehabilitation, et  
al.,  
Defendants.

Case Number 5-6-cv-1793-JF-RS

DEATH-PENALTY CASE

ORDER FOLLOWING GRANT OF  
CERTIORARI IN *BAZE V. REES*

Yesterday, the Supreme Court of the United States granted certiorari in *Baze v. Rees*, No. 07-5439, 2007 WL 2075334 (U.S. Sept. 25, 2007) (mem.). The questions presented by the petition for certiorari in *Baze* are:

- I. Does the Eighth Amendment to the United States Constitution prohibit means for carrying out a method of

1 execution that create an unnecessary risk of pain and  
 2 suffering as opposed to only a substantial risk of the wanton  
 infliction of pain?

3 II. Do the means for carrying out an execution cause an  
 4 unnecessary risk of pain and suffering in violation of the  
 Eighth Amendment upon a showing that readily available  
 alternatives that pose less risk of pain and suffering could  
 be used?

5 III. Does the continued use of sodium thiopental, pancuronium  
 6 bromide, and potassium chloride, individually or together,  
 violate the cruel and unusual punishment clause of the  
 Eighth Amendment because lethal injections can be carried  
 7 out by using other chemicals that pose less risk of pain and  
 suffering?

8 IV. When it is known that the effects of the chemicals could be  
 9 reversed if the proper actions are taken, does substantive  
 due process require a state to be prepared to maintain life in  
 case a stay of execution is granted after the lethal injection  
 10 chemicals are injected?

11 Br. for Pet'r at ii–iii, *Baze* (filed July 11, 2007). While the issues presented in *Morales v. Tilton*  
 12 are not identical in all respects to those before the Supreme Court in *Baze*, it would appear that at  
 13 the very least the Supreme Court's decision in *Baze* is likely to affect this Court's legal analysis  
 14 and conclusions. The order granting certiorari indicates that the Supreme Court will not hear  
 15 argument in *Baze* until early in 2008.

16 The Court held a joint status conference in the above-captioned related actions on  
 17 September 14, 2007. At that conference, the Court set a fact-discovery cutoff date of November  
 18 16, 2007, scheduled proceedings at San Quentin State Prison on November 19, 2007, and set a  
 19 further evidentiary hearing in *Morales* for December 10 and 11, 2007. The Court is interested in  
 20 the parties' views as to what impact, if any, the Supreme Court's grant of certiorari in *Baze*  
 21 should have on this schedule. Accordingly, and good cause therefor appearing, the parties to  
 22 both actions shall file, on or before October 1, 2007, letter briefs not to exceed five (5) pages in  
 23 length addressing this question. Counsel should not assume from this request for briefing that the  
 24 Court is inclined to make further changes to the case schedule in *Morales* absent a compelling  
 25 reason for doing so.

26 In addition, counsel advised the Court at the September 14 conference that the Marin  
 27 Superior Court has scheduled argument in Plaintiff Morales's related state-law action for October  
 28

1 24, 2007. By this order, the Court directs the parties to file a joint statement immediately  
2 following that hearing indicating the status of the action. In addition, Defendants shall advise the  
3 Court immediately if it appears that construction of the new execution chamber will not be  
4 completed prior to November 19, 2007.

5 Defendants' motion to dismiss the first amended complaint in *Pacific News Service v.*  
6 *Tilton* currently is set for argument on October 26, 2007. In light of the current status of  
7 *Morales*, and for the reasons stated by the Court at the September 14 conference, the October 26  
8 hearing will be vacated; all pending motions in *Pacific News Service* are terminated without  
9 prejudice to being restored to the Court's calendar at a later date.

10 IT IS SO ORDERED.

11  
12 DATED: September 26, 2007

13   
14 JEREMY FOGEL  
15 United States District Judge