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 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 11 FRESNO DIVISION

<p>13 <b>LARRY ROBERTS,</b>          14          Petitioner,          15          v.          16  <b>JEFF LYNCH, Warden, California State          Prison at Sacramento,<sup>1</sup></b>          17          Respondent.          18          19</p>	<p><b>CAPITAL CASE</b>          2:93-cv-00254-DAD-DAD-DB  <b>NOTICE OF INTENT TO FORGO          RETRIAL AND REQUEST FOR          ISSUANCE OF WRIT</b>          Judge: The Honorable Dale A. Drozd</p>
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20 On October 28, 2022, this Court entered an order granting a conditional writ of habeas  
 21 corpus vacating the guilty verdict in petitioner’s case unless the state commenced a new trial  
 22 within a reasonable time. [Doc. 569] Subsequent to that order the state undertook to review the  
 23 case and to ascertain the current location of prosecution witnesses to determine whether a retrial  
 24 was possible. As a part of that review it was determined that a number of witnesses were  
 25 deceased, or of sufficiently advanced age that they would be unavailable to provide testimony at a  
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 28 <sup>1</sup> As part of the closing of death row at San Quentin, petitioner has been transferred to the state prison at Sacramento.

1 new trial. Based on the extensive review, the California Attorney General has now determined  
2 that a retrial is not reasonably feasible. Counsel for petitioner has been notified of this decision.

3 In light of the state's decision to forgo retrial, respondent requests that the writ issue and the  
4 verdict in the murder of Charles Gardner be vacated. Respondent notes that at the time of  
5 Gardner's murder petitioner was serving a life sentence for a prior murder. That conviction  
6 remains intact.

7 Dated: June 21, 2024

Respectfully submitted,

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14 /s/ **Alice B. Lustre**  
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