

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

No. 12-99001

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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SAMUEL VILLEGAS LOPEZ

Appellant-Petitioner

v.

CHARLES RYAN, ET. AL

Appellee-Respondent

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MOTION TO STRIKE 28(J) LETTER

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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:

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/s Kelley J. Henry  
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