

MAY 15 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SAMUEL VILLEGAS LOPEZ,

Plaintiff - Appellant,

v.

JANICE K BREWER, Governor of Arizona; CHARLES L. RYAN, Director, Arizona Department of Corrections; RON CREDIO, Warden, Arizona Department of Corrections - Eyman; LANCE R. HETMER, named as: Lance Hetmer/Warden, Arizona Department of Corrections - Florence; UNKOWN PARTIES, named as: IV Team Leader; IV Team Members 1-5; Special Operations Team Leader; Special Operations Team Recorder; Special Operations Team Members 1-5; and Does 1-25,

Defendants - Appellees.

No. 12-16084

D.C. No. 2:12-cv-00245-NVW
District of Arizona,
Phoenix

ORDER

Before: THOMAS, Circuit Judge and Capital Case Coordinator.

A panel of this Court issued an opinion affirming the district court’s denial of petitioner’s motion for a preliminary injunction and denying his motion for a stay of execution. Petitioner filed a petition for rehearing and rehearing en banc.

The Warden elected not to file an optional response.

Pursuant to the rules applicable to capital cases when an execution date has been scheduled, a deadline was established by which any judge could request a vote on whether the panel's opinion should be reheard en banc. A judge timely requested a vote on the petition for rehearing en banc. A majority of the judges eligible to vote did not vote in favor of rehearing en banc. Judges Ikuta, Murguia, and Nguyen were recused.

Therefore, the Petition for Rehearing En Banc is DENIED. En banc proceedings with respect to the panel opinion are concluded.¹ The panel will issue a separate order as to the petition for panel rehearing.

¹ Ordinarily an Order denying a Petition for Rehearing En Banc is not filed until the Court ascertains whether any judge wishes to file a dissent from Rehearing En Banc or a concurrence in the Order. Given the time constraints, this Order is being filed forthwith. Dissents or concurrences will be filed for publication later if a judge so requests.