

CAPITAL CASE: EXECUTION SET MAY 16, 2012 at 10:00 A.M

No. 12-99001

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAMUEL VILLEGAS LOPEZ

Appellant-Petitioner

v.

CHARLES RYAN, ET. AL

Appellee-Respondent

MOTION TO STRIKE 28(J) LETTER

Denise I. Young
Attorney at Law
2930 North Santa Rosa
Tucson, AZ
(520) 322-5344
Dyoung3@mindspring.com

Kelley J. Henry
Supervisory AFPD-Capital Habeas
Federal Public Defender's Office
Middle District of Tennessee
810 Broadway, Suite 200
Nashville, TN 37203
(615) 337-0469
Kelley_henry@fd.org

Counsel for Samuel Lopez

In violation of this Court's briefing schedule, Appellees have filed a Notice of Supplemental Authority pursuant to FRAP 28(f) (sic) raising an entirely new argument which is not responsive to Appellant's Reply Brief and was not raised in the District Court. Neither case cited by Appellant is new, nor were they unaware of them. Appellant should not be forced to respond to an entirely new argument, raised for the first time after briefing has been completed.

WHEREFORE, the notice should be stricken.

Respectfully submitted this 11th day of May 2012.

Kelley J.Henry
Denise I. Young

BY: /s/ Kelley J.Henry

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which is designed to send a Notice of Electronic Filing to persons including the following:

Kent Cattani
Susanne Blomo
Assistant Attorney Generals
1275 W. Washington
Phoenix, AZ 85007-2997

/s Kelley J. Henry
Attorney for Samuel Lopez