

Jon M. Sands
Federal Public Defender
Dale A. Baich, OH Bar No. 0025070
Robin C. Konrad, AL Bar No. 2194-N76K
Cary Sandman, AZ Bar No. 004779
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
Telephone: 602-382-2816
Facsimile: 602-889-3960

David J. Sepanik, CA Bar No. 221527
Flora F. Vigo, CA Bar No. 239643
Amanda R. Conley, CA Bar No. 281270
O'Melveny & Myers LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
Telephone: 415-984-8963

Denise I. Young, AZ Bar No.
007146
2930 N. Santa Rosa Place
Tucson, Arizona 85712
Telephone: 520-322-5344

Henry A. Martin
Federal Public Defender
Kelley J. Henry, MO State Bar No.
38849
Assistant Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203-3805
Telephone: 615-736-5047
Facsimile: 615-736-5265

Counsel for Plaintiff-Appellant

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Samuel Lopez,

Plaintiff-Appellant,

v.

Janice K. Brewer, et al.,

Defendants-Appellees.

No. 12-16084

Dist. Ct. No. 2:12-cv-00245-NVW

* * * CAPITAL CASE * * *
EXECUTION SET MAY 16, 2012, at
10AM MST

NOTICE OF FILING

Lopez provides notice to this Court of Plaintiffs' Emergency Motion for Discovery and Preservation of Evidence on May 16, 2012, which was filed this morning in the pending case below, *Towery v. Brewer*, 2:12-cv-00245-NVW. (See

Ex. A.)

Respectfully submitted this 15th day of May, 2012.

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s/Dale A. Baich
Counsel for Plaintiff-Appellant

Certificate of Service

I hereby certify that on May 15, 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.

s/Michelle Young
Legal Assistant
Capital Habeas Unit

EXHIBIT A

EXHIBIT A

Towery v. Brewer
No. 2:12-cv-00245-NVW

**Exhibits to Emergency Motion for Court Order Directing the Arizona
Department of Corrections to Allow Counsel for Plaintiff to View IV
Insertion Procedure**

EXHIBIT PP: Letter to Charles Ryan from Dale Baich, dated May 11, 2012

EXHIBIT QQ: Letter to Dale Baich from Charles Ryan, dated May 14, 2012

EXHIBIT RR: Email from Katherine Perez to Dale Baich [transmitting May 14, 2012, letter to Dale Baich from Charles Ryan] dated May 15, 2012

EXHIBIT SS: Arizona Department of Corrections Continuous Correctional Log, Execution of Thomas West [*West v. Brewer*, No. 2:11-cv-01409-NVW, Trial Exhibit 23]

EXHIBIT PP

EXHIBIT PP

Office of the
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit
850 West Adams Street, Suite 201
Phoenix, Arizona 85007

JON M. SANDS
Federal Public Defender

direct 602.382.2816
800.758.7053
facsimile 602.889.3960
e-mail dale_baich@fd.org

May 11, 2012

Charles Ryan, Director
Arizona Department of Corrections
1601 W. Jefferson
Phoenix, AZ 85007

Re: Death-Row Prisoner Samuel Lopez, No. 043833

Dear Director Ryan,

I am writing to request authorization for two attorneys to be in the execution room throughout the time that the execution team sets the lethal-injection IV lines in Samuel Lopez on Wednesday, May 16, 2012. The reason for my request is to permit the attorneys to witness the setting of IV lines in Mr. Lopez, who has consented to allowing us to view the process. We will select the two attorneys from among the counsel representing the plaintiffs in *Towery v. Brewer*, No. CV-12-245-PHX-NVW (D. Ariz.), filed Feb. 6, 2012. Of course, the attorneys will be bound by the protective order in place in *West v. Brewer*, No. 2:11-cv-01409-NVW.

Allowing attorneys and witnesses to observe the setting of IV lines is not unprecedented. In California, members of the press and public have a "First Amendment right to view executions from the moment the condemned is escorted into the execution chamber."¹ Similarly, in Ohio, witnesses observe the setting of the IV lines via closed-circuit television.²

¹*Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868 (9th Cir. 2002).

²Ohio Execution Policy 01-COM-11, § IV.G.4 ("Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms."); § IV.G.6 ("Once the prisoner is secured to the bed, the curtain shall be closed, prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view

Charles Ryan
May 11, 2012
Page 2

If you are unable to comply with our request to be physically present with the IV Team and Mr. Lopez, then I request that the two attorneys be permitted to view and listen to this procedure through the video and audio equipment that is already in place in Housing Unit 9.³ Whether the attorneys are permitted to be physically present in the room with the IV Team, or are instead permitted to observe the procedure via video camera, I also request that you maintain a videotaped record (including audio) of the insertion of these lines.

Please advise me at your earliest convenience regarding my request. If you decline the request, I ask that you explain your reasons for doing so. If you have any questions, or if you would like to discuss this request further, please let me know.

Best regards,



Dale A. Baich, Supervisor
Capital Habeas Unit

cc: Kelley Henry
Dawn Northup (by email dnorthup@azcorrections.gov)
Jeffrey Zick (by email Jeffrey.Zick@azag.gov)

DAB/cls

the establishment of IV site(s).”).

Available at http://www.drc.ohio.gov/web/drc_policies/documents/01-COM-11.pdf (last visited May 11, 2012).

³See, e.g., Arizona Department of Corrections Department Order 710, Attachment D, § D.4.

EXHIBIT QQ

EXHIBIT QQ

Arizona Department of Corrections



JANICE K. BREWER
GOVERNOR

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov



CHARLES L. RYAN
DIRECTOR

May 14, 2012

Dale A. Baich
Capital Habeas Unit
Office of the Federal Public Defender
850 West Adams Street, Suite 201
Phoenix, AZ 85007


Mr. Baich:

In response to your letter dated May 11, 2012, I decline your request for two attorneys to be present in the execution room during placement of the IV lines into inmate Samuel Lopez. As you have noted in your letter, ADC Department Order 710, Attachment D, provides that a camera will be positioned on the inmate's face and a microphone affixed to the inmate's shirt so that the IV team or the Special Operations Team can monitor any verbal or non-verbal communication. Nothing in your letter suggests that Mr. Lopez cannot communicate with the IV or Special Operations Teams if he is experiencing pain. As reiterated in ADC Department Order 710, the Department faithfully adheres to all constitutional mandates to ensure that the execution is carried out in a professional and dignified manner.

The Department also has a compelling interest in maintaining the anonymity of all personnel who participate, or perform ancillary functions, in the execution, and to that end, the execution is not videotaped or recorded in any manner in accordance with A.R.S. § 13-757(C). Likewise, there are no closed-circuit televisions in place as your letter suggests.

The Department has accommodated requests for numerous legal visits with Mr. Lopez in the days leading to the execution as well as legal visitation with two attorneys between the hours of 6:00 a.m. to 7:00 a.m. on the morning of the execution. I believe the current execution process as outlined in Department Order 710 and its Attachments comports with constitutional mandates regarding Mr. Lopez's access to counsel, as well as your interest in ensuring the IV lines are properly set.

Regards,


Charles L. Ryan
Director

May 14, 2012

Page 2

cc: Kelley Henry, Federal Public Defender
Jeffrey Zick, Assistant Attorney General, Criminal Appeals/Capital Litigation
Dawn Northup, General Counsel
Robert Patton, Division Director, Prison Operations

EXHIBIT RR

EXHIBIT RR

From: PEREZ, KATHERINE
To: Dale_Baich@fd.org
Subject: Letter from Director Charles Ryan
Date: 05/15/2012 07:26 AM
Attachments: [DOC051412.pdf](#)

Mr. Baich:

Please see attached letter from Director Ryan. Thank you.

Kathy Perez
Legal Services
602-542-4805
kperez@azcorrections.gov

EXHIBIT SS

EXHIBIT SS

DFS' 26(a)(1) Disclosures & Responses to RFP's 01472
ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

INSTITUTION/FACILITY IPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX		PERIOD COVERED PAGE <u>7</u> OF <u>8</u>			
HOUSING UNIT/POST/ASSIGNMENT <u>Housing Unit #9</u>				HOUR <u>0700</u>	DATE <u>07/19/11</u>	HOUR <u>1004</u>	DATE <u>07/19/11</u>
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED
		<u>0700</u>	<u>1120</u>				

EXHIBIT NO. 23
 SOTM 2
 9-19-11

TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.
<u>0700</u>	<u>SPECIAL OPERATIONS TEAM ASSEMBLED FOR THE EXECUTION OF INMATE WEST, THOMAS PAUL AOC# 008781; ALL EQUIPMENT HAS BEEN CHECKED AND IS OPERATIONAL.</u>
<u>0828</u>	<u>MEDICAL TEAM INITIATED MIXING OF CHEM</u>
<u>0920</u>	<u>COMPLETED MIXING OF CHEMICALS.</u>
<u>0957⁰⁰</u>	<u>INMATE PLACED ON TABLE</u>
<u>1010⁰²</u>	<u>INMATE FULLY RESTRAINED</u>
<u>1001⁵²</u>	<u>BLOOD PRESSURE CUFF IN POSITION</u>
<u>1002¹⁴</u>	<u>PULSE OXYGEN; EKG LINES IN POSITION</u>
<u>1003²⁷</u>	<u>INITIAL BLOOD PRESSURE READING 146/82</u>
<u>1004⁰²</u>	<u>MEDICAL PROCEDURE INITIATED; MEDICAL TEAM LEADER REVIEWED THE PERTINENT INFORMATION RELATING TO THE ADMINISTRATION OF PENTOBARBITAL (ALL BARBITURATES) AS WELL AS PAN CURONUM AND POTASSIUM AND DETERMINED THEY SHOULD BE ADMINISTERED THROUGH A LARGE PERIPHERAL VEIN AT THE ELBOW OR CLOSER TO THE HEART. MEDICAL TEAM LEADER DETERMINED THERE IS SIGNIFICANT RISK FOR ADVERSE EFFECTS IF THE VEIN IS DEFECTIVE. A CENTRAL LINE WAS DEEMED NECESSARY.</u>
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate	

DFS' 26(a)(1) Disclosures & Responses to RFP's 01473
ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

INSTITUTION/FACILITY ASPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX		PERIOD COVERED PAGE 2 OF 3			
HOUSING UNIT/POST/ASSIGNMENT Housing Unit #9				HOUR	DATE	HOUR	DATE
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED
		0700	1128				
TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance, Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.						STAFF INITIALS
004 ⁰² (PMTD)	AS A BACK UP METHOD TO ENSURE THE SAFEST ADMINISTRATION OF THE CHEMICALS; MEDICAL TEAM OBSERVED THAT THE INMATE HAS SMALL VEINS. INMATE AGREED THAT HE HAS SMALL VEINS, AND THAT HE SHOULD HAVE DONE PUSH UPS TO MAKE HIS VEINS STAND OUT.						
1010 ⁴⁰	ATTEMPT TO PLACE IV IN LEFT ARM, FAILED DUE TO POOR VEINS. MEDICAL TEAM ABANDONED IV FOR LEFT ARM. RIGHT ARM DESIGNATED AS THE PRIMARY LINE.						
1011 ⁰²	PROCEDURE FOR CENTRAL LINE INITIATED AS A BACK UP TO THE MAIN LINE IN THE RIGHT ARM.						
1014 ⁰⁷	BLOOD PRESSURE 124/76						
1025 ²⁸	MEDICAL PROCEDURE COMPLETE.						
1100 ²⁰	READING OF THE WARRANT OF EXECUTION						
1101 ⁵¹	COMMENCE PHASE I						
1105 ⁰⁴	PHASE I COMPLETE.						
1106 ¹⁶	INMATE IS SEATED						
1106 ²⁴	COMMENCE PHASE II						
1109 ²²	PHASE II COMPLETE.						
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate							

ARIZONA DEPARTMENT OF CORRECTIONS
CONTINUOUS CORRECTIONAL LOG

INSTITUTION/FACILITY SPC-FLORENCE		INSTITUTIONAL UNIT COMPLEX			PERIOD COVERED PAGE <u>3</u> OF <u>3</u>			
HOUSING UNIT/POST/ASSIGNMENT <i>Housing Unit #9.</i>					HOUSING UNIT	DATE	HOUSING UNIT	DATE
					<i>1107</i>	<i>07/19/11</i>	<i>1128</i>	<i>07/19/11</i>
STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	STAFF MEMBER	MEMBER INITIALS	TIME ARRIVED	TIME DEPARTED	
		<i>0700</i>	<i>1128</i>					
TIME OF DAY	OCCURRENCE / ACTION TAKEN: Events, Activities, Disciplinary Violations, Maintenance, Requirements, Safety/Health Hazards, Other Information Received, and Action Taken, Etc.						STAFF INITIALS	
<i>1107³⁸</i>	<i>PHASE III COMMENCES.</i>							
<i>1108²⁸</i>	<i>PHASE III COMPLETE.</i>							
<i>1108⁵²</i>	<i>Commence 9B.</i>							
<i>1109⁰</i>	<i>Complete 9B.</i>							
<i>1109³²</i>	<i>Commence 10B.</i>							
<i>1109⁴⁰</i>	<i>Complete 10B.</i>							
<i>1109⁴²</i>	<i>Commence 11B.</i>							
<i>1110¹⁰</i>	<i>Complete 11B.</i>							
<i>1110³²</i>	<i>TIME OF DEATH.</i>							
<i>1117¹⁰</i>	<i>MEDICAL TEAM ENTERING ROOM TO REMOVE TV lines.</i>							
<i>1119⁵⁸</i>	<i>PIA enters room for photographs/cover entry room.</i>							
<i>1128³⁹</i>	<i>Body Released to Coroner.</i>							
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate.								