

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 04 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

CARL MERTON IRONS, II,

Petitioner - Appellee,

v.

TOM L. CAREY, Warden,

Respondent - Appellant.

No. 05-15275

D.C. No. CV-04-00220-LKK
Eastern District of California,
Sacramento

ORDER

Before: REINHARDT, NOONAN, and FERNANDEZ, Circuit Judges.

At oral argument, the parties should be prepared to give an indication of their views regarding the question whether the standards that Congress has set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) – under which we may not grant habeas relief unless the state court decision was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” 28 U.S.C. § 2254(d)(1) – are constitutional in light of *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), and *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997). Specifically, the parties should be prepared to give an indication of their views as to whether AEDPA unconstitutionally prescribes the sources of law that the

Judicial Branch must use in exercising its jurisdiction and whether under the separation of powers doctrine this court should decline to apply the AEDPA standards in this case. *See id.*

Judge Fernandez does not join in this order.