IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12-99001

SAMUEL VILLEGAS LOPEZ Petitioner-Appellant, v. CHARLES L. RYAN, et. al., Respondents-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, No. CIV-98–0072–PHX–SMM

RESPONSE TO MOTION FOR STAY OF EXECUTION

Thomas C. Horne
Attorney General
(Firm State Bar No. 14000)

Kent E. Cattani
Division Chief Counsel

Jeffrey A. Zick
Section Chief Counsel

Susanne Bartlett Blomo
Assistant Attorney General
Capital Litigation Section
1275 West Washington
Phoenix, Arizona 85007–2997
Telephone: (602) 542–4686
cadocket@azag.gov
(State Bar Number 016992)

Attorneys for Respondents-Appellees

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 12–99001

SAMUEL VILLEGAS LOPEZ, Petitioner-Appellant, v. CHARLES L. RYAN, et.al., Respondents-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, No. CIV–98–0072–PHX–SMM

OPPOSITION TO MOTION TO STAY

Lopez has not presented grounds for a stay. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1760 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id*. at 1761 (citing cases). While a stay involves the exercise of judicial discretion, it is not unbridled discretion; legal principles govern the exercise of discretion. *Id*. In considering whether to halt progress on a case, four factors are considered in evaluating whether to issue a stay:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interests lie.

Nken, 129 S. Ct. at 1761; *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (*per curiam*); *see also Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (concluding that the Circuit's "serious questions" version of the sliding scale for preliminary injunctions is viable after the Supreme Court's decision in *Winter v. Natural Resources Defense Council, Inc*., 555 U.S. 7 (2008)). "[A] stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in enforcing its criminal judgments[.]" *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id*. (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)).

Here, there are no "serious questions." Respondents-Appellees' answering brief addresses the question of whether the district court erred in denying Lopez's Rule 60 motion/habeas petition. The district court did not err because Lopez's motion/petition is a successive petition barred by 28 U.S.C. § 2244(b)(1), and, even if properly considered a Rule 60 motion, Lopez has not established the extraordinary circumstances necesssary to reopen habeas proceedings. Based on the facts and argument contained in Respondents'-Appellees' answering brief as incorporated by reference herein, Lopez has not made a strong showing that he is likely to succeed on the merits. *See Moormann v. Schriro,* 672 F.3d 644, 647 (9th Cir. 2012); *Rhoades v. Blades*, 661 F.3d 1201, 1203 (9th Cir. 2011) (*per curiam*);

Beaty v. Brewer, 649 F.3d 1071, 1072 (9th Cir. 2011). Moreover, further delay "from a stay would cause hardship and prejudice to the State and victims, given that the appellate process in this case has already spanned more than two decades." *Bible v. Schriro*, 651 F.3d 1060, 1065 (9th Cir. 2011) (*per curiam*).

CONCLUSION

Based on the foregoing, Lopez's request for a stay should be denied.

RESPECTFULLY SUBMITTED this 8th day of May, 2012.

Thomas C. Horne
Attorney General

Kent E. Cattani
Division Chief Counsel

Jeffrey A. Zick
Section Chief Counsel

/s/
Susanne Bartlett Blomo
Assistant Attorney General

Attorneys for Respondents-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2012 I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Kelly J. Henry
Office of the Federal Public Defender
Capital Habeas Unit
810 Broadway, Suite 200
Nashville, Tennessee 37203-3805

Denise I. Young
Attorney at Law
2930 North Santa Rosa Place
Tucson, Arizona 85712

/s/ _____
E. Leyva
Legal Secretary
Criminal Appeals/
Capital Litigation Division
1275 West Washington
Phoenix, Arizona 85007–2997

2692083