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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  
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Federal Public Defender

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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."<sup>1</sup> Similarly, in Ohio, witnesses observe the setting of the IV lines via closed-circuit television.<sup>2</sup>

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

<sup>2</sup>Ohio 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.<sup>3</sup> 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](mailto:dnorthup@azcorrections.gov))  
Jeffrey Zick (by email [Jeffrey.Zick@azag.gov](mailto:Jeffrey.Zick@azag.gov))

DAB/cls

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the establishment of IV site(s).”).

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

<sup>3</sup>See, 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](mailto:Dale_Baich@fd.org)  
**Subject:** Letter from Director Charles Ryan  
**Date:** 05/15/2012 07:26 AM  
**Attachments:** [DOC051412.pdf](#)

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Mr. Baich:

Please see attached letter from Director Ryan. Thank you.

Kathy Perez  
Legal Services  
602-542-4805  
[kperez@azcorrections.gov](mailto: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>0957<sup>00</sup></u>	<u>INMATE PLACED ON TABLE</u>
<u>1010<sup>02</sup></u>	<u>INMATE FULLY RESTRAINED</u>
<u>1001<sup>52</sup></u>	<u>BLOOD PRESSURE CUFF IN POSITION</u>
<u>1002<sup>14</sup></u>	<u>PULSE OXYGEN; EKG LINES IN POSITION</u>
<u>1003<sup>27</sup></u>	<u>INITIAL BLOOD PRESSURE READING 146/82</u>
<u>1004<sup>02</sup></u>	<u>MEDICAL PROCEDURE INITIATED; MEDICAL TEAM LEADER REVIEWED THE PERTINENT INFORMATION RELATING TO THE ADMINISTRATION OF PENTOBARBITAL (ALL BARBITURATES) AS WELL AS PANICURONIUM 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 <sup>02</sup> (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 <sup>40</sup>	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 <sup>02</sup>	PROCEDURE FOR CENTRAL LINE INITIATED AS A BACK UP TO THE MAIN LINE IN THE RIGHT ARM.						
1014 <sup>07</sup>	BLOOD PRESSURE 124/76						
1025 <sup>28</sup>	MEDICAL PROCEDURE COMPLETE.						
1100 <sup>20</sup>	READING OF THE WARRANT OF EXECUTION						
1101 <sup>51</sup>	COMMENCE PHASE I						
1105 <sup>04</sup>	PHASE I COMPLETE.						
1106 <sup>16</sup>	INMATE IS SEATED						
1106 <sup>24</sup>	COMMENCE PHASE II						
1109 <sup>22</sup>	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>					HOURLY	DATE	HOURLY	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>1107<sup>38</sup></i>	<i>PHASE III COMMENCES.</i>						[REDACTED]	
<i>1108<sup>28</sup></i>	<i>PHASE III COMPLETE.</i>							
<i>1108<sup>52</sup></i>	<i>Commence 9B.</i>							
<i>1109<sup>0</sup></i>	<i>Complete 9B.</i>							
<i>1109<sup>32</sup></i>	<i>Commence 10B.</i>							
<i>1109<sup>40</sup></i>	<i>Complete 10B.</i>							
<i>1109<sup>42</sup></i>	<i>Commence 11B.</i>							
<i>1110<sup>10</sup></i>	<i>Complete 11B.</i>							
<i>1110<sup>32</sup></i>	<i>TIME OF DEATH.</i>							
<i>1117<sup>10</sup></i>	<i>MEDICAL TEAM ENTERING ROOM TO REMOVE TV lines.</i>							
<i>1119<sup>58</sup></i>	<i>PIA enters room for photographs/cover entry room.</i>							
<i>1128<sup>39</sup></i>	<i>Body Released to Coroner.</i>							
SHIFT COMMANDER'S COMMENTS: Notes or comments concerning entries above; comments deemed appropriate.								