

No. 10-99021

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY TIMOTHY LANDRIGAN,

Petitioner-Appellant,

v.

CHARLES RYAN, *et al.*,

Respondents-Appellees.

PLAINTIFF'S OBJECTION TO AND MOTION TO STRIKE
APPELLANTS' MOTION TO FILE DOCUMENTS UNDER SEAL

On Appeal from the United States District Court
for the District of Arizona

Jon M. Sands
Federal Public Defender
Sylvia J. Lett (AZ. Bar No. 017326)
Dale A. Baich (OH. Bar No. 0025070)
Karen M. Wilkinson (AZ. Bar No. 014095)
Robin C. Konrad (AL. Bar No. 2194-N76K)
Sarah E. Stone (AZ. Bar No. 022713)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
Tel: (602) 382-2816
Fax: (602) 889-3960
sylvia_lett@fd.org
dale_baich@fd.org
karen_wilkinson@fd.org
robin_konrad@fd.org
sarah_stone@fd.org

Counsel for Petitioner-Appellant

Appellants are asking to submit documents under seal to this Court that Landrigan has never seen or had the opportunity to respond to. To consider these documents now would violate Landrigan's due process rights under the Fourteenth Amendment. Appellants attempt to rush to an execution without permitting Landrigan to review information critical to his Eighth Amendment challenge.

While Appellants provided these documents to the district court for *in camera* review, they failed to comply with their obligations under Rule 26 (b)(5)(A) and Rule 26(c)(1)(A) of the Federal Rules of Civil Procedure for treating these documents as privileged. (Ninth Cir. Doc. No. 5, at 5 & n.3) Moreover, as the district court pointed out,

This Court has never experienced a situation such as this where a defendant opposes a motion for emergency relief by claiming it has the evidence necessary for resolution of the matter but that evidence should not be produced.

(Dist. Ct. Doc. No. 21 at 14.)

Appellants chose not to file these documents when the matter was under consideration by the panel; it is inappropriate to allow them to circumvent the rules yet again. *See* Fed. R. App. P. 10(b)(2). Having failed to abide by Rule 10(b)(2) when this matter was before the panel, Appellants should not be allowed to recreate the record on appeal, after the appeal has been taken and decided, simply because they do not agree with the panel's outcome. *See* Fed. R. App. P. 11(a) ("Appellants Duty. An appellant filing a motion of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the

record..”)

For these reasons, Landrigan objects to the motion and moves to strike it.

Respectfully submitted this 26th day of October, 2010.

Jon M. Sands
Federal Public Defender

Sylvia J. Lett
Dale A. Baich
Karen M. Wilkinson
Robin C. Konrad
Sarah E. Stone
Assistant Federal Public Defenders

By s/Dale A. Baich
Counsel for Petitioner-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2010, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following registrants:

Kent Cattani
Assistant Attorney General
Attorney General's Office
Capital Litigation Section

By s/Nancy A. Rangel
Legal Secretary
Capital Habeas Unit