

In Re: Samuel Villegas Lopez

**APPLICATION FOR REPRIEVE
AND COMMUTATION OF SENTENCE**

**PRESENTED TO THE
ARIZONA BOARD OF EXECUTIVE CLEMENCY**

TO: The Arizona Board of Executive Clemency

FROM: Kelley Henry and Denise Young
on Behalf of Samuel V. Lopez, Inmate Number 43833

DATE: April 30, 2012

RE: Request for Reprieve and Commutation of Sentence

Dear Members of the Board:

It is impossible to read the facts of Estefana Holmes' death and not be moved. But with the availability of competent counsel, resources and funds, and a thorough social history of Sammy Lopez's life which sheds light on who Sammy Lopez really is, it is clear that he is more than the worst thing he has ever done. He is a tragic figure. Born to a mother who could never protect herself, let alone her children, Sammy Lopez grew up in constant terror. He witnessed daily, life-threatening violence. He never had a stable home. He lived in abject poverty. He was constantly hungry. And, Sammy Lopez learned at an early age to escape the poverty, hunger, constant danger and violence by using and abusing toxic inhalants: paint and glue. That momentary escape from the pain and trauma of his daily life led to long-term brain damage. All this occurred long before the events of Ms. Holmes death and was beyond Sammy Lopez's control. Sammy Lopez is not the heartless, remorseless, cold-blooded killer that the trial judge

believed he was. If Sammy Lopez had been provided access to a constitutionally effective lawyer armed with the required resources and experts, he would not have been sentenced to death.

These compelling circumstances require the failsafe that is clemency. We don't have that opportunity at this time due to the circumstances created by the recent appointments of three new members to the Board. Sammy Lopez respectfully suggests that this board recommend a reprieve so that the newly appointed board members may receive the training mandated by statute prior to passing judgment on his application for commutation. Separately, Sammy Lopez respectfully suggests that board member Brian Livingston recuse himself from any action on this matter as it appears that Mr. Livingston is a registered lobbyist on behalf of the Arizona Police Association and as such has a conflict of interest in this matter. See http://azcapitoltimes.com/azlobbyists/lobbyists-directory/?view_id=749 (last visited April 30, 2012).

Further, Sammy Lopez petitions this board for a commutation of sentence. Specifically, we are asking the board to recommend to Governor Brewer that Sammy Lopez's sentence be commuted from death to life in prison without the

possibility of parole, a sentence that no court can impose, but that the Governor has the authority to impose.

REQUEST FOR REPRIEVE

Three members of this board were only recently appointed and have yet to complete the training required by statute to vote on a clemency application. A.R.S section 31-401(C) requires each member appointed to the board complete a four week course “relating to the duties and activities of the board.” The course is designed and administered by the chairman of the board and includes training “in all statutes that pertain to the board and participation in a decision making workshop.” This training is a statutory requirement for the position.

This will be the first death penalty case before this newly constituted board.¹ Sammy Lopez and the State of Arizona are entitled to a fair clemency hearing before a board that has been trained in accordance with the statutory mandate. Indeed it appears that if the newly appointed board members were to vote on Sammy Lopez’s application, such vote would be in violation of the statute.

The timing of the appointments was outside the control of the board members as well as Sammy Lopez. Even so, the appropriate remedy is to grant

¹ Undersigned counsel, Kelley Henry, wrote to the Board on April 23, 2012 to formally request notice as to the composition of the Board at the May 7, 2012 hearing, after being informed by telephone on April 19 and April 20, by Erin Warzecha, that the Board was in transition and she did not know what decisions had been made. As of April 30, 2012, no response to the April 23, 2012 letter has been received.

Sammy Lopez a reprieve until such time as the board is properly trained and in full compliance with their statutory obligations. The United States Supreme Court has recognized that clemency is the failsafe. It is the last opportunity to correct an injustice when the Courts have failed. *Herrera v. Collins*, 506 U.S. 390 (1993). Through a series of incompetent appointed lawyers to the application of procedural technicalities, the Courts have failed Sammy Lopez, at every turn. This board should not sit in judgment on Sammy Lopez's very life without proper training and preparation.

Such a reprieve would be consistent with the mandate of Arizona law, and federal law, that such hearings be conducted in accordance with Due Process.

Since 1962, the Arizona Supreme Court has made clear:

A person under sentence of death upon timely application must be permitted a hearing at which he may produce evidence to establish extenuating or mitigating circumstances or which may otherwise justify such commutation. Due process of law requires notice and opportunity to be heard, and: "'* * * there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them.' * *"

"The maintenance of the proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the

contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.' *Morgan v. United States*, 304 U.S. 1, 22, 58 S.Ct. 773, 778, 999, 1000, 82 L.Ed. 1129." *Forman v. Creighton School District No. 14*, 87 Ariz. 329, 351 P.2d 165.

It is not merely the individual with whom we are here concerned. It is that this person has not received his full measure in the struggle against the public's will. **The unlawful taking of a human life has from time immemorial been considered immoral. It is not less so because it is done collectively by the State. If it is to be justified under the law, it must not be done with less formality than the spirit and the traditions of the law contemplate.**

McGee v. Arizona State Bd. of Pardons & Paroles, 92 Ariz. 317, 320 (Ariz. 1962)

(emphasis added).

All human life is valuable. Sammy Lopez's life hangs in the balance. He is entitled to a full board hearing that is in compliance with the statute and due process. A short reprieve to settle the matters relating to training and conflicts of interest is fair and just.

REQUEST FOR COMMUTATION OF SENTENCE

I. NO COURT HAS EVER HEARD THE SUBSTANTIAL MITIGATING EVIDENCE WHICH THE CONSTITUTION REQUIRES TO BE CONSIDERED BEFORE A SENTENCE OF DEATH IS IMPOSED.

Sammy Lopez “was born into a volatile, chaotic, and unpredictable environment to cold, unaffectionate, and distant caretakers.” Exhibit 1, Affidavit of Dr. George Woods, p. 3.² Little is known about the background of Sammy Lopez’s father, Arcadio Lopez, other than that he was born in Tombstone, Arizona. It is known that Arcadio was a life-long alcoholic who suffered depression, and who repeatedly and brutally beat and raped his common law wife, Sammy Lopez’s mother, Concepcion Lopez (she is known as Concha). The beatings were so terrible that Sammy Lopez and his brothers often feared their father had killed their mother. Without provocation or justification, Arcadio beat and terrorized Sammy Lopez and his brothers as well, threatening to kill them. *Id.*, at p. 4-6. Although Arcadio was arrested once, he soon was released and returned to terrorizing his family. *Id.*, at 46. Sammy Lopez explains in his affidavit:

² Exhibits supporting our request are attached to this submission and number 1-21. An Exhibit List precedes the exhibits themselves. Dr. Woods has personally interviewed the Lopez family and their declarations which corroborate his findings are included. A thirty minute DVD is also included.

My dad was a violent drunk. He used to beat my mother in front of all of us. He didn't just hit her once and stop. He hit her over and over until she was bloody. We tried to protect her, but then he beat us too. We were afraid of our dad the way some kids are afraid of monsters.

Exhibit 20, Lopez Affidavit.

Sammy Lopez felt protective of his mother, Concha Villegas. Ms. Villegas was also raised in abject poverty and never learned how to parent children. Ms. Villegas is limited intellectually and emotionally. Sammy Lopez's mother came from a large, extremely impoverished family who migrated from Mexico to a small farming town in Texas. Concha was regularly beaten by her harsh mother for minor infractions. Her punishments included being forced to stand outside for hours in the hot sun without water, or whipped with a belt if her clothing was torn, or her shoes not shined to her mother's standards. And, when any one child engaged in some perceived transgression, her mother punished them all. Exhibit 1, p. 17-31.

Concha attended a segregated school for Mexican children. After school, she worked in the cotton fields where crop-dusting planes flew overhead, spraying pesticides directly on Concha and her family, and on the open water barrels from which they drank. *Id.* When Concha was seventeen years old, she was raped and impregnated by a close friend of the family, who was much older

than Concha. When her mother discovered what had happened, she blamed Concha, and beat her because she had “dishonored” her family. *Id.*, pp. 24-27. She was banished to a back room of the small family house so that no one could see her. Once her child was born, Concha’s mother made her leave her newborn child, and exiled her from the family home. Concha moved to Arizona where an aunt lived. *Id.*

In Arizona, while working in the agricultural fields, as she had in Texas, Concha met Sammy Lopez’s father, Arcadio, who operated the bus that she and the other workers took to the fields. One day, Arcadio showed up at Concha’s apartment with his possessions and moved in with her against her wishes. *Id.*, pp. 28, 33-35. Arcadio was a brutal man who raped and beat Concha repeatedly. As discussed more below, Concha’s life experiences left her profoundly grief-stricken, traumatized and unable to protect herself against Arcadio’s physical and sexual abuse, or to properly raise Sammy Lopez and his seven brothers. She did not display love or affection for her children, and neglected them.

Dr. Woods explains the import of Concha’s abuse:

It is also important to understand Concha’s own abuse history, cultural beliefs, and genetic heritage and how they found expression in the manner in which she reared Sammy and his siblings. Her deep religious and cultural beliefs gave her a path, if not the strength, to survive major stressors during the course of her life and are represented in her language, beliefs about

family, and her self concepts. Concha's determination to keep her family together at all costs—even when the price was chronic brutality at the hands of the children's father—springs from her strong cultural beliefs about her obligations as mother, even though she was not able to actualize those beliefs with any of her children, due to her own trauma and neglect.

Id. p. 8.

The trauma Sammy Lopez suffered thus began at the hands of his father who was “violent and unpredictable,” and whose alcoholic rages and mental illness worsened over Sammy Lopez's childhood. He lived in constant fear.

I often sat at the window and kept a lookout for my dad. I felt like this was my job when I was a little boy. When I saw him, I told my mom to run and hide, and I ran and hid too. My mom worked and fed us and tried to protect us from my dad. She was the only one on our side and the only person that kept us alive. Every day I was afraid that my dad was going to kill her, and without my mom around, I would die too.

Exhibit 20. Dr. Woods explains Sammy Lopez was in “constant danger” as a child, fearing for his own life as well as the lives of his mother and brothers, he developed an “anticipatory stress response” characterized by “symptoms of hyperarousal, hypervigilance, high anxiety, agitation, guardedness, paranoia, and sleeping difficulties.” Exhibit 1, p. 4. To this day, Sammy Lopez's “ability to respond appropriately to emotional stimuli,” known as affective dysregulation, “is grossly impaired.” *Id.*, p. 4.

The omnipresent chaos and danger in Sammy Lopez's childhood caused him to experience, among other things, "night terrors," a "common symptom in children who are traumatized." *Id.*, p. 5. Lopez's family vividly describe his suffering as a child that worsened "after a particularly brutal beating from [his father.]" His family found him "crouched in the corner of the kitchen in the middle of the night shaking with fear. Sammy's mother was the only one who could wake him; once awake, Sammy burst into tears." *Id.*

Besides living in constant terror in his own home, Lopez lived in "profound conditions of neglect and poverty." School records document both these conditions. When he was just seven years old and enrolled in school for the first time, school officials reveal "he suffered from frequent tooth pain, cavities, repetitive tonsillitis, and ear infections." School personnel and others told Concha that Lopez needed to be examined by appropriate medical personnel, but his mother was too poor and ill-equipped to obtain the help he needed. *Id.*, p. 69.

Lopez was described as a sad, fearful, lonely boy with low self-esteem, who, not surprisingly given his background, mistrusted others. *Id.*, pp. 55-58. In a desperate attempt to control the stress and anxieties he suffered, he developed "certain behaviors, like keeping his belongings in perfect order." *Id.* This behavior, known as obsessive compulsive spectrum disorder, is consistent with

Lopez's "attempts to control his overwhelming anxiety secondary to his traumatic stress." Without "these mechanisms or his self-medicating" through paint sniffing and alcohol, Lopez's affective dysregulation would take over, and [his] chaotic behavior would ensue." *Id.*, p. 58.

When Lopez was seven years old, he suffered yet another loss. His sister, Gloria, was born with a serious birth defect that required repeated hospitalizations. Lopez, his mother, and seven brothers and sisters believed her birth to be a miracle, and the family's salvation in the otherwise wretched world in which they lived. "My mom and my brothers and I were all so happy to have a little girl in our family. It didn't matter to us that she was deformed. We felt like she was an angel sent from God. She was the one bright spot in our lives."

Exhibit 20. But in yet another tragedy to befall this family, Gloria died at ten months old, following an unsuccessful surgery. Sammy Lopez's mother reacted to the loss of her only daughter by falling even deeper into her already debilitating depression. As a result, she was even less capable of caring for her eight sons. Sammy Lopez's father's reaction was quite different: he abandoned his family and never returned. Exhibit 1, pp. 59-60.

Although Lopez and his family never knew what happened to Arcadio, records show that after he abandoned the family, he moved to California. There,

he worked sporadically in the agriculture fields, and was frequently arrested for drunkenness. He eventually drank himself to death when he was only 56 years old, from “liver failure due to cirrhosis, lying in a field surrounded by empty beer and wine bottles.” *Id.*, p. 28-29.

Arcadio’s abandonment of his family had three immediate and direct consequences. It left Lopez and his siblings uncertain, and thus anxious, as to whether his father was truly gone from the family or instead would return at some unknown time and continue to beat and terrorize them. It required Lopez’s oldest brother Junior, who was in the 9th grade at the time, to drop out of school so he could work and care for Lopez and his six other brothers, and it deepened even more his family’s abject poverty and harsh living conditions. *Id.*, pp. 60-61.

Unfortunately, because Junior was still a child, and knew only the child rearing practices of his father to emulate, Junior continued to physically abuse and threaten Lopez and his other siblings. *Id.*, pp. 62-65. When Lopez tried to intervene in one particularly terrible beating Junior was inflicting on their younger brother, Joe, Junior turned his anger and fury on Lopez, punching him repeatedly about the face and head with his fists. Apparently realizing that he was doing what his father had done, Junior suddenly stopped the beating, and ran out the door. *Id.* Like his father, Junior too soon abandoned his mother and younger

brothers. He married, moved out of the family home, and rarely had contact with his mother and brothers. Exhibit 1.

But before Junior left, Lopez's family suffered yet another terrible trauma. While walking home from the store, Concha was brutally assaulted and raped. When her attacker released her, she ran home nearly naked, where Lopez and some of his brothers were. Because the family had no telephone to call for help, Concha went to a neighbor's house where she was able to contact the police and get a ride to a medical facility for treatment of her injuries. *Id.*, pp. 61-62. As Dr. Woods explains, the "witnessing of sexual assaults and abuse of loved ones can often be more devastating for children than if they were actually sexually assaulted and abused themselves." *Id.*, p. 62.

Shortly after this latest catastrophic event, Concha allowed another man to move into the family home: Pedro. Like Arcadio, Pedro was an alcoholic and a physically abusive and dangerous man. Also like Arcadio, Pedro provided no financial assistance to the family. He kept guns in the house and liked to shoot up the house. He terrorized Lopez, beating him up, pointing a gun at him, and threatening to kill him. *Id.*, pp. 65-67. Soon, his children from his prior marriage began moving in with Concha and her children. *Id.* Sammy Lopez explains:

Pete never liked me. One time he woke me up in the middle of the night and pointed a gun in my face, threatening to kill me. I hid his gun after that, and when Pete noticed it was gone, he turned red and threatened to kill me again if I didn't return his gun. Pete insisted that my mom kick me and my younger brothers, Joe and George, out of the house. She did.

Exhibit 20, Lopez Affidavit.

Lopez lived in the poorest of neighborhoods in Southwest Phoenix:

Southwest Phoenix is a racially segregated and violently charged community reserved for the metal recycling industry, foundries, and impoverished Latino families. Even among this impecunious community, Sammy's family stood out as being extremely poor.

Exhibit 1, Woods Affidavit, p. 4. It has long been known that “[e]arly and chronic poverty has the worst effects on child development. Chronic poverty is dehumanizing as it damages parents’ capacities for maintaining any kind of hope.” *Id.*, p. 36. For Lopez, his poverty and the disadvantages he experienced “led to inadequate nutrition, inadequate housing and homelessness, inadequate child care, higher exposure to environmental toxins, such as the industrial and gas/diesel pollutants that surrounded their neighborhood, exposure to community violence, and lack of access to health care.” *Id.* Records document that at one of Concha’s homes, it was so cold that the water froze. *Id.*, pp. 58-59.

“Latino families living in Southwest Phoenix experienced pervasive racism and segregation. Poverty, drugs, and crime plagued the community and

destroyed dreams of a better future.” Exhibit 1, pp. 35-36. Because of the Lopez family’s poverty, Concha constantly changed residences because she was unable to pay the rent. Once, Concha was evicted for failure to pay the rent, and with nowhere to go, she and her children moved their belongings and stayed overnight in the neighborhood park. *Id.*, pp. 35-39. A neighbor who knew the Lopez family explained:

Concha and her boys were my neighbors for many years in the 1960’s and 1970’s. Our children were friends with her children and Concha and I were friends. Our neighborhood was not just poor, but filled with drugs and crime. We had to work all day to keep food on the table and have a roof over our heads. That meant our children were left to the many dangers of the neighborhood. I have experience with the dangers. Two of my seven children were in prison for many years. Another son was shot in our neighborhood. Concha’s life was even harder because she did not have a husband to help her.

Exhibit 9, Declaration of Domitilla Servin.

Lopez’s only escape from this pervasive neglect and abuse was the school he attended. He enjoyed school and worked hard to succeed there. Exhibit 1, pp. 68-70. But his family’s instability made it difficult for Lopez to keep up with the other students. His “intense fears” and preoccupation that he, his brothers and mother would not survive the ever-present danger in his home from his father, and then Pedro, as well as the neighborhood violence and racism where he lived, also surely interfered with his success at school. As Dr. Woods explains:

The constant mortal terror in the Lopez family prevented Sammy from developing what many of us take for granted: the comforting certainty that the world is a safe and secure place and that caretakers are ready, willing, and capable of providing us with safety and comfort. Emotions in Sammy's family were dangerous, erratic and pathologically extreme. Like all children, Sammy and his brothers craved affection from their mother, which provides the sense of security needed for normal development. Suffering, however, from her own severe psychological impairments, Concha could not provide her sons with the love and attention they so desperately needed.

Id., p. 7. Neuropsychological testing reveals that Lopez suffers significant brain damage that also would have contributed to his academic failures. But because he was well-behaved and well-liked, he was socially promoted to the next grade despite his inability to master the class materials. *Id.*, p. 68.

Frustrated, bewildered and depressed, Lopez left school in the ninth grade.

Id., p. 9. He soon turned to the same methods of survival that his older brothers used to get through each day: consuming alcohol and drugs. He sniffed paint daily, eventually suffering neurological damage. He was "homeless, living in cars, staying in the neighborhood park and the local cemetery." In a "desperate attempt to obtain money for drugs," he began to rob houses in the neighborhood when the residents were not at home. *Id.*, p. 7. As one of his brothers explained, "[d]rinking and taking drugs was the only way [we] knew to bury all the bad feelings that were too much for a kid to handle." *Id.*, p. 72.

Had a proper investigation been conducted, it would have revealed “the prevalence of alcoholism and drug addiction” in Lopez’s immediate and extended family is remarkable and widespread. Alcoholism contributed to the chronic and pervasive interpersonal violence, poverty, chaos, and rejection that characterized [his] early life and potentiated other stressors he faced.” Exhibit 1, p. 29.

“The relationship between chronic exposure to trauma, early childhood neglect, and alcoholism” is well documented in Lopez’s immediate family, and his maternal relatives. *Id.*, p. 30. Lopez’s “father, mother, many of his brothers, and numerous maternal relatives display symptoms of depression, alcoholism, and post traumatic stress disorder that have significantly impaired their ability to function....” Their intoxication, like that of Lopez, “is frequently accompanied by bizarre changes in their behavior.” *Id.*

Contrary to the courthouse rumors that the older boys were relatively successful, for most of Lopez’s brothers, their alcoholism and/or drug addictions have resulted in legal problems. Lopez’s older brother, Eddie, is an alcoholic who has been arrested many times for alcohol related offenses. His brother Jimmy, too, is an alcoholic, although he apparently has avoided any legal ramifications resulting from his addiction. His brother, Steve, is an alcoholic, who was also addicted to inhaling organic solvents. He would sniff paint until he passed out. In

1978, Steve was arrested for armed robbery. Lopez's brother, Frank, suffers alcohol problems and has been arrested for drunken driving. Lopez's brothers, Joe and George, began drinking when they were 10 years old, and like Lopez, were heavy drinkers by the time they were teenagers, when they also began inhaling solvents, paints and glue and gas. *Id.*, pp. 72-76. "Mental impairments in the family increased the likelihood of addictive disease, and many family members attempted to self-medicate with alcohol and drugs." *Id.*, pp. 32-33.

Lopez quickly became addicted to inhaling these solvents and "continued to inhale these highly toxic substances into his adulthood despite their disastrous consequences." *Id.*, p. 79. Dr. Woods explains:

Inhalants enter the blood supply within seconds to produce intoxication. Effects of inhalants can cause an intoxicating effect resembling alcohol. The effects produce a decrease in inhibition, loss of control, mood swings, violence, speech and coordination problems, hallucinations, and delirium. The recovery time varies from user to user; some can require hours to come down, others do not come down at all.

Id.

Lopez's backgrounds and history established relevant mitigating evidence supporting a life sentence. But no Court has ever considered this evidence because Sammy Lopez's court appointed lawyers did not investigate. They sat in their offices waiting for the family to come to them. They did not know that it

was common and expected practice that the lawyers were supposed to go out and get this information. Given this family's significant impairments, it is not surprising that they did not contact the lawyers. The Lopez family is extremely damaged: cognitively, emotionally, and socially. They did not know that they could or should contact the lawyers or that they had any information that could help. It was the professional responsibility of the lawyer to seek this information out. Exhibit 19, Stetler Affidavit. With the information and records about Lopez and his family that the lawyers and the Court did not have, Dr. Woods concludes:

Sammy's friends and family have documented that he suffers from a pathological response to alcohol, becoming unpredictable, irrational, agitated, and at times psychotic. When Sammy drinks, even just a small amount of alcohol, he quickly and dramatically changes. Sammy's intoxication and addictive disease were the direct consequence of a devastating accumulation of risks that shaped his development and behavior. As a child, Sammy had to contend with multiple risks: family mental illness, abandonment, family addictive and neurological disease, poverty, and constant life threatening danger at home and in his community. Each alone constituted a significant obstacle to healthy development, but in combination they resulted in devastating mental impairments.

Exhibit 1, p. 7.

Genetic heritage and acquired brain damage combined to leave Sammy with crippling mental impairments. As a pre-adolescent, Sammy exhibited clear diagnostic signs of acute trauma. This was not merely the product of neglect and mistreatment; it was also the effect of growing up in constant fear for his life and the life of his mother. The chronic and horrific violence Sammy suffered, the physical and sexual assaults he witnessed against his

mother, and endlessly repeated abandonments and ongoing neglect by his attachment figures left Sammy utterly unprotected from this recipe for developmental disaster. He has spent his entire life reaping the tragic seeds of his childhood.

Id., p. 4. Dr. Woods explains that Lopez suffers:

[I]mpaired cognitive ability to inhibit his behavior once that behavior has started as well as his inability to effectively weight and deliberate, particularly in a fast changing, chaotic environment.

Id., p. 90. His low average IQ and “brain impairment creates a vulnerability to atypical drug responses.” *Id.* His “cognitive impairments are manifested by his inability to organize. He acts impulsively, has mental inflexibility (concrete thinking), and perseverates. [His] inability to organize only augments his overwhelming traumatic induced stress.” *Id.*, p. 91.

The mitigating evidence and records were available to sentencing and post-conviction counsel had they investigated. They could have discovered and presented evidence demonstrating:

Sammy’s long-standing mental disorder is characterized by paranoia, delusion, confusion, suspiciousness, loss of contact with reality and disordered thinking. Sammy is cognitively concrete and measures his interactions with others against his delusional belief system that others will harm him. He holds onto this belief regardless of evidence to the contrary. This disorder affects all aspects of his life, including written and verbal communications with others, the safety of meals he is provided, special meanings of words that only he understands, and strict, but secret, rules that must be followed in interpersonal relationships. Sammy displayed signs of a thought

disturbance at times present in his speech patterns. He perseverates, displays impoverished speech, and has a limited range of affect.

II. UNTRAINED, INEXPERIENCED LAWYERS FAILED TO ADVOCATE FOR SAMMY'S LIFE

A death penalty trial occurs in two phases. The first phase is the trial for guilt or innocence. The second phase determines life or death. In the second phase, the lawyer is supposed to present mitigating evidence. Mitigating evidence is anything about the person's background, upbringing, or mental health which call for a sentence less than death.

Sammy Lopez first went to trial in 1987. Sammy Lopez's attorney at that trial was Joel Brown. Though Mr. Brown is now a seasoned attorney, when he was assigned Sammy Lopez's case he had never tried a death penalty case, had received no training in how to defend such cases, and has admitted in court documents that he had no idea what he was doing when it came time to defend Sammy Lopez at sentencing. He told the Court in a sworn affidavit, "I was never trained on how to present a case in mitigation. ...When I look back on how we did things back then, it seems like we were in the dark ages." Brown continued: "I did not have an investigator assigned to the case. I was by myself. I had no concept of mitigation. I did not conduct a mitigation investigation. ... I did not even know I

had done anything wrong until Judge D'Angelo started to make a record about the fact that I did not present any mitigation." Exhibit 16.

The death sentence in the first trial was overturned on appeal because the judge illegally used evidence of a prior conviction for resisting arrest in deciding to sentence Sammy to death. On re-trial, Sammy's second attorney, George Sterling, also utterly failed to present mitigating evidence for the judge to weigh in sentencing. While Sterling did call one witness, the witness he called was only tentative in his diagnosis of "pathological intoxication." The law does not permit the court to consider expert testimony that is speculative. Mr. Sterling has since passed away. Once again faced with a case where the defense had presented no mitigation, the law gave the trial judge no choice but to impose death sentence.

Like many states, Arizona gives all criminal defendants one opportunity to challenge the representation they received by their court-appointed lawyers. In Sammy Lopez's case, he was once again appointed a lawyer who had never handled a case like his before. That lawyer, Robert Doyle, has given sworn testimony that "At the time of my appointment, there were no standards for training or experience in order to be qualified to accept capital appointments. Mr. Lopez's case was my first capital case[.]" Exhibit 17. Mr. Doyle was a sole practitioner and "did not have a staff investigator or other resources available to

me to conduct a social history investigation.” *Id.* Mr. Doyle remembers talking to Joel Brown, but no other lawyers. Joel Brown does not recall ever speaking to Mr. Doyle about the Sammy Lopez’s case. Mr. Doyle never spoke with any of Sammy Lopez’s family members. *Id.*

A nationally renowned expert in the field of mitigation investigation who has worked on hundreds of cases, has examined the file in this case and opined that trial and post-conviction counsel failed in the professional obligations to conduct a reasonable investigation in Sammy Lopez’s case. Exhibit 19.

Because of the lack of experience, training and resources available to Sammy Lopez’s lawyers, the Judge who sentenced him to death never heard any of the compelling facts about his upbringing in south Phoenix; the torture and trauma he witnessed at the hand of his brutal, alcoholic father; the resulting night terrors and post-traumatic disorder; or the brain damage which he received as a result of the substance use he turned to in order to escape the daily hell that was his life. Such evidence is routinely used by juries to return a life sentence instead of death.

III. PROCEDURAL TECHNICALITIES HAVE BLOCKED ACCESS TO THE COURTS

It was not until Sammy was appointed counsel in federal court that any court was ever presented with the true picture of who Sammy Lopez is and how he came to be involved with such a horrific crime. But because of procedural technicalities, the evidence that would have supported a life sentence was thrown out of the federal court. The federal court held, based on established precedent, that if a defendant's state court lawyer failed to present the evidence in state court, then the federal court was legally prohibited from considering the evidence.

That law changed last month, when the United States Supreme Court held in another Arizona case that if a defendant could prove that his state lawyer failed in his duties to the client, then that defendant could receive federal review of his evidence. Sammy Lopez has asked the federal court to give him the benefit of that new case, *Martinez v. Ryan*. The Attorney General is fighting against Lopez, once again on procedural grounds.³ There is little doubt that Sammy Lopez would

³ The Arizona Attorney General also used a procedural technicality to block Mr. Lopez from receiving the benefit of the United States Supreme Court decision in 2002 that Arizona's judge sentencing law was unconstitutional. Mr. Lopez had raised that exact same claim in an appeal in 1990. But, at that time, the Supreme Court was deciding the exact same issue in *Walton v. Arizona*, 497 U.S. 639 (1990). In *Walton*, the US Supreme Court upheld judge sentencing. Twelve years later in *Ring v. Arizona*, 536 U.S. 584 (2002), the court reversed itself and struck down judge sentencing. Mr. Walton has since received judicial relief on other grounds and is no longer on death row. But, Mr. Lopez, was denied application of *Ring* because the decision came after he was in federal court and he was

be given the benefit of the new decision if his case had not wound its way through the courts last year. But since it has, the attorney general is relying on another procedural defense to close the courthouse doors to Sammy's claim. If they win, no court will have ever heard Sammy Lopez's case for life.

CONCLUSION

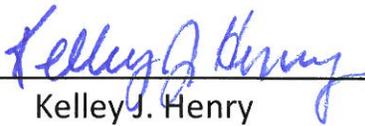
The evidence described here is not evidence which excuses Mr. Lopez's crime. But it does help to explain how he came to such a place in his life where he could commit such a tragic crime. In America, we believe that life is sacred. We believe that the State should not take a life unless there is truly no other option. Mr. Lopez is not the worst of the worst. He is not beyond hope and redemption. He can be punished by living the rest of his life in prison. Such punishment would be justice for Mrs. Holmes death while reaffirming the value of human life.

denied retroactive application of the law. So even though Mr. Lopez was correct on the law when he raised his claim in 1990, because the Courts were wrong and waited 12 years to correct themselves, he was denied relief.

Respectfully submitted this 30th day of April, 2012.

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