

CAPITAL CASE OVERSIGHT COMMITTEE

MEETING AGENDA

Monday, March 31, 2014

12:00 to 1:30 PM

State Courts Building * 1501 W. Washington * Conference Room 230 * Phoenix, AZ

Conference call-in number: (602) 452-3288 Access code: 4481

	Call to Order	
Item no. 1 * Pg. 3	Approval of the October 30, 2013 meeting minutes	<i>Judge Reinstein</i>
Item no. 2	Status reports: Superior Court Appeals and PCRs	<i>Judge Welty Mr. Montgomery Ms. Polk Ms. Johnson Mr. Logan Mr. Patterson Ms. Hallam</i>
Item no. 3 *Pg. 9 *Pg. 15	Follow-up on items from the October 30, 2013 meeting: Rule petition R-13-0050 regarding Rule 31.17(c), Ariz. R. Crim. P. HCRC and FPDA v DOJ (N.D. Cal., C-13-4517-CW)	<i>Ms. Hallam Ms. Hallam</i>
Item no. 4 *Pg. 26	Discussion of R-14-0010 concerning the timing of petitions for post-conviction relief	<i>All</i>
Item no. 5	Call to the Public Adjourn	<i>Judge Reinstein</i>

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange accommodations.

**ARIZONA SUPREME COURT
CAPITAL CASE OVERSIGHT COMMITTEE
DRAFT MINUTES
October 30, 2013**

Members Present:

Hon. Ronald Reinstein, Chair
 Hon. Joseph Welty
 Hon. Kent Cattani
 Donna Hallam
 Kellie Johnson
 Dan Levey
 Marty Lieberman
 James Logan, by proxy
 Bruce Peterson
 William Montgomery
 Daniel Patterson
 Sheila Polk, by proxy,
 Dennis McGrane (telephonic)
 Natman Schaye

Not present:

James Belanger

Guests:

John Todd
 Dale Baich
 Jennifer Garcia
 Jeff Zick
 Marcus Reinkensmeyer
 Kristine Fox (telephonic)
 Charles Babbitt
 Robert Shutts
 Anthony Novitsky
 Diane Alessi
 Carolyn Edlund
 Amy Armstrong (telephonic)
 Emily Skinner (telephonic)
 Colleen Chase
 Aaron Moskowitz
 Theresa Barrett
 Bob James

Staff: Mark Meltzer, Kymberly Lopez, Sabrina Nash

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1. Call to Order; approval of the meeting minutes. The Chair called the meeting to order at 12:02 p.m. He announced that Ms. Johnson and Mr. Zick recently assumed leadership positions with the Association of Government Attorneys in Capital Litigation, and he congratulated them. The Chair also noted that the posthumous induction of Justice Michael Ryan into the Maricopa County Bar Association's Hall of Fame is occurring at the same time as this Oversight Committee meeting. The Chair spoke with Mrs. Ryan about this unavoidable calendar conflict, and Mrs. Ryan assured the Chair that he should go forward with the meeting.

The Chair then asked the members to review draft minutes of the April 4, 2013 meeting. Mr. Schaye clarified that Pima County has had "limited" success in recruiting attorneys for capital PCRs, and this one-word qualifier will be added in the first sentence of section 3 of those minutes. Mr. McGrane had a question concerning a sentence in the next paragraph of those minutes regarding staffed defender agencies, but the members agreed after discussion that this sentence was accurate and did not need correction.

Motion: A member then moved to approve the draft April 4, 2013 minutes, with the one change noted above, and following a second, the members unanimously approved those meeting minutes.

2a. Status reports. The Chair asked for status reports.

Judge Welty reported that there are currently sixty-seven capital cases pending in the Maricopa County Superior Court. Two of these cases are pending non-capital sentencing. Two of the cases are in trial. There are also thirty-eight proceedings for post-conviction relief. Twenty-five of these post-conviction cases are pending the filing of a petition, three are pending the filing of a response or reply, nine are pending an evidentiary hearing, and one is pending the appointment of counsel.

Mr. Montgomery reported that three cases are currently under consideration by his capital case review committee. If the review committee recommends not filing a death notice in any of these three cases, it would mark the third consecutive month that his office has had no new capital filings. Mr. Patterson noted that the defender agencies are at or near their capital case capacities; he agreed that there has been a decline in the number of death notices and that the prosecutor is more circumspect about filing death notices than prior administrations. Mr. Montgomery responded that even though the number of filings has dropped, the analysis remains the same: is there sufficient evidence to show guilt and aggravating factors beyond a reasonable doubt, and do the totality of circumstances justify death as a just punishment. He believes that filings will continue to be relatively stable as long as the population and homicide rate remain stable. He added that he is not compelled to file any “magic number” of death notices.

Ms. Johnson reported that there are five pending cases in Pima County; one is in trial and another is pending on a special action concerning an intellectual disability, and yet another is a remand pending resentencing. Her office resolved a capital case last month with a plea to a natural life sentence. Ms. Johnson anticipates that there will be new filings in Pima County next month. Mr. McGrane said that Yavapai County has seven pending cases, most of which are pending trial; another is on an interlocutory appeal to the Arizona Supreme Court. The Chair noted that ten capital cases are pending in Pinal County.

Ms. Hallam advised that there are twelve pending capital appeals. Six capital defendants are awaiting the appointment of counsel on post-conviction proceedings.

3. Draft petition regarding amendments to Rule 31.17(c). At the April 4, 2013 meeting, Ms. Hallam explained the desirability of a rule petition concerning amendments to Rule 31.17(c), Ariz. R. Crim. P. She presented a draft rule petition to the members and indicated that she anticipates filing the petition for consideration during the Court’s 2014 rules cycle. The current rule requires the Court to issue an execution warrant on the same day as its denial of a petition for review regarding a petition for post-conviction relief. The defendant usually initiates a federal habeas proceeding within a matter of days of the denial, which results in a federal court stay of the execution and immediate cancellation of the notices concerning the pending execution previously sent to multiple agencies, organizations, and officials. Members of the Oversight Committee and attending guests from the federal court agreed that the issuance of an execution

warrant contemporaneously with the denial of the petition for review is unnecessary and causes significant administrative costs. The Chair asked for a formal vote on the draft rule petition to reflect the sense of the Oversight Committee.

Motion: A member then moved to support the draft petition to amend Rule 31.17(c) as presented, and following a second, the members passed the motion unanimously.

4. Revised application for appointment on a capital PCR proceeding. Ms. Hallam suggested that the current application for capital PCR appointments could benefit from a thorough revision, and that it should request more information. Accordingly, she and staff prepared a revised application that was included in the meeting materials. A discussion of the revised application ensued. In Section C, following question 5, Judge Cattani suggested adding a question asking whether the applicant, if not qualified under Rule 6.8(c), is nonetheless qualified under the “exceptional circumstances” provision of Rule 6.8(d). If so, the applicant should describe those circumstances. There was consensus among the members concerning this suggestion.

5. Screening non-Maricopa attorneys for capital cases. At prior meetings the members discussed Maricopa County Superior Court Administrative Order 2012-118 (August 10, 2012), a plan for reviewing the qualifications of private defense counsel for appointment on, among other things, capital trials and appeals. The Maricopa County A.O. is applicable only to attorneys in Maricopa County. Mr. Schaye has requested the members to consider a proposal for screening private attorneys for appointment on capital cases in other counties. This proposal was included in the meeting materials.

Mr. Schaye prepared this proposal following consultation with lawyers in Maricopa and Pima counties. The Maricopa plan was the model for his proposal, although unlike A.O. 2012-118, his proposal would expressly include PCRs. The proposal would apply to all counties other than Maricopa. He noted that it would not be practical for a small county with a limited number of capital cases to establish its own screening system. He also cited the benefit of having a consistent mechanism for appointments statewide.

Ms. Hallam noted that the Supreme Court appoints capital PCR counsel, but it is not involved in the appointment of trial or appellate counsel, although Mr. Schaye’s proposal includes such provisions. Judge Welty added that county presiding judges are responsible for appointing trial and appellate counsel. Mr. Schaye agreed to modify his proposal accordingly. The Chair noted that the Supreme Court has statutory responsibility to appoint counsel for capital PCRs, who for the most part appear before superior court judges, and the superior court has a corresponding duty to appoint appellate attorneys, who appear before the Supreme Court. He asked parenthetically whether the reverse would be more appropriate. Mr. Schaye said that his objective was assuring the highest quality of defender representation as early in the process as possible. In response to a question, Mr. Montgomery, Ms. Johnson, Mr. Levey, and Mr. Zick, each affirmed the desirability of having highly qualified defense counsel. Mr. Montgomery added that if this new proposal went to a vote before the Oversight Committee, he nevertheless would recuse himself because he did not believe it would be appropriate for him to set the qualifications of his adversaries. The Oversight Committee took no vote on the proposal.

The Chair concluded this discussion by noting that a decision to adopt the proposal rests with the Supreme Court, although the Chief Justice may first request input from presiding judges and others as deemed appropriate. The Chair will also speak with court officials about Maricopa County's request to screen capital PCR counsel under the mechanism established by AO 2012-118. The Chair noted that he and Ms. Hallam currently do that screening.

6. Rule proposal regarding the timing of petitions for post-conviction relief. Mr. Zick advised that the Arizona Attorney General was considering a rule petition as an alternate approach to SB 1413, which failed in the Legislature earlier this year. This rule proposal, like SB 1413, would require that a capital PCR petition precede briefing on a direct appeal. The proposal, which is not yet available as a document, envisions the simultaneous filing of notices of appeal and for post-conviction relief. During preparation of the trial court record, which Mr. Zick estimated would take about six to nine months, PCR counsel could investigate extra-judicial facts. At a designated time following completion of the trial court record, counsel would then file a petition for PCR. If the trial court denied the PCR petition, the proposed rule would consolidate the direct appeal with the PCR petition for review. The benefits and drawbacks cited during a discussion of the proposal included the following:

- The evidentiary hearing would be closer in time to the trial; therefore, witnesses' memories would not have faded as much, and would be more reliable.
- There is less likelihood that defense counsel's records would be lost or become unavailable.
- If a defendant's mental health at the time of trial is at issue in the PCR proceeding, it is preferable to make that determination sooner rather than later.
- The rules prefer that the sentencing judge consider the post-conviction evidence. Because there is a considerable length of time following conviction until a PCR petition is ready for an evidentiary hearing, the sentencing judge may be retired or otherwise unavailable for the PCR hearing. This rule proposal would facilitate the original trial court judge conducting more post-conviction hearings.
- The proposal is a way for Arizona to address the issues raised by *Martinez v Ryan* and *Trevino v Thaler*.
- Preparation of a petition for post-conviction relief, and especially a comprehensive mitigation investigation, requires substantially more time than suggested by this rule proposal.
- For those cases that would be reversed on direct appeal, a PCR before the appeal would add an immediate and substantial expense for the county (although there is a contrary view that ultimately this expense would be less than the cost of a federal court remand ten or twenty years later.)
- It would be difficult to make a transition from the current system to the one proposed.

- The proposal would extend PCR proceedings by requiring a second PCR petition to litigate the effectiveness of appellate counsel.

One member suggested that the appointment of two defense attorneys on a capital PCR would be more effective than this rule proposal. Another individual recommended that the issue of lost or misplaced files would be better resolved by establishing an official repository for capital case files.

Mr. Zick indicated that he would file the rule petition by the January 2014 rules cycle deadline.

7. 2013 Report to the Arizona Judicial Council. The Chair will present a progress report from the Oversight Committee at the December 12, 2013 meeting of the Arizona Judicial Council. The Chair noted two corrections to the draft report, which was included in the meeting materials:

- (1) The Court issued twenty-seven opinions in the thirty month period between April 2011 [not August] and September 2013; and
- (2) Add in the body of recommendation #2, or in a footnote, this update: The most recent regulations published by the United States Attorney are the subject of a temporary restraining order issued by a federal district court on October 18, 2013, in Habeas Corpus Resource Center and the Office of the Federal Public Defender for the District of Arizona, Plaintiffs, versus the United States Department of Justice and Eric H. Holder, Defendants (N.D. Cal., C-13-4517-CW). A hearing on the TRO is set for November 14, 2013.

On the issue of compensation for capital PCR counsel, the consensus of the members was to recommend an increase in the rate, as stated in recommendation #1. The rate of attorney compensation is higher in the Maricopa County Superior Court and in federal court than the rate currently set by Arizona statute for capital PCR attorneys. A member described the PCR work as “gut-wrenching.” The member added that there are not a substantial number of attorneys qualified to do capital PCRs; increasing the rate may attract those who are qualified and who are suited to do this work. Another member observed that an increase in the rate of compensation would be an incentive for counties to establish departments in public defender agencies to do these proceedings in-house in lieu of appointing more highly compensated private counsel. Public agencies would also have the benefits of better management and supervision, and a support network, and these agencies would develop a cadre of attorneys who consistently practice in this area and who are well qualified under Rule 6.8(c).

Concerning an extension of the term, the members considered future goals and purposes of the Oversight Committee. Although the members agreed that data collection and monitoring the number of capital cases should continue, one member cautioned against a discussion by this committee of decisions to file death notices. County attorneys have the prerogative of differing charging philosophies, and filing a death notice is an executive branch decision. The members agreed that the Oversight Committee should continue to discuss capital case procedures,

*Draft Meeting Minutes: October 30, 2013
Capital Case Oversight Committee*

including improvements in procedures, and the committee should continue its consideration of the effects of new court opinions, legislation, regulations, and rules on capital cases.

The Chair at this time asked for a motion authorizing him to finalize the report.

Motion: A member then moved to authorize the Chair to finalize the Oversight Committee's report to the AJC, in his discretion and consistently with the meeting's discussions, and to make additional revisions as appropriate to update the status of the HCRC v DOJ case. Following a second, the members unanimously passed this motion.

8. Call to the public; adjourn. There was no response to a call to the public. The meeting adjourned at 1:35 p.m.

Donna M. Hallam
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IN THE SUPREME COURT OF ARIZONA

In the Matter of)	
)	Arizona Supreme Court No. _____
THE ARIZONA RULES)	
OF CRIMINAL PROCEDURE)	PETITION TO AMEND RULE 31.17(c)(1),
)	ARIZONA RULES OF CRIMINAL
)	PROCEDURE
_____)	

PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Supreme Court Staff Attorneys' Office petitions the Court to amend the Arizona Rules of Criminal Procedure, as reflected in the attachment hereto.

I. BACKGROUND

Arizona Revised Statutes § 13-759(A) provides:

A. After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review or upon motion by the state. The supreme court shall grant subsequent warrants of execution on a motion by the state. The time for execution shall be fixed for thirty-five days after the state's motion is granted.

Rule 31.17(c)(1) and (2), Ariz. R. Crim. P., provides:

(1) *Initial Execution Warrant.* After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired,

the Supreme Court shall fix a twenty-four hour time period for execution of the sentence and shall issue a warrant of execution.

(2) *Subsequent Execution Warrant.* In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the Supreme Court shall issue subsequent warrants of execution upon motion by the state.

Pursuant to the statute and rule, if the superior court denies the first Rule 32 petition for post-conviction relief in a capital case and the Arizona Supreme Court denies review, the Court issues a warrant of execution. The Court's practice is to issue the warrant on the same date that it denies the petition for review. The Clerk of the Supreme Court sends a certified copy of the warrant to the Director of the Arizona Department of Corrections and the Warden of the Arizona State Prison at Florence, and sends e-mail copies to numerous other persons and agencies including counsel, superior court judges and staff, federal district court judges and staff, clerks of the superior court and federal courts, victims' representatives, the governor's general counsel and the Arizona Board of Executive Clemency. In addition, the Clerk of the Supreme Court gives notification by telephone calls to many of those persons and agencies.

Within a few days, the inmate under sentence of death ("petitioner") will initiate a habeas corpus proceeding in the United States District Court for the District of Arizona.¹ The District Court will then immediately issue an order staying the warrant of execution and directing its clerk to make telephone calls notifying the Director of the Arizona Department of Corrections, the Attorney General of the State of Arizona, the Clerk of the Arizona Supreme Court, and the Warden of the Arizona State Prison at Florence. The District Court also orders the United States Marshal to serve those individuals with a copy of the stay order, and a copy is sent to the petitioner. Shortly

¹ Typically, the petitioner will file in the District Court a Motion to Stay Execution, a Motion for Appointment of Counsel, an Application to Proceed In Forma Pauperis, and a Statement of Intent stating his or her intent to file an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

thereafter, the District Court issues another order appointing habeas corpus counsel and scheduling a case management conference.

II. PROPOSED AMENDMENT TO RULE 31.17(c)(1), ARIZ. R. CRIM. P.

The first sentence of A.R.S. § 13-759(A) states: "After a conviction and sentence of death are affirmed and the first post-conviction relief proceedings have concluded, the supreme court shall issue a warrant of execution that authorizes the director of the state department of corrections to carry out the execution thirty-five days after the supreme court's mandate or order denying review *or upon motion by the state.*" (Emphasis added.) The proposed amendment would avoid the unnecessary issuance of a warrant of execution for those petitioners who promptly initiate habeas corpus proceedings in the federal district court. In light of the significant administrative costs associated with issuance of execution warrants, this will conserve judicial resources in both the state and federal courts. Therefore, the undersigned Staff Attorney respectfully requests that the Court adopt the proposed amendment as reflected in the attachment hereto.

DATED this ____ day of December, 2013.

Donna M. Hallam
Staff Attorney, Arizona Supreme Court

ATTACHMENT²

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.17. Disposition and ancillary orders

a. - b. [No change in text.]

c. Fixing the Date of Execution After a Death Sentence Is Affirmed.

(1) *Initial Execution Warrant.* ~~After a conviction and sentence of death are affirmed and the first post-conviction relief proceeding pursuant to Rule 32.4(a) has concluded by the denial of a petition for review filed pursuant to Rule 32.9(c) or, if no petition for review has been filed, upon the filing of a notice by the state that the time for filing such petition has expired, the Supreme Court shall fix a twenty four hour time period for execution of the sentence and shall issue a warrant of execution. Following affirmance of a sentence of death, and if the superior court denies the first Rule 32 petition for post-conviction relief and the Supreme Court denies the petition for review, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the defendant has not initiated habeas corpus proceedings in federal district court within fifteen days after review is denied. If no Rule 32 petition for post-conviction relief or petition for review is filed, the Supreme Court shall issue a warrant of execution upon the filing of a notice by the state that the time for filing such petition has expired.~~

(2) *Subsequent Execution Warrant.* ~~In the event the warrant is stayed by any court beyond the time period fixed for the execution of sentence, the The Supreme Court shall issue subsequent warrants of execution upon motion by the state.~~

(3) *Date and Time of Execution.* [No change in text.]

(4) *Return on Warrant.* [No change in text.]

d. - e. [No change in text.]

² Additions in text are indicated by underscoring and deletions from text are indicated by strikeouts.

Hon. Ronald Reinstein (ret.), Chair
Capital Case Oversight Committee
1501 W. Washington, Suite 410
Phoenix, AZ 85007

IN THE ARIZONA SUPREME COURT

IN THE MATTER OF:)	Supreme Court Number
)	R-13-0050
PETITION TO AMEND)	
RULE 31.17(c), ARIZONA RULES)	Comment from the Capital
OF CRIMINAL PROCEDURE)	Case Oversight Committee
_____)	

The Capital Case Oversight Committee (“Oversight Committee”) discussed a draft of this rule petition during a public meeting on October 30, 2013, prior to the petition’s filing date, and considered the petition subsequent to its filing at a public meeting on March 31, 2014.

Members of the Oversight Committee and guests from the federal court attending these meetings agreed that the issuance of an execution warrant contemporaneously with the denial of a petition for review is unnecessary and causes significant administrative costs. The members of the Oversight Committee unanimously support the Court’s adoption of the rule amendments proposed by R-13-0050.

Respectfully submitted this ___ day of April 2014

By: /s/ _____
Hon. Ronald Reinstein (ret.), Chair
Capital Case Oversight Committee
1501 W. Washington, Suite 410
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DRAFT

ADRMOP,APPEAL,RELATE

**U.S. District Court
California Northern District (Oakland)
CIVIL DOCKET FOR CASE #: 4:13-cv-04517-CW**

Habeas Corpus Resource Center et al v. United States
Department of Justice et al
Assigned to: Hon. Claudia Wilken
Relate Case Case: 4:08-cv-02649-CW
Case in other court: 14-15113
Ninth Circuit Court of Appeals, 14-
15205

Date Filed: 09/30/2013
Jury Demand: None
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: U.S. Government
Defendant

Cause: 05:551 Administrative Procedure Act

Plaintiff

Habeas Corpus Resource Center

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Plaintiff

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V.

Defendant

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Defendant

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Date Filed	#	Docket Text
09/30/2013	<u>1</u>	COMPLAINT and Request for Injunctive Relief against Eric H. Holder, United States Department of Justice (Filing fee \$ 400.00., Receipt Number 34611090105). Filed by Office of the Federal Public Defender for the District of Arizona, Habeas Corpus Resource Center. (gbaS, COURT STAFF) (Filed on 9/30/2013) (Additional attachment(s) added on 10/2/2013: # <u>1</u> Civil Cover Sheet) (gbaS, COURT STAFF). (Entered: 09/30/2013)
09/30/2013	<u>2</u>	Certificate of Interested Entities by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona (gbaS, COURT STAFF) (Filed on 9/30/2013) (gbaS, COURT STAFF). (Entered: 09/30/2013)
09/30/2013	<u>3</u>	Summons Issued as to Eric H. Holder, United States Department of Justice. (gbaS, COURT STAFF) (Filed on 9/30/2013) (gbaS, COURT STAFF). (Entered: 09/30/2013)
09/30/2013	<u>4</u>	ADR SCHEDULING ORDER: Case Management Statement due by 1/3/2014. Case Management Conference set for 1/10/2014 01:30 PM in Courtroom G, 15th Floor, San Francisco. (Attachments: # <u>1</u> Standing Order) (gbaS, COURT STAFF) (Filed on 9/30/2013) (Entered: 09/30/2013)
10/01/2013	<u>5</u>	MOTION for leave to appear in Pro Hac Vice <i>and Order Granting Application for Admission of Attorney Pro Hac Vice - Certificate of Good Standing (attached)</i> (Filing fee \$ 305, receipt number 0971-8045207.) filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Lui, Catherine) (Filed on 10/1/2013) (Entered: 10/01/2013)
10/04/2013	<u>6</u>	Order, signed 10/4/13, by Magistrate Judge Joseph C. Spero granting <u>5</u> Motion for Pro Hac Vice George Greer.(klh, COURT STAFF) (Filed on 10/4/2013) (Entered: 10/04/2013)

10/04/2013	<u>7</u>	Ex Parte MOTION for Temporary Restraining Order <i>and Order to Show Cause for Preliminary Injunction</i> filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Lui, Catherine) (Filed on 10/4/2013) (Entered: 10/04/2013)
10/04/2013	<u>8</u>	Brief re <u>7</u> Ex Parte MOTION for Temporary Restraining Order <i>and Order to Show Cause for Preliminary Injunction</i> filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Attachments: # <u>1</u> Declaration of Darren S. Teshima In Support of Plaintiffs' Ex Parte Motion for Temporary Restraining Order, et al., # <u>2</u> Exhibit A to Teshima Declaration, # <u>3</u> Exhibit B to Teshima Declaration, # <u>4</u> Exhibit C part 1 of 4 to Teshima Declaration, # <u>5</u> Exhibit C, Part 2 of 4 to Teshima Declaration, # <u>6</u> Exhibit C, Part 3 of 4 to Teshima Declaration, # <u>7</u> Exhibit C, Part 4 of 4 to Teshima Declaration, # <u>8</u> Exhibit D to Teshima Declaration, # <u>9</u> Exhibit E to Teshima Declaration, # <u>10</u> Exhibit F to Teshima Declaration, # <u>11</u> Declaration of Michael Laurence In Support of Plaintiffs' Ex Parte Motion for Temporary Restraining Order, et al., # <u>12</u> Exhibit A to Laurence Declaration, # <u>13</u> Exhibit B to Laurence Declaration, # <u>14</u> Exhibit C to Laurence Declaration, # <u>15</u> Declaration of Dale A. Baich In Support of Plaintiffs' Ex Parte Motion for Temporary Restraining Order, et al., # <u>16</u> Exhibit A to Baich Declaration, # <u>17</u> Exhibit B to Baich Declaration, # <u>18</u> Exhibit C to Baich Declaration, # <u>19</u> Exhibit D to Baich Declaration, # <u>20</u> Exhibit E to Baich Declaration, # <u>21</u> Exhibit F to Baich Declaration, # <u>22</u> Exhibit G to Baich Declaration, # <u>23</u> Proposed Order)(Related document(s) <u>7</u>) (Lui, Catherine) (Filed on 10/4/2013) (Entered: 10/04/2013)
10/04/2013	<u>9</u>	MOTION (<i>ADMINISTRATIVE</i>) for Relief from Fed.R.Civ.Proc. 16(d)(1) in Order to Conduct Expedited Discovery and Supporting Declaration of Darren S. Teshima filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. Motion Hearing set for 11/22/2013 09:30 AM in Courtroom G, 15th Floor, San Francisco before Magistrate Judge Joseph C. Spero. Responses due by 10/18/2013. Replies due by 10/25/2013. (Attachments: # <u>1</u> Exhibit A to Plaintiffs' Administrative Motion for Relief from Fed. R. Civ. Proc. 26(d)(1), # <u>2</u> Exhibit B to Plaintiffs' Administrative Motion for Relief from Fed. R. Civ. Proc. 26(d)(1), # <u>3</u> Proposed Order)(Lui, Catherine) (Filed on 10/4/2013) Modified on 10/11/2013 (cpS, COURT STAFF). (Entered: 10/04/2013)
10/04/2013	<u>10</u>	CERTIFICATE OF SERVICE by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona re <u>4</u> ADR Scheduling Order, <u>1</u> Complaint, <u>8</u> Brief,,,,, <u>7</u> Ex Parte MOTION for Temporary Restraining Order <i>and Order to Show Cause for Preliminary Injunction</i> , <u>3</u> Summons Issued, <u>2</u> Certificate of Interested Entities, <u>6</u> Order on Motion for Pro Hac Vice, <u>9</u> MOTION (<i>ADMINISTRATIVE</i>) for Relief from Fed.R.Civ.Proc. 16(d)(1) in Order to Conduct Expedited Discovery and Supporting Declaration of Darren S. Teshima (Service by Certified and Registered Mail) (Lui, Catherine) (Filed on 10/4/2013) (Entered: 10/04/2013)
10/07/2013	<u>11</u>	MOTION to Stay <i>in Light of Lapse in Federal Government Appropriations Pursuant to Rule 7-11</i> filed by Eric H. Holder, United States Department of Justice. Responses due by 10/11/2013. Replies due by 10/18/2013.

		(Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order)(Coleman Snead, Jacqueline) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>12</u>	CERTIFICATE OF SERVICE by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona re <u>4</u> ADR Scheduling Order, <u>1</u> Complaint, <u>8</u> Brief,,,,,, <u>7</u> Ex Parte MOTION for Temporary Restraining Order <i>and Order to Show Cause for Preliminary Injunction</i> , <u>3</u> Summons Issued, <u>2</u> Certificate of Interested Entities, <u>9</u> MOTION (ADMINISTRATIVE) for Relief from Fed.R.Civ.Proc. 16(d)(1) in Order to Conduct Expedited Discovery and Supporting Declaration of Darren S. Teshima (PERSONAL DELIVERY) (Lui, Catherine) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>13</u>	MOTION to Stay <i>in Light of Lapse in Federal Government Appropriations Pursuant to Rule 7-11 (Corrected to Display Line Numbering)</i> filed by Eric H. Holder, United States Department of Justice. Responses due by 10/11/2013. Replies due by 10/18/2013. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order) (Coleman Snead, Jacqueline) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>14</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona.. (Teshima, Darren) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>15</u>	RESPONSE (re <u>13</u> MOTION to Stay <i>in Light of Lapse in Federal Government Appropriations Pursuant to Rule 7-11 (Corrected to Display Line Numbering)</i>) Plaintiffs' Opposition to Defendants' Administrative Motion to Stay Litigation and Toll Deadlines <i>in Light of Lapse in Federal Government Appropriations</i> filed byHabeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Attachments: # <u>1</u> Declaration of Darren S. Teshima in Support, # <u>2</u> Exhibit A to Teshima Declaration, # <u>3</u> Exhibit B to Teshima Declaration, # <u>4</u> Proposed Order)(Teshima, Darren) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>16</u>	CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klhS, COURT STAFF) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/07/2013	<u>17</u>	ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Richard Seeborg for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to the case. Signed by Executive Committee on 10/7/13. (sv, COURT STAFF) (Filed on 10/7/2013) (Entered: 10/07/2013)
10/08/2013	<u>18</u>	ORDER SETTING HEARING ON EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER. Temporary Restraining Order Hearing set for 10/10/2013 03:00 PM. Signed by Judge Richard Seeborg on 10/8/13. (cl, COURT STAFF) (Filed on 10/8/2013) (Entered: 10/08/2013)
10/08/2013	<u>19</u>	MOTION for leave to appear in Pro Hac Vice <i>Marc R. Shapiro</i> (Filing fee \$ 305, receipt number 0971-8063349.) filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Attachments: # <u>1</u> Exhibit Certificate of Good Standing)(Shapiro, Marc) (Filed on 10/8/2013) (Entered: 10/08/2013)

10/08/2013	<u>20</u>	ORDER GRANTING APPLICATION FOR ADMISSION OF ATTORNEY MARC R. SHAPIRO PRO HAC VICE. by Judge Richard Seeborg (cl, COURT STAFF) (Filed on 10/8/2013) (Entered: 10/08/2013)
10/08/2013	<u>21</u>	ORDER VACATING THE HEARING ON EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER. Signed by Judge Richard Seeborg on 10/8/13. (cl, COURT STAFF) (Filed on 10/8/2013) (Entered: 10/08/2013)
10/09/2013	<u>22</u>	ORDER RELATING CASE to C 08-2649 CW. Signed by Judge Claudia Wilken on 10/9/2013. (ndr, COURT STAFF) (Filed on 10/9/2013) (Entered: 10/09/2013)
10/09/2013		Case reassigned to Judge Hon. Claudia Wilken. Judge Hon. Richard Seeborg no longer assigned to the case. (cpS, COURT STAFF) (Filed on 10/9/2013) (Entered: 10/10/2013)
10/10/2013	<u>23</u>	RESPONSE (re <u>9</u> MOTION (<i>ADMINISTRATIVE</i>) for Relief from <i>Fed.R.Civ.Proc. 16(d)(1) in Order to Conduct Expedited Discovery</i>) filed by Eric H. Holder, United States Department of Justice. (Coleman Snead, Jacqueline) (Filed on 10/10/2013) Modified on 10/11/2013 (cpS, COURT STAFF). (Entered: 10/10/2013)
10/15/2013	<u>24</u>	CASE MANAGEMENT SCHEDULING ORDER FOR REASSIGNED CIVIL CASE: Case Management Statement due by 1/8/2014. Case Management Conference set for 1/15/2014 02:00 PM. Signed by Judge Claudia Wilken on 10/15/2013. (Attachments: # <u>1</u> Standing Order)(ndr, COURT STAFF) (Filed on 10/15/2013) (Entered: 10/15/2013)
10/17/2013	<u>25</u>	Declaration of Darren S. Teshima in Support of <u>7</u> Ex Parte MOTION for Temporary Restraining Order <i>and Order to Show Cause for Preliminary Injunction Supplemental Declaration of Darren S. Teshima in Support of Plaintiffs' Ex Parte Motion for (1) Temporary Restraining Order; and (2) Order to Show Cause for Preliminary Injunction</i> filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Attachments: # <u>1</u> Exhibit A to Supplemental Declaration of Darren S. Teshima, # <u>2</u> Exhibit B to Supplemental Declaration of Darren S. Teshima) (Related document(s) <u>7</u>) (Teshima, Darren) (Filed on 10/17/2013) (Entered: 10/17/2013)
10/18/2013	<u>26</u>	ORDER by Judge Claudia Wilken GRANTING <u>7</u> PLAINTIFFS APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE. (Denying <u>13</u> Motion to Stay). (ndr, COURT STAFF) (Filed on 10/18/2013) Modified on 10/21/2013 (cpS, COURT STAFF). (Entered: 10/18/2013)
10/23/2013	<u>27</u>	STIPULATION WITH PROPOSED ORDER for briefing on Show Cause Order <u>26</u> filed by Eric H. Holder, United States Department of Justice, Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Coleman Snead, Jacqueline) (Filed on 10/23/2013) Modified on 10/24/2013 (cpS, COURT STAFF). (Entered: 10/23/2013)

10/24/2013		See Docket No. <u>26</u> Order Set Hearings: Order to Show Cause Hearing set for 10/31/2013 02:00 PM. (ndr, COURT STAFF) (Filed on 10/24/2013) (Entered: 10/24/2013)
10/25/2013	<u>28</u>	ORDER by Judge Claudia Wilken Granting <u>27</u> Stipulation for Briefing on Show Cause Order <u>26</u> . (ndr, COURT STAFF) (Filed on 10/25/2013) (Entered: 10/25/2013)
10/25/2013		See <u>28</u> Order on Stipulation. Reset Hearing : Order to Show Cause Hearing set for 11/14/2013 02:00 PM. (ndr, COURT STAFF) (Filed on 10/25/2013) (Entered: 10/25/2013)
11/04/2013	<u>29</u>	MOTION to Intervene <i>or in the Alternative</i> , MOTION to File Amicus Curiae Brief filed by Marc Klaas. Motion Hearing set for 11/14/2013 02:00 PM in Courtroom 2, 4th Floor, Oakland before Hon. Claudia Wilken. Responses due by 11/18/2013. Replies due by 11/25/2013. (Attachments: # <u>1</u> Declaration Declaration of Kent Scheidegger in Support of Motion to Intervene, # <u>2</u> Proposed Order Proposed Order Granting Motion to Intervene, # <u>3</u> Proposed Brief for Marc Klaas as Intervenor or Amicus)(Scheidegger, Kent) (Filed on 11/4/2013) Modified on 11/5/2013 (kcS, COURT STAFF). (Entered: 11/04/2013)
11/04/2013	<u>30</u>	Response to Order to Show Cause by Eric H. Holder, United States Department of Justice. (Coleman Snead, Jacqueline) (Filed on 11/4/2013) (Entered: 11/04/2013)
11/05/2013	<u>31</u>	NOTICE of Manual Filing of Certified Administrative Record, filed by Eric H. Holder, United States Department of Justice (Coleman Snead, Jacqueline) (Filed on 11/5/2013) Modified on 11/6/2013 (jlm, COURT STAFF). (Entered: 11/05/2013)
11/06/2013	<u>32</u>	RESPONSE (re <u>29</u> MOTION to Intervene <i>or in the Alternative</i> MOTION to File Amicus Curiae Brief) <i>PLAINTIFFS OPPOSITION TO MOTION OF MARC KLAAS TO INTERVENE OR IN THE ALTERNATIVE TO FILE A BRIEF AS AMICUS CURIAE</i> filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Teshima, Darren) (Filed on 11/6/2013) (Entered: 11/06/2013)
11/06/2013		Received Administrative Record (Exhibits 1-75) re <u>31</u> <i>Notice of Manual Filing of Certified Administrative Record</i> by United States Department of Justice, Eric H. Holder. (jlm, COURT STAFF) (Filed on 11/6/2013) Modified on 11/6/2013 (jlm, COURT STAFF). (Entered: 11/06/2013)
11/06/2013		Received Administrative Record (Exhibits 76-155) re <u>31</u> <i>Notice of Manual Filing of Certified Administrative Record</i> , by Eric H. Holder, United States Department of Justice. (jlm, COURT STAFF) (Filed on 11/6/2013) (Entered: 11/06/2013)
11/11/2013	<u>33</u>	<i>PLAINTIFFS' REPLY IN SUPPORT OF ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION</i> by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Attachments: # <u>1</u> Declaration (Supplemental) of Dale A. Baich, # <u>2</u> Declaration (Supplemental) of Michael Laurence)(Teshima, Darren) (Filed on 11/11/2013) Modified on

		11/12/2013 (cpS, COURT STAFF). (Entered: 11/11/2013)
11/11/2013	<u>34</u>	REPLY (re <u>29</u> MOTION to Intervene <i>or in the Alternative</i> MOTION to File Amicus Curiae Brief) filed by Marc Klaas. (Scheidegger, Kent) (Filed on 11/11/2013) (Entered: 11/11/2013)
11/14/2013	<u>35</u>	Order denying <u>29</u> Motion to Intervene; granting <u>29</u> Motion to File Amicus Curiae Brief entered by Hon. Claudia Wilken. Parties will be given an opportunity to respond in writing to the amicus brief and Amicus may file a written reply. Order to follow. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 11/14/2013)
11/14/2013	<u>43</u>	Minute Entry: Show Cause Hearing - Non Evidentiary (Date Filed: 11/14/2013). (Court Reporter: Diane Skillman) (ndr, COURT STAFF) (Date Filed: 11/14/2013) (Entered: 12/04/2013)
11/15/2013	<u>36</u>	ORDER EXTENDING TEMPORARY RESTRAINING ORDER. Signed by Judge Claudia Wilken on 11/15/2013. (ndr, COURT STAFF) (Filed on 11/15/2013) (Entered: 11/15/2013)
11/22/2013	<u>37</u>	ORDER DENYING <u>29</u> MOTION TO INTERVENE AND GRANTING MOTION TO FILE AMICUS BRIEF. Signed by Judge Claudia Wilken on 11/22/2013. (ndr, COURT STAFF) (Filed on 11/22/2013) (Entered: 11/22/2013)
11/26/2013	<u>38</u>	STIPULATION WITH PROPOSED ORDER <i>re Enlargement of Time to Respond to Complaint</i> filed by Eric H. Holder, United States Department of Justice, Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Coleman Snead, Jacqueline) (Filed on 11/26/2013) Modified on 11/27/2013 (cpS, COURT STAFF). (Entered: 11/26/2013)
11/27/2013	<u>39</u>	RESPONSE to <i>Amicus Curiae Brief of Marc Klaas</i> by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Teshima, Darren) (Filed on 11/27/2013) (Entered: 11/27/2013)
11/27/2013	<u>40</u>	Order granting <u>38</u> Stipulation entered by Hon. Claudia Wilken. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 11/27/2013)
12/02/2013	<u>41</u>	REPLY to re <u>39</u> Response to <i>Amicus Brief</i> by Marc Klaas. (Attachments: # <u>1</u> Appendix Situ v. Leavitt)(Scheidegger, Kent) (Filed on 12/2/2013) Modified on 12/2/2013 (cp, COURT STAFF). (Entered: 12/02/2013)
12/04/2013	<u>42</u>	ORDER GRANTING PRELIMINARY INJUNCTION. Signed by Judge Claudia Wilken on 12/4/2013. (ndr, COURT STAFF) (Filed on 12/4/2013) (Entered: 12/04/2013)
12/18/2013	<u>44</u>	STIPULATION WITH PROPOSED ORDER <i>for Enlargement of Time to Respond to the Complaint and Continuance of Case Management Conference</i> filed by Eric H. Holder, United States Department of Justice, Office of the Federal Public Defender for the District of Arizona, Habeas Corpus Resource Center. (Coleman Snead, Jacqueline) (Filed on 12/18/2013) Modified on 12/19/2013 (cpS, COURT STAFF). (Entered: 12/18/2013)

12/19/2013	45	Order granting <u>44</u> Stipulation entered by Hon. Claudia Wilken. (This is a text-only entry generated by the court. There is no document associated with this entry.) (Entered: 12/19/2013)
12/20/2013		***See document # <u>44</u> . Set Deadlines/Hearings: Case Management Statement due by 1/30/2014. Case Management Conference set for 2/5/2014 02:00 PM. (cpS, COURT STAFF) (Filed on 12/20/2013) (Entered: 12/20/2013)
01/15/2014	<u>46</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options by <i>Habeas Corpus Resource Center</i> (Teshima, Darren) (Filed on 1/15/2014) (Entered: 01/15/2014)
01/15/2014	<u>47</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options by <i>the Office of the Federal Public Defender for the District of Arizona</i> (Teshima, Darren) (Filed on 1/15/2014) (Entered: 01/15/2014)
01/15/2014	<u>48</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Teshima, Darren) (Filed on 1/15/2014) (Entered: 01/15/2014)
01/16/2014	<u>49</u>	ADR Clerks Notice Setting ADR Phone Conference on Monday, January 27, 2014 at 2:00 PM Pacific time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (af, COURT STAFF) (Filed on 1/16/2014) (Entered: 01/16/2014)
01/20/2014	<u>50</u>	NOTICE OF APPEAL to the 9th CCA Marc Klaas. Appeal of Order <u>37</u> (Appeal fee of \$505 receipt number 0971-8308007 paid.) (Scheidegger, Kent) (Filed on 1/20/2014) (Entered: 01/20/2014)
01/21/2014	<u>51</u>	MOTION to Dismiss <i>Plaintiffs' Fifth Cause of Action</i> ; (Proposed) Order filed by Eric H. Holder, United States Department of Justice. Motion Hearing set for 4/3/2014 02:00 PM in Courtroom 2, 4th Floor, Oakland before Hon. Claudia Wilken. Responses due by 2/4/2014. Replies due by 2/11/2014. (Attachments: # <u>1</u> Declaration)(Coleman Snead, Jacqueline) (Filed on 1/21/2014) Modified on 1/22/2014 (cpS, COURT STAFF). (Entered: 01/21/2014)
01/21/2014	<u>52</u>	ANSWER to Complaint <i>First, Second, Third, and Fourth Causes of Action</i> by Eric H. Holder, United States Department of Justice. (Attachments: # <u>1</u> Declaration)(Coleman Snead, Jacqueline) (Filed on 1/21/2014) (Entered: 01/21/2014)
01/21/2014	<u>53</u>	STIPULATION WITH PROPOSED ORDER for Briefing Scheduling and Hearing re <u>51</u> MOTION to Dismiss <i>Plaintiffs' Fifth Cause of Action</i> filed by Eric H. Holder, United States Department of Justice, Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona. (Coleman Snead, Jacqueline) (Filed on 1/21/2014) Modified on 1/22/2014 (cpS, COURT STAFF). (Entered: 01/21/2014)
01/22/2014	<u>54</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Coleman Snead, Jacqueline) (Filed on 1/22/2014) (Entered: 01/22/2014)
01/22/2014	<u>55</u>	USCA Case Number 14-15113 for <u>50</u> Notice of Appeal filed by Marc Klaas. (cjl, COURT STAFF) (Filed on 1/22/2014) (Entered: 01/22/2014)
01/22/2014	56	Order granting <u>53</u> Stipulation entered by Hon. Claudia Wilken. (This is a

		text-only entry generated by the court. There is no document associated with this entry.) (Entered: 01/22/2014)
01/23/2014		***See text order, document # 56 . Set/Reset Deadlines as to <u>51</u> MOTION to Dismiss <i>Plaintiffs' Fifth Cause of Action</i> . Responses due by 2/27/2014. Replies due by 3/20/2014. Motion Hearing set for 4/3/2014 02:00 PM before Hon. Claudia Wilken. (cpS, COURT STAFF) (Filed on 1/23/2014) (Entered: 01/23/2014)
01/27/2014	<u>57</u>	CLERKS NOTICE. Notice is hereby given that the case management conference, previously set for February 5, 2014, is continued to April 3, 2014, at 2:00 p.m., to be heard along with the <u>51</u> motion to dismiss, in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94612. Case Management Statement due by March 27, 2014. (This is a text only docket entry, there is no document associated with this notice.) (ndr, COURT STAFF) (Filed on 1/27/2014) (Entered: 01/27/2014)
01/28/2014		ADR Remark: ADR Phone Conference held by Howard A. Herman Director, ADR Program on 1/27/2014. (af, COURT STAFF) (Filed on 1/28/2014) (Entered: 01/28/2014)
02/03/2014	<u>58</u>	NOTICE OF APPEAL to the 9th CCA Eric H. Holder, United States Department of Justice. (Appeal fee FEE WAIVED.) (Coleman Snead, Jacqueline) (Filed on 2/3/2014) (Entered: 02/03/2014)
02/04/2014	<u>59</u>	USCA Case Number 14-15205 Ninth Circuit Court of Appeals for <u>58</u> Notice of Appeal filed by United States Department of Justice, Eric H. Holder. (kk, COURT STAFF) (Filed on 2/4/2014) (Entered: 02/04/2014)
02/11/2014	<u>60</u>	Transcript Designation Form for proceedings held on None before Judge Wilken, re <u>55</u> USCA Case Number, <u>50</u> Notice of Appeal Transcript due by 3/10/2014. (Scheidegger, Kent) (Filed on 2/11/2014) (Entered: 02/11/2014)
02/26/2014	<u>61</u>	STIPULATION WITH PROPOSED ORDER <i>TO EXTEND BRIEFING SCHEDULE</i> filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona, United States Department of Justice, Eric H. Holder. (Lui, Catherine) (Filed on 2/26/2014) Modified on 2/27/2014 (cpS, COURT STAFF). (Entered: 02/26/2014)
02/28/2014	<u>62</u>	ORDER by Judge Claudia Wilken Granting <u>61</u> Stipulation TO EXTEND BRIEFING SCHEDULE. (ndr, COURT STAFF) (Filed on 2/28/2014) (Entered: 02/28/2014)
02/28/2014		Reset Deadlines as to <u>51</u> MOTION to Dismiss <i>Plaintiffs' Fifth Cause of Action</i> (See Docket No. 68): Responses due by 3/5/2014. Replies due by 3/27/2014. Motion Hearing set for 4/10/2014 02:00 PM before Hon. Claudia Wilken. (ndr, COURT STAFF) (Filed on 2/28/2014) (Entered: 02/28/2014)
03/05/2014	<u>63</u>	STIPULATION AND PROPOSED ORDER TO VOLUNTARILY DISMISS PLAINTIFFS' FIFTH CAUSE OF ACTION WITHOUT PREJUDICE AND

		ESTABLISH SUMMARY JUDGMENT BRIEFING SCHEDULE ON REMAINING CLAIMS filed by Habeas Corpus Resource Center, Office of the Federal Public Defender for the District of Arizona, United States Department of Justice, Eric H. Holder. (Lui, Catherine) (Filed on 3/5/2014) Modified on 3/6/2014 (cpS, COURT STAFF). (Entered: 03/05/2014)
03/06/2014	<u>64</u>	ORDER by Judge Claudia Wilken Granting <u>63</u> Stipulation VOLUNTARILY DISMISS PLAINTIFFS' FIFTH CAUSE OF ACTION WITHOUT PREJUDICE AND ESTABLISH SUMMARY JUDGMENT BRIEFING SCHEDULE ON REMAINING CLAIMS (ndr, COURT STAFF) (Filed on 3/6/2014) (Entered: 03/06/2014)

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ARIZONA SUPREME COURT

In the Matter of,

PETITION TO AMEND RULES
31.2, 31.4, 31.13, 32.4, and 32.9
ARIZONA RULES OF CRIMINAL
PROCEDURE

SUPREME COURT NO. R- _____

**PETITION TO AMEND RULES 31.2, 31.4,
31.13, 32.4, AND 32.9, ARIZ. R. CRIM. P.**

**[MODIFIED COMMENT PERIOD
REQUESTED]**

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Petitioner respectfully requests that this Court amend Rules 31.2, 31.4, and 31.13, and Rules 32.4 and 32.9 of the Arizona Rules of Criminal Procedure as applicable to capital cases. Petitioner requests a modified comment period to allow for an amended petition, if appropriate, after an initial comment period. The text of the proposed amendments is contained in the attached Appendix.

INTRODUCTION

Under Arizona's current capital post-conviction procedure, post-conviction relief proceedings do not commence until after the conclusion of direct review. In

capital cases, significant delay is routine and post-conviction proceedings occur many years after trial. The delay between the trial and the post-conviction proceeding can potentially affect the reliability of the capital post-conviction proceeding. Moreover, post-conviction counsel are placed at a disadvantage because the delay leads to the loss of trial counsel's files and records, unavailability of witnesses, and difficulty obtaining evidence. In turn, this leads to a perceived need to re-investigate the case anew in the post-conviction setting.

This petition explains the consequent need to change the way that capital post-conviction cases are processed. These proposed amendments will remedy three serious problems in the way that courts currently address post-conviction claims in capital cases. The amendments will: (1) make the post-conviction review process more reliable by creating a state-court record close in time to the trial; (2) decrease the inordinate amount of delay in state-court review of capital cases; and (3) provide for direct review of ineffective assistance of trial counsel claims after an opportunity for an evidentiary hearing in the trial court. Under the proposed amendments to Rules 31 and 32, post-conviction proceedings occur immediately after trial, and this Court's review of those proceedings would be consolidated with direct review. This re-ordering would ensure a more reliable post-conviction proceeding for capital defendants and would reduce the delay in capital post-conviction proceedings.

I. BACKGROUND AND CURRENT RULE 32 PROCEDURES.

A. *Background.*

Rule 32 post-conviction relief proceedings allow criminal defendants to raise claims relating primarily to whether: (1) trial counsel provided effective representation; (2) there is "newly discovered" evidence that would have changed the verdict or sentence; and (3) there has been a change in the law that applies retroactively and would probably change the conviction or sentence. *See* Ariz. R.

Crim. P. 32.1. In capital cases especially, allegations of trial counsel’s ineffective assistance make up the most significant portion of claims raised in Rule 32 proceedings. Previously, this Court preferred to suspend the direct appeal while trial courts adjudicated claims of ineffective trial assistance under Rule 32. *State v. Valdez*, 160 Ariz. 9, 15, 770 P.2d 313, 319 (1989). The trial court would rule on the ineffectiveness claim and permit the defendant to consolidate any petition for review from the post-conviction proceedings with the direct appeal. *Id.*

This Court eventually abandoned the practice of suspending direct appeal to litigate Rule 32 proceedings, finding the procedure unworkable. *Krone v. Hotham*, 181 Ariz. 364, 366, 890 P.2d 1149, 1151 (1995); *see also State v. Spreitz*, 202 Ariz. 1, 2, ¶ 6, 39 P.3d 525, 526 (2002). Long delay was the primary reason for abandoning the former practice. *See Krone*, 181 Ariz. at 366, 890 P.2d at 1151 (citing *State v. Vickers*, 180 Ariz. 521, 885 P.2d 1086 (1994), where 5 years elapsed from conviction to disposition on appeal).

B. *Delay in the current capital post-conviction procedure.*

The current procedure for adjudicating direct appeals and Rule 32 proceedings in capital cases has proven just as unworkable as the prior procedure, if not more so. Under the current system, direct review proceedings initiate automatically upon imposition of a death sentence. Ariz. R. Crim. P. Rule 31.2(b). The capital appellant is then allowed 90 days after completion of the record on appeal—which typically takes 6 to 9 months—to file an opening brief. Ariz. R. Crim. P. 31.13(f). Then, the State files an answering brief, the defendant files a reply brief, this Court conducts oral argument, and direct review concludes with an opinion.

Capital defendants initiate Rule 32 post-conviction relief (PCR) proceedings after the convictions and death sentences are affirmed on direct appeal. Ariz. R. Crim. P. 32.4(a); *Spreitz*, 202 Ariz. at 2, ¶ 6, 39 P.3d at 526. But in recent years,

many cases see significant delays both in (a) the appointment of post-conviction counsel, and (b) the time that elapses (frequently more than a year) from the appointment of post-conviction counsel to the filing of a PCR petition. On average, more than 3 years pass between the time that the United States Supreme Court denies review of the certiorari petition and the time that a capital Rule 32 petition is filed. Sometimes the delay is significantly longer:

- *State v. Steven Boggs*, Maricopa County Superior Court No. CR–2002–009759, 218 Ariz. 325, 185 P.3d 111 (2008)—amended Rule 32 petition filed 3 years and 8 months after United States Supreme Court denied certiorari on direct review;
- *State v. Derek Chappell*, Maricopa County Superior Court No. CR2004–037319, 225 Ariz. 229, 236 P.3d 1176 (2010)—Rule 32 petition filed 2 years and 5 months after cert. denied;
- *State v. John Montenegro Cruz*, Pima County Superior Court No. CR–2003–1740, 218 Ariz. 149, 181 P.3d 196 (2008)—Rule 32 petition filed 3 years after cert. denied;
- *State v. Ruben Myran Johnson*, Maricopa County Superior Court No. CR2001–001604, 212 Ariz. 425, 133 P.3d 735 (2006)—first amended petition filed 5 years and 9 months after cert. denied;
- *State v. Frank Dale McCray*, Maricopa County Superior Court No. CR2001–015915, 218 Ariz. 252, 183 P.3d 503 (2008)—supplemental petition filed 4 years and 8 months after cert. denied;
- *State v. Leroy Dean McGill*, Maricopa County Superior Court No. CR2003–005315, 213 Ariz. 147, 140 P.3d 930 (2006)—petition filed 3 years and 2 months after cert. denied;
- *State v. Julius Moore*, Maricopa County Superior Court No. CR1999–016742, 222 Ariz. 1, 213 P.3d 150 (2009)—no Rule 32 petition filed as of this date; cert. denied more than 4 years ago in November, 2009.
- *State v. John Edward Sansing*, Maricopa County Superior Court No. CR98–003520, 206 Ariz. 232, 77 P.3d 30 (2003)—petition filed 3 years and 7 months after cert. denied;

- *State v. Eugene Tucker*, Maricopa County Superior Court No. CR1999–015293, 215 Ariz. 298, 160 P.3d 177 (2007)—no Rule 32 petition yet filed; cert. denied over 6 years ago on October 1, 2007;
- *State v. Juan Velazquez*, Maricopa County Superior Court No. CR2001–014970, 216 Ariz. 300, 166 P.3d 91 (2007)—no Rule 32 petition yet filed; cert. denied more than 5 years ago on April 21, 2008.

The filing of a PCR petition merely begins the collateral review. After the petition is filed, motions to amend the petition, pre-hearing discovery, and preparation for evidentiary hearings typically require additional time.

As a result of these various delays, the typical post-conviction hearing in a capital case occurs years after the crime and the trial. For example, in many recent capital Rule 32 proceedings, evidentiary hearings and dispositive rulings have taken place roughly a decade after the crime and more than 7 years after trial, with even greater lapses of time in some cases:

- *State v. Wendi Andriano*, Maricopa County Superior Court No. CR2000–096032, 215 Ariz. 497, 161 P.3d 540 (2007)—PCR petition filed, currently pending evidentiary hearing 13 years after crime and 9 years after trial;
- *Boggs*, Maricopa County Superior Court No. CR–2002–009759, 218 Ariz. 325, 185 P.3d 111—Rule 32 petition dismissed without evidentiary hearing nearly 11 years after murders and almost 8 years after trial;
- *State v. Albert Carreon*, Maricopa County Superior Court No. CR2001–090195, 210 Ariz. 54, 107 P.3d 900 (2005)—PCR proceeding pending as of this date, more than 12 years after murder and 10 years after trial;
- *Cruz*, Pima County Superior Court No. CR–2003–1740, 218 Ariz. 149, 181 P.3d 196—Rule 32 petition filed nearly 9 years after murder and almost 7 years after trial;
- *State v. Ruben Garza*, Maricopa County Superior Court No. CR1999–017624, 216 Ariz. 56, 163 P.3d 1006 (2007)—PCR

petition dismissed without evidentiary hearing nearly 9 years after trial;

- *State v. Tracy Hampton*, Maricopa County Superior Court No. CR2001–008991, 213 Ariz. 167, 140 P.3d 950 (2006)—PCR evidentiary hearing conducted more than 10 years after *Ring*¹ resentencing proceeding;
- *Johnson*, Maricopa County Superior Court No. CR2001–001604, 212 Ariz. 425, 133 P.3d 735—Rule 32 proceeding pending as of this date, more than 13 years after murder and 10 years after trial;
- *McCray*, Maricopa County Superior Court No. CR2001–015915, 218 Ariz. 252, 183 P.3d 503—PCR proceeding pending as of this date, more than 8 years after trial;
- *McGill*, Maricopa County Superior Court No. CR2003–005315, 213 Ariz. 147, 140 P.3d 930—Rule 32 evidentiary hearing conducted 9 years after murder and 7 years after trial;
- *Sansing*, Maricopa County Superior Court No. CR98–003520, 206 Ariz. 232, 77 P.3d 30—Rule 32 evidentiary hearing conducted nearly 12 years after murder and more than 10 years after sentencing hearing.

This significant time lapse is problematic for two reasons: (1) it amplifies the potential for lost evidence and fading witness memory, and (2) it fosters an unnecessary need to re-investigate the case anew. *See State v. Carriger*, 143 Ariz. 142, 146, 692 P.2d 991, 995 (1984) (“Rule 32 petitions are often filed, as in this case, years after the trial. When the appeal is filed, the witness’s memories and evidence are fresh and readily available should a new trial be required. When a Rule 32 petition is filed, the witness’s testimony may be lost because of dimmed memories or death and physical evidence may be lost, destroyed, or misplaced.”); *cf. Krone*, 181 Ariz. at 366, 890 P.3d at 1151 (“an early Rule 32 proceeding could

¹ *Ring v. Arizona*, 536 U.S. 584, 122 S. Ct. 2428 (2002).

make consideration of the direct appeal moot and could hasten the start of a new trial or other resolution of the case”).

II. THE PROPOSED AMENDMENTS.

The proposed amendments would re-order the proceedings so that post-conviction review in capital cases would take place immediately after trial, followed by the direct appeal. Upon the entry of judgment following the imposition of a death sentence, the clerk would simultaneously file a notice of appeal and notice of post-conviction relief on the defendant’s behalf. In addition, within 7 days of entry of judgment, trial counsel must file a notice with the superior court indicating that a copy of counsel’s complete trial file is available for appointed post-conviction and appellate counsel.

Appointed post-conviction counsel will then have 270 days from the notice of the completion of the record on appeal to file a petition for post-conviction relief. The direct appeal will be automatically stayed pending the superior court’s decision on the petition for post-conviction relief.

Appointed appellate counsel will have 90 days after the superior court issues a decision in the post-conviction relief proceeding to file an opening brief in the Arizona Supreme Court. The opening brief will be consolidated with any petition for review from the denial of post-conviction relief.

Petitioner anticipates a prospective application of these amended rules. If the amendments were approved, the new provisions would apply to those cases in which capital sentences were imposed after the effective date.

III. REASONS FOR IMPLEMENTING THE AMENDMENTS.

A. *The amendments will improve the reliability of post-conviction proceedings.*

Evidence-based claims—such as ineffective assistance of counsel, which make up a significant amount of Rule 32 claims—should be addressed as close in time as possible to the crime and the trial. It is critically important to discover any

constitutionally deficient aspect of counsel's performance before witnesses' memories have faded and before evidence becomes stale or is "lost, destroyed, or misplaced." *See Carriger*, 143 Ariz. at 146, 692 P.2d at 995. Accordingly, any investigation into trial counsel's performance should precede the direct appeal, which addresses record-based legal issues. In contrast, potential claims of ineffective assistance of counsel, which under Arizona law must be raised in the post-conviction relief proceeding, *Spreitz*, 202 Ariz. at 3, ¶ 9, 39 P.3d at 527, usually depend on extra-record evidence and are vulnerable to fading memories and loss or destruction of evidence. By moving the extra-record based claims forward, in some instances by several years, the proposed amendments will significantly improve the reliability of the fact-finding upon which many capital post-conviction claims depend.

B. *The amendments will reduce delay.*

The amendments will also reduce the time between imposition of a death sentence and the conclusion of post-conviction and direct review. First, conducting the post-conviction proceedings immediately after trial will make investigation of claims dependent on extra-record evidence more efficient because the relevant evidence will be fresher and more readily available. Post-conviction counsel will have the advantage of developing potential issues immediately upon appointment.

In contrast, under the current approach, trial counsel's file is often lost or misplaced in the years after trial and before post-conviction proceedings commence, impeding post-conviction counsel's ability to effectively investigate potential claims. Commencing the Rule 32 proceedings directly after trial will remedy this common problem by allowing immediate transfer of trial counsel's file to post-conviction counsel, who can then begin reviewing for potential claims even as the record on appeal is being compiled. The proposed amendments address this directly by instructing post-conviction counsel to begin investigating potential

claims immediately upon appointment, even before the record on appeal is complete.

C. *The amendments will improve judicial efficiency.*

Rule 32 proceedings are part of the original criminal action. Ariz. R. Crim. P. 32.3. By moving the post-conviction review of claims forward, the proposed amendments will increase the likelihood that the same judge who presided over the trial will preside over the Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.4(e) (“The proceeding shall be assigned to the sentencing judge where possible.”). Given the lengthy delays between capital trials and post-conviction proceedings, the judge who presided over a capital trial is often unavailable to preside over the Rule 32 proceeding, whether due to retirement or other circumstances. In such cases, a different judge must review the trial record and become familiar with the prior proceedings. By holding the post-conviction proceeding immediately after trial in capital cases, the proposed amendments will reduce the occurrence of such judicial inefficiencies by increasing the likelihood that the same judge can preside over the trial and the Rule 32 proceeding.

This Court’s review of death sentences will also become more efficient with the consolidation of direct review and review from the denial of post-conviction relief. Under the current practice, review of these respective proceedings is often conducted years apart. Also, compilation of the appellate record for the direct appeal (which takes up to a year) will occur concurrently with the PCR proceedings so that the record will be complete by the time the direct appeal proceedings are initiated, saving additional time. These amendments will streamline direct and post-conviction review of death sentences, thereby reducing the time between imposition of a death sentence and the issuance of a warrant of execution.

D. *The amendments will further the goals of the Victims' Bill of Rights.*

By reducing the elapsed time, the proposed amendments further the right of crime victims to prompt and final resolution after conviction and sentence. *See* Ariz. Const. art. II, § 2.1 (A)(10).

E. *The amendments will address the concerns implicated in Martinez v. Ryan.*

The proposed rule amendments also address the United States Supreme Court's decision in *Martinez v. Ryan*, 132 S. Ct. 1309 (2012). In *Martinez*, the Court held that the ineffective assistance of counsel at "initial-review collateral proceedings" may establish cause for a prisoner's procedural default of a federal habeas claim of ineffective assistance at trial. *Id.* at 1315. The Court created this equitable remedy for those cases where ineffective assistance of trial counsel claims can only be raised in "initial review collateral proceedings," like Arizona's current system. "By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes a prisoner's ability to file such claims." *Id.* at 1318. The impetus for this shift was the Court's concern that if an attorney errs in an initial-review collateral proceeding, it is likely that no state court at any level will hear the petitioner's claim. *Id.* at 1316.

Nearly all of the 46 Arizona capital defendants currently on habeas appeal have filed motions requesting remands in light of *Martinez* on claims that were never raised in state court. This has significantly affected the prompt resolution of these cases and has added an extraordinary amount of delay.

The proposed amendments would replace Arizona's "initial-review collateral proceeding" and allow for direct review of all claims of ineffective assistance of counsel whether raised in the post-conviction proceeding or on direct review. Thus, the procedural framework which provided context for the equitable rule announced in *Martinez* would no longer exist. Moreover, by holding the post-

conviction proceeding before direct appeal, the proposed system will ensure thorough review of claims of trial counsel's ineffectiveness; appellate counsel will be able to obtain review of any trial counsel ineffectiveness claims rejected by the trial court in the Rule 32 proceeding, as well as any additional ineffectiveness claims not raised by post-conviction counsel.

IV. CONCERNS.

A. *The amendments will not significantly increase costs.*

Based on the Attorney General's prior attempt to enact similar changes legislatively, it is anticipated that there will be objections to these amendments on the theory that the proposed re-ordering of proceedings and simultaneous appointment of PCR and appellate counsel will increase the cost of reviewing capital convictions. The most obvious arguments would be that in cases where a defendant obtains Rule 32 relief, appellate counsel's work up to that point will be for naught, or, if a case is reversed on direct appeal after the PCR proceeding, then the money spent on the PCR will have been wasted.

Neither scenario necessarily increases the cost to capital post-conviction and appellate proceedings. First, reversal in capital cases on direct appeal is exceedingly rare, presumably because in all capital trials the defendant receives two highly-qualified attorneys, *see* Ariz. R. Crim. P. 6.2, 6.8(a), (b), as well as funding for any "reasonably necessary" investigators and expert witnesses. A.R.S. § 13-4013(B). Since 2002, there have been only three reversals of capital convictions,² one reversal of a death sentence under the "abuse of discretion"

² *See State v. Anthony*, 218 Ariz. 439, 189 P.3d 366 (2008); *State v. Minnitt*, 203 Ariz. 431, 55 P.3d 774 (2002); *State v. Prion*, 203 Ariz. 157, 52 P.3d 189 (2002).

standard,³ and, excluding *Ring* remands, only seven remands for resentencing⁴ and five capital sentences reduced to life or natural life under the “independent review” standard.⁵ Thus, reversal of a capital conviction or sentence on direct review after the PCR will be rare.

Nor does the possibility of PCR relief when Rule 32 and appellate counsel are appointed add significant cost to the system in most cases. For example, where a capital defendant obtains PCR relief on a penalty-phase issue and is re-sentenced, appellate counsel can still use any work done on guilt-phase issues in the subsequent direct appeal.

There are also countervailing cost savings. Most significantly, conducting PCR proceedings immediately after the trial will avoid wasted time tracking down missing or misplaced files and long-lost witnesses and evidence. This can greatly reduce the number of hours billed by post-conviction counsel, investigators, and experts in a given case.

Given these circumstances, the potential of increased costs in some cases should not deter this Court from amending the rules as requested.

³ See *State v. Gunches*, 225 Ariz. 22, 234 P.3d 590 (2010).

⁴ See *State v. Lynch*, 225 Ariz. 27, 234 P.3d 595 (2010); *State v. Wallace*, 219 Ariz. 1, 191 P.3d 164 (2008); *State v. Grell*, 212 Ariz. 516, 135 P.3d 696 (2006); *State v. Gomez*, 211 Ariz. 494, 123 P.3d 1131 (2005); *State v. Lamar*, 210 Ariz. 571, 115 P.3d 611 (2005); *State v. Armstrong*, 208 Ariz. 360, 94 P.3d 1076 (2004); *State v. Moody*, 208 Ariz. 424, 94 P.3d 1119 (2004).

⁵ See *State v. Grell*, 231 Ariz. 153, 291 P.3d 350 (2013); *State v. Wallace*, 229 Ariz. 155, 272 P.3d 1046 (2012); *State v. Snelling*, 225 Ariz. 182, 236 P.3d 409 (2010); *State v. Bocharski*, 218 Ariz. 476, 189 P.3d 403 (2008); *State v. Roque*, 213 Ariz. 193, 141 P.3d 368 (2006).

B. The amendments do not reduce the time available to develop claims and affords other investigative advantages.

Currently, the court appoints post-conviction counsel years after the trial. Consequently, counsel spends a great deal of time searching for and recreating trial counsel's files and other records relating to the trial. The proposed rule change calls for the appointment of post-conviction counsel immediately after trial but prior to the completion of the trial transcripts or record on appeal. One potential concern is whether post-conviction counsel will be able to begin independently investigating potential claims without these records.

Appointment of post-conviction counsel prior to completion of the record on appeal poses no obstacle to counsel's investigation of potential claims. The proposed amendments give post-conviction counsel immediate access to trial counsel's complete files. Unlike the current capital post-conviction regime, counsel can review, organize, and digest trial counsel's files close in time to the trial. Likewise, post-conviction counsel will have the ability to interview trial counsel immediately after trial, when trial counsel's memory of relevant events and circumstances is better. In addition, post-conviction counsel can spend the time it takes to complete the record to form the necessary relationship with the client.

C. Review of ineffective assistance of appellate counsel claims can be left to federal courts.

The proposed amendments to Rules 31 and 32 do not provide a procedure for raising ineffective assistance of *appellate* counsel claims, as post-conviction proceedings for capital defendants will end on direct appeal. Review of such claims can occur exclusively in federal habeas corpus proceedings.

This Court could provide an additional state-court proceeding to raise claims of appellate counsel's ineffectiveness, which would receive deference in a subsequent federal habeas challenge under 28 U.S.C. § 2254. *See Harrington v. Richter*, 131 S. Ct. 770, 785 (2011). However, apart from deference, there is no

advantage to that approach. Such a proceeding would add the significant cost of appointing yet another lawyer to review the record and allege additional legal claims, and it would add more time to state capital post-conviction review proceedings. Federal courts can conduct *de novo* review in federal habeas corpus proceedings since claims of ineffective appellate counsel, unlike claims of ineffective trial counsel, are largely record-based, legal claims. *See State v. Cutting*, 15 Ariz. App. 311, 313, 488 P.2d 667, 669 (1971) (appellate claims “must be reviewed and decided solely on the record made in the trial court”). Given the expense and delay that an additional state proceeding to raise appellate counsel's ineffectiveness would create, Petitioner is willing to forgo the benefit of deference in federal court on these types of claims and instead allow *de novo* federal court review.

CONCLUSION

Petitioner respectfully requests that the Court amend Rules 31.2, 31.4, and 31.13, and Rules 32.4 and 32.9 of the Arizona Rules of Criminal Procedure as proposed herein. Petitioner suggests a modified comment period as follows: comments to this petition to be filed on or before May 1, 2014; any amended petition or reply to comments to be filed on or before June 1, 2014; if an amended petition is filed, additional comments to be filed on or before June 30, 2014; and any reply to comments to be filed on or before July 15, 2014.

Respectfully submitted,

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APPENDIX¹

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.2. Notice of appeal; automatic appeal; joint appeals.

a. [No changes to text.]

b. Automatic Appeal When Defendant is Sentenced to Death. When a defendant has been sentenced to death, ~~the clerk, pursuant to Rule 26.15, shall file a notice of appeal on his behalf at the time of entry of judgment and sentence. Such notice at the time of entry of judgment, the clerk shall file a notice of appeal on the defendant's behalf. The clerk shall also contemporaneously file a notice of post-conviction relief pursuant to Rule 32. The appeal will be stayed pending resolution of the defendant's petition for post-conviction relief and will be consolidated with any petition for review from that proceeding.~~ The notice of appeal shall be sufficient as a notice of appeal by the defendant with respect to all judgments entered and sentences imposed in the case. Within 10 days after the filing of the notice of post-conviction relief and notice of appeal in any capital case, the clerk of the superior court shall notify all authorized transcribers assigned to transcribe any portion of the proceedings that they are required to transmit their portions of the certified transcript to the clerk of the supreme court.

c. – g. [No changes to text.]

* * *

Rule 31.4. Motion to stay appeal; notice of reinstatement of appeal; consolidation of appeals

a. Motion to Stay Appeal; Notice of Reinstatement of Appeal.

(1) The appellate court, on motion of a party or on its own initiative, may stay an appeal while a motion under Rule 24 or a petition under Rule 32 is pending. If a stay is ordered, the clerk of the appellate court shall notify all parties, the clerk of the trial court, and, if the certified transcript has not yet been filed, the appropriate authorized transcribers.

¹ Additions to text are indicated by underscoring and deletions are indicated by ~~strikethrough~~.

~~(2) Within 20 days after the trial court's decision on the motion or petition, the appellant shall file with the clerk of the Appellate Court, and send to all persons notified of the stay, either a notice of reinstatement of the appeal or a motion to dismiss the appeal under Rule 31.15(a)(2). In a capital case, the direct appeal is automatically stayed pending the trial court's decision on the petition for post-conviction relief.~~

(2 ~~3~~) Within 20 days after the trial court's decision on the motion or petition, the appellant shall file with the clerk of the Appellate Court, and send to all persons notified of the stay, either a notice of reinstatement of the appeal or a motion to dismiss the appeal under Rule 31.15(a)(2).

b. [No change to text]

* * *

Rule 31.13. Appellate briefs

a. – e. [No change to text]

f. Capital Cases.

(1) *Time for Filing.* In capital cases, the appellant's opening brief shall be filed within 90 days after the superior court issues a decision in the post-conviction relief proceeding ~~court issues a notice that the record is complete.~~ The appellee's brief shall be filed within 60 days after service of the appellant's brief. Appellant's reply brief shall be filed within 30 days after service of appellee's brief.

(2) *Length.* Except by permission of the court, (i) a principal brief in a capital case prepared in a proportionately spaced typeface may not exceed 32,000 ~~28,000~~ words, and a reply brief may not exceed 14,000 words, and neither may have an average of more than 280 words per page, including footnotes and quotations; and (ii) a principal brief in a capital case prepared in a monospaced typeface may not exceed 100 ~~80~~ pages, and a reply brief may not exceed 40 pages. All other requirements for the form of the briefs shall be as specified in subsection (b) of this rule.

(3) Ineffective Assistance of Counsel Claims. Appellant's counsel shall include in the opening brief all colorable claims of ineffective assistance of trial and sentencing counsel regardless of whether the claims have been raised in a petition for post-conviction relief or in the petition for review from the denial of post-conviction relief. The supreme court shall address the ineffective assistance of trial and sentencing counsel claims on direct appeal.

* * *

Rule 32.4. Commencement of proceedings

a. Form, Filing and Service of Petition. A proceeding is commenced by timely filing a notice of post-conviction relief with the court in which the conviction occurred. The court shall provide notice forms for commencement of all post-conviction relief proceedings. In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner's first petition for post-conviction relief proceeding. In all other non-capital cases, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later. In a capital case, the clerk of the Supreme Court shall expeditiously file a notice for post-conviction relief with the trial court contemporaneous with the notice of appeal ~~upon the issuance of a mandate affirming the defendant's conviction and sentence on direct appeal~~. Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h). The notice shall bear the caption of the original criminal action or actions to which it pertains. On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the county attorney, the defendant's attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies. If the conviction occurred in a court other than the Superior Court, the copy shall be sent to the office of the prosecuting attorney who represented the state at trial. The state shall notify any victim who has requested notice of post-conviction proceedings.

b. Notification of Appellate Court. In non-capital cases, ~~if~~ an appeal of the defendant's conviction, sentence, or both is pending, the clerk, or the court, within 5 days after the filing of the notice for post-conviction relief, shall send a copy of the notice to the appropriate appellate court, noting in the record the date and manner of sending the copies.

c. Appointment of Counsel.

(1) *Capital Cases.* Upon the filing of the notice of post-conviction relief and notice of appeal from the judgment of conviction and sentence ~~After the Supreme Court has affirmed a defendant's conviction and sentence in a capital case,~~ the Supreme Court, or if authorized by the Supreme Court, the presiding judge of the county from which the case originated, shall appoint counsel for the defendant pursuant to A.R.S. § 13-4041 and Rule 6.8 if the defendant is determined to be indigent. If the appointment is made by the presiding judge, a copy of the court's order appointing counsel shall be filed in the Supreme Court.

Within 7 days of a verdict imposing a death sentence, trial counsel shall file a notice with the superior court stating that a copy of the entire trial file is available for post-conviction and appellate counsel. If trial counsel fails to file such a notice, the superior court shall hold a hearing for counsel to show cause why a copy of the trial file has not been made available. On appointment, post-conviction counsel shall investigate expeditiously, before and after the notice of completion of the record on appeal, the factual and legal grounds for the filing of a petition for post-conviction relief.

Upon the filing of a successive notice of post-conviction relief, the presiding judge shall appoint the previous post-conviction counsel of the capital defendant unless counsel is waived or good cause is shown to appoint another qualified attorney from the list described in A.R.S. § 13-4041.

On the first notice in capital cases, appointed counsel for the defendant shall have 270 days ~~12 months~~ from the notice of completion of the record on appeal ~~filing of the notice to file a petition for post-conviction relief~~. On the filing of a successive notice of post-conviction relief, appointed counsel, or the defendant if proceeding without counsel, shall file the petition within thirty days from the filing of the notice. On a showing of good cause, a defendant in a capital case may be granted a sixty day extension in which to file the petition. Additional extensions of thirty days may be granted for good cause. If a petition for post-conviction relief is not filed within 12 months from the date of appointment of counsel, or 12 months from the date the notice is filed, or the date a request for counsel is denied if the defendant is proceeding without counsel, the defendant or counsel for the defendant shall file a notice in the Supreme Court, advising the court of the status of the proceedings. Thereafter, defendant or counsel for

the defendant shall file status reports in the Supreme Court every sixty days until the petition for post-conviction relief is filed.

(2) [No changes to text.]

d. – f. [No changes to text.]

* * *

Rule 32.9. Review

a. – b. [No change to text]

c. Petition for Review. Within thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, any party aggrieved may petition the appropriate appellate court for review of the actions of the trial court. A cross-petition for review may be filed within 15 days after service of a petition for review. The petition for review, cross-petition and all responsive pleadings filed pursuant to this rule shall be filed in the appellate court. Within 3 days after filing a petition or cross-petition for review, the petitioner and cross-petitioner, if any, shall file a notice of such filing with the trial court. The notice of filing may include a designation of record adding to the record defined in Rule 32.9(e) any additional certified transcripts of trial court proceedings that were prepared pursuant to Rule 32.4(d) or that were otherwise available to the trial court and the parties and that are material to the issues raised in the petition for review. Motions for extensions of time to file petitions or cross-petitions shall be filed in and ruled upon by the trial court. All other motions shall be filed in the court in which the petition is to be filed.

In a capital case, within 90 days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing, the petition for review shall be consolidated with the direct review opening brief pursuant to Rule 31.2.

1. *Form and contents.* The petition or cross-petition for review shall comply with the form requirements of Rule 31.12 of these rules and contain a caption setting forth the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number and a brief descriptive title. An original and seven copies of the petition and an original and one copy

of the appendix, if any, shall be filed if review is being sought in the Supreme Court. An original and four copies of the petition and an original and one copy of the appendix, if any, shall be filed if review is being sought in the Court of Appeals. An original and one copy shall be filed if review is being sought in the superior court. The parties shall be designated as in the trial court proceedings. The petition or cross-petition shall not exceed 20 pages, exclusive of the appendix, shall not have a cover or be bound, but shall be fastened with a single staple in the upper left corner, and shall contain the following:

(i) Copies of the trial court's rulings entered pursuant to rules 32.6(c), 32.8(d) and 32.9(b).

(ii) The issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review.

(iii) The facts material to a consideration of the issues presented for review.

(iv) The reasons why the petition should be granted. In capital cases any record made during the post-conviction proceedings, including transcripts, shall be prepared with and made part of the record on appeal and all references in a petition for review shall be made to the record on appeal. ~~all references to the record in the trial court shall be supported by an appendix, with appropriate copies of the portions of the record which support the petition. The petition shall not incorporate any document by reference, except the appendices. If the appendices exclusive of the trial court's rulings exceed 15 pages in length, such appendices shall be fastened together separately from the petition and the copies of the trial court's rulings.~~

In Rule 32 of-right and non-capital cases, an appendix is not required, but the petition for review shall contain specific references to the record.

The filing of a motion for rehearing pursuant to paragraph (a) of this rule does not limit the issues that may be raised in the petition or the cross-petition for review. Failure to raise any issue that could be raised in the petition or the cross-petition for review shall constitute waiver of appellate review of that issue.

2. [No changes to text.]

d. [No changes to text.]

e. Filing of the Record. In Rule 32 of-right and non-capital cases, within 45 days after the receipt of the notice of filing of a petition for review, the record, including the trial court file and the certified transcript, shall be transmitted to the appellate court.

In capital cases, the record of the post-conviction proceedings shall be prepared expeditiously and transmitted to the supreme court to be consolidated with the record on appeal. ~~not be transmitted to the appellate court unless requested by that court. If requested by the appellate court, the record shall consist of copies of the notice of post conviction relief, the petition for post conviction relief, response and reply, all motions and responsive pleadings filed and all minute entries and orders issued in the post conviction proceedings, plus the certified transcript and any exhibits admitted by the trial court in the post-conviction proceedings.~~

f. – h. [No changes to text.]

TO: Ron Reinstein
FROM: Mark Meltzer
RE: ASC capital cases, 2005 to present, where a death sentence is not affirmed
DATE: March 31, 2014

Introduction: The attached memo dated February 28, 2013 concluded with a December 2012 opinion (Gomez) and two opinions from January 2013 (Ovante and Grell). This memo supplements the prior one with the Court's subsequent death penalty opinions.

Update: Since February 2013, the Court has issued opinions in twelve additional cases:

2013:

Parker, Rose, Boyston, Fitzgerald, Hernandez, Benson, Medina*, Reeves, Payne, Miller

2014:

Forde, Naranjo

The Court affirmed death sentences in each of these twelve cases.

Summary: With the addition of the twelve cases above, the Court has issued **74 death-penalty opinions** between 2005 and the present. In eleven of these cases, the Court reversed convictions or reduced sentences, but because of multiple appeals by the same defendant, these eleven cases involved nine defendants. The death sentences of those nine defendants included

Five reduced on independent review (Grell, Wallace, Bocharski, Roque, and Snelling)

One that resulted in the imposition of a life sentence following retrial (Lamar)

Three that resulted in imposition of a death sentence following retrial (Gomez, Anthony, and Lynch)

* The Court originally affirmed Medina's conviction in 1999. In 2003, the trial court granted his PCR petition based on IAC at sentencing. A penalty phase retrial in 2009 resulted in a death sentence and thereafter the second opinion in 2013.

TO: Ron Reinstein
FROM: Mark Meltzer
RE: ASC capital cases, 2005 to present, where a death sentence is not affirmed
DATE: February 28, 2013

Introduction: Kent introduced a proposal at the September 24, 2012 meeting of the Oversight Committee to stay a capital appeal pending the conclusion of a PCR proceeding in the trial court. This proposal, motivated by the SCOTUS opinion of *Martinez v Ryan* (decided March 20, 2012), is currently pending in the Arizona Legislature as SB 1413.

Opposing view: The opposing view at the September 24 meeting was that because a certain number of capital appeals resulted in remands by the Arizona Supreme Court (“ASC”) or in a reduction of the sentence from death to life, it would be unnecessary to require PCRs in a significant percentage of cases prior to the direct appeal. Jim estimated during a subsequent presentation on SB 1413 to the Senate Judiciary Committee that the cost of counsel on appeal was about \$30-40,000, compared to about ten times that amount for a PCR; that is, he could fund about ten appeals for the cost of a single PCR. Members also noted that it is more likely for the ASC to reverse a capital conviction or reduce a capital sentence on direct appeal than on a PCR petition for review.

At the September meeting, Marty provided the Oversight Committee with a one-page list of capital case data, which showed that from 2005 to August 2012, the ASC reversed convictions or reduced sentences in ten of 61 capital case opinions. Because the ASC remanded these cases or reduced these death sentences to life imprisonment, the opposing view believes that the requirement of pre-appeal PCRs would have resulted in substantial and unnecessary expenses. Applying Jim’s math, the cost of PCRs for these ten cases would have been about \$4 million.

Information was not available at the September meeting concerning how many of these cases the ASC reversed, or how many of the sentence sentences it modified, on a standard of independent review. This memo discusses the number of these cases reversed on modified on that standard.

Updates to the list: After the September Oversight Committee meeting, the ASC issued opinions in three additional capital cases. Two of these cases (Ovante and Gomez) affirmed the death sentences, and one (Grell) reduced a death sentence to life. Combining these three cases with the 61 on Marty’s list, the ASC has issued opinions in 64 capital cases from 2005 to the present, and the ASC reversed convictions or reduced sentences in eleven of those cases. However, in two of the eleven cases on the updated list (Grell and Wallace), the ASC remanded or reduced twice; therefore, the ASC remanded or reduced death sentences of **nine “defendants.”**

- *1. Grell:* Grell was before the ASC on three occasions: (1) The ASC remanded the case in 2001 for an *Atkins* issue. (2) The ASC remanded the case in 2006 based on

- Ring*. (3) In January 2013, the ASC, on independent review, reduced Grell's sentence to life (based upon mental retardation.)
- 2. *Wallace*: Wallace's case was before the ASC four times. (1) The ASC affirmed two death sentences and remanded one death sentence for resentencing in 1986. (2) In 1989, following resentencing, the ASC affirmed the third death sentence. In 1999, a federal court remanded the convictions based on ineffective assistance of counsel. (3) Following resentencing, the ASC held in 2008 that a jury instruction was not harmless error; it reduced one death sentence to life and remanded two for resentencing. (4) In 2012, the ASC on independent review found that the State did not establish the sole aggravator, and reduced the two remaining death sentences to life.
 - 3. *Bocharski*: The ASC remanded Bocharski in 2001 due to lack of funding for a mitigation investigation. In 2008, on the second appeal, the ASC on independent review reduced his sentence to natural life.
 - 4. *Lamar*: The ASC affirmed Lamar's murder conviction in 2003, but remanded Lamar for re-sentencing per *Ring* in 2005. In 2010, a jury was unable to reach a verdict, and the trial judge thereafter sentenced Lamar to natural life.
 - 5. *Gomez*: The ASC affirmed the guilt verdict but vacated the sentence in 2005 based on a shackling issue. The ASC affirmed Gomez' death sentence in December 2012.
 - 6. *Anthony*: The ASC reversed the judgment of conviction in 2006 upon a finding that the admission of certain evidence and arguments was not harmless error. Anthony received a death sentence in September 2012 following a retrial, followed by a second direct appeal. The second appeal terminated upon Anthony's death in December 2012, and a dismissal of the indictment in January 2013.
 - 7. *Roque*: In 2006, the ASC reduced Roque's sentence to natural life based on independent review.
 - 8. *Lynch*: The ASC remanded Lynch in 2010 based on an erroneous instruction during the penalty phase. In August 2012, the jury on retrial returned a death verdict, and the judge resentenced Lynch to death.
 - 9. *Snelling*: In 2010, the ASC on independent review found insufficient evidence for the sole supporting aggravator and reduced the sentence to life.

Summary: The ASC reduced the sentences of five defendants (out of the nine identified above) based on independent review (Grell, Wallace, Bocharski, Roque, and Snelling.) The standard of independent review applies if the date of the offense was prior to August 1, 2002.

SUPREME COURT CAPITAL APPEAL RESULTS SINCE 2005 AS OF 9/21/2012

Year	Date	Name	County	Result	Death Total for Year	Life Total for Year	Remands for Year	Cases Decided	PCR atty Appointed	Time until appointment	WHO	Wait Time months
2012					9	1		10				
	17-Aug	Martinez	Maricopa	Death								
	17-Aug	Joseph	Maricopa	Death								
	16-Aug	Hardy	Maricopa	Death								
	15-Aug	Van Winkle	Maricopa	Death								
	14-Aug	Patterson	Maricopa	Death								
	26-Jul	Nordstrom	Pima	Death								
	10-Jul	Hausner	Maricopa	Death								
	12-Apr	Nelson	Mohave	Death								
	27-Mar	Wallace	Pima	Life								
	22-Mar	Cota	Maricopa	Death								
2011					6			6				
	21-Dec	Manuel	Maricopa	Death								
	13-Jul	Lehr	Maricopa	Death								
	1-Jul	Dixon	Maricopa	Death								
	6-May	Styers	Maricopa	Death								
	6-May	Prince	Maricopa	Death								
	8-Apr	Delahanty	Maricopa	Death								
2010					8	1	1	10				
	30-Nov	Gallardo	Maricopa	Death					2/3/2011	2 mos, 5 days	MCPD	2
	9-Aug	Snelling	Maricopa	Life					NONE			
	3-Aug	Chappell	Maricopa	Death								
	12-Jul	Womble	Maricopa	Death								
	1-Jul	Villalobos	Maricopa	Death					2/3/2011	7 mos, 3 days	MCPD	7
	22-Jun	Lynch	Maricopa	Remand					NONE			
	14-Jun	Hargrave	Maricopa	Death								
	18-Mar	Garcia, A	Maricopa	Death								
	11-Mar	Cropper	Maricopa	Death								
	24-Feb	Kuhs	Maricopa	Death								
2009					5	0	0	5				
	10-Aug	Kiles	Yuma	Death								
	24-Jul	Moore	Maricopa	Death								
	24-Jul	Speer	Maricopa	Death					2/23/2011	1 yr, 7 mos	Craig**	19
	17-Jul	Bearup	Maricopa	Death					12/6/2010	1 yr, 4 mos +	Graham	16
	19-May	Dann	Maricopa	Death					1/10/2011	1 yr, 7 mo, 23 da	Tallen	20
2008					6	1	2	9				
	22-Aug	Wallace	Pima	Remand					NONE			
	8-Aug	Bocharski	Yavapai	Life					NONE			
	29-Jul	Armstrong	Pima	Death					12/6/2010	2 yrs, 4 mos	Graham	28
	28-Jul	Anthony	Maricopa	Remand					NONE			
	25-Jul	Martinez	Pima	Death					~ 11/20/10	~ 2yrs, 4 mos	Armendariz	28
	16-Jun	Boggs	Maricopa	Death					9/29/2010	2 yrs, 5 mos +	Duncan	29
	21-Apr	Cruz	Pima	death					6/28/2010	2 yrs, 2 mos	Levy	26
	14-Feb	Harrod	Maricopa	death					8/4/2010	2 yrs, 5 mos +	Gierloff	29
	14-Feb	McCray	Maricopa	death					8/16/2010	2 yrs, 6 mos	Darby	30
2007					7	0	0	7				
	9-Aug	Velasquez	Maricopa	death					7/30/2010	2 yrs, 11 mos +	Darby	35
	12-Jul	Pandeli	Maricopa	death					6/15/2010	2 yrs, 11 mos	Countryman	35
	9-Jul	Andriano	Maricopa	death					n/a - pro bono			
	29-Jun	Garza	Maricopa	death					5/26/2010	2 yrs, 11 mos	Phalen	35
	18-Jun	Morris	Maricopa	death					3/9/2010	2 yrs, 8 mos +	Farnum	32
	13-Jun	Tucker	Maricopa	death					11/3/2009	2 yrs, 4 mos +	PCRPD	28
	31-May	Smith, J C	Maricopa	death					11/5/2009	2 yrs, 5 mos.	Dew	29
2006					5	1	1	7				
	15-Aug	Hampton	Maricopa	death					11/4/2009	3 yrs, 2 mos +	Levy	38
	14-Aug	Roque	Maricopa	life					NONE			
	14-Aug	McGill	Maricopa	death					6/1/2009	2 yrs, 9 mos.	Droban	33
	9-Aug	Ellison	Mohave	death					3/20/2009	2 yrs, 7 mos.	Roy	31
	6-Jun	Grell	Maricopa	remand					NONE			
	9-May	Johnson, R	Maricopa	death					11/17/2008	2 yrs, 6 mos.	PCRPD	30
	26-Apr	Newell	Maricopa	death					5/23/2008	2 yrs, 1 mo.	Droban	25
2005					5	0	2	7				
	6-Dec	Gomez	Maricopa	remand					NONE			
	17-Aug	Cromwell	Maricopa	death					3/31/2008	2 yrs, 7 mos.	PCRPD	31
	12-Aug	Anderson	Maricopa	death					12/10/2007	2 yrs, 7 mos.	PCRPD	31
	10-Aug	Glassel	Maricopa	death					9/10/2007	2 yrs, 1 mo.	PCRPD	25
	8-Jul	Lamar	Maricopa	remand					NONE			
	11-May	Roseberry	Yavapai	death					5/15/2006	1 yr	Newman	12
	24-Feb	Carreon	Maricopa	death					n/a - pro bono			
		Totals Since 2005			51	4	6	61				
			Total by County									
		50	Maricopa		83.61%	6.56%	9.84%					
		6	Pima							** removed 3/28/11		
		2	Yavapai									
		2	Mohave									
		1	Yuma									

SUPREME COURT CAPITAL APPEAL RESULTS SINCE 2005 AS OF 9/21/2012

2013 9 JAN GREN Maricopa life reduced to life on indept review (mental retardation)

Year	Date	Name	County	Result	Death Total for Year	Life Total for Year	Remands for Year	Cases Decided	PCR atty Appointed	Time until appointment	WHO	Wait Time months
2013	11 JAN	OVANTE	Maricopa	Death								
2012	1 DOC	GENEZ	Maricopa	death	9	1		10	*** Wallace I - one of three D.S. remanded for resent based on findings re Aggravators. (1984)			
	17-Aug	Martinez	Maricopa	Death					Wallace II - three D.S. affirmed (1987)			
	17-Aug	Joseph	Maricopa	Death					Wallace III - 1st Remand S / AC (1989)			
	16-Aug	Hardy	Maricopa	Death					IV - instruction not harmless error. one of three D.S. of life.			
	15-Aug	Van Winkle	Maricopa	Death								
	14-Aug	Patterson	Maricopa	Death								
	26-Jul	Nordstrom	Pima	Death								
	10-Jul	Hausner	Maricopa	Death								
	12-Apr	Nelson	Mohave	Death								
	27-Mar	Wallace	Pima	Life								
	22-Mar	Cota	Maricopa	Death								
2011												
	21-Dec	Manuel	Maricopa	Death								
	13-Jul	Lehr	Maricopa	Death								
	1-Jul	Dixon	Maricopa	Death								
	6-May	Styers	Maricopa	Death								
	6-May	Prince	Maricopa	Death								
	8-Apr	Delahanty	Maricopa	Death								
2010					8	1	1	10				
	30-Nov	Gallardo	Maricopa	Death					2/3/2011	2 mos, 5 days	MCPD	2
	9-Aug	Snelling	Maricopa	Life					NONE			
	3-Aug	Chappell	Maricopa	Death								
	12-Jul	Womble	Maricopa	Death								
	1-Jul	Villalobos	Maricopa	Death					2/3/2011	7 mos, 3 days	MCPD	7
	22-Jun	Lynch	Maricopa	Remand					NONE			
	14-Jun	Hargrave	Maricopa	Death								
	18-Mar	Garcia, A	Maricopa	Death								
	11-Mar	Cropper	Maricopa	Death								
	24-Feb	Kuhs	Maricopa	Death								
2009					5	0	0	5				
	10-Aug	Kiles	Yuma	Death								
	24-Jul	Moore	Maricopa	Death								
	24-Jul	Speer	Maricopa	Death					2/23/2011	1-yr, 7-mos	Graig**	19
	17-Jul	Bearup	Maricopa	Death					12/6/2010	1 yr, 4 mos +	Graham	16
	19-May	Dann	Maricopa	Death					1/10/2011	1 yr, 7 mo, 23 da	Tallen	20
2008					6	1	2	9				
	22-Aug	Wallace	Pima	Remand					NONE			
	8-Aug	Bocharski	Yavapai	Life					NONE			
	29-Jul	Armstrong	Pima	Death					12/6/2010	2 yrs, 4 mos	Graham	28
	28-Jul	Anthony	Maricopa	Remand					NONE			
	25-Jul	Martinez	Pima	Death					~ 11/20/10	~ 2yrs, 4 mos	Armendariz	28
	16-Jun	Boggs	Maricopa	Death					9/29/2010	2 yrs, 5 mos +	Duncan	29
	21-Apr	Cruz	Pima	death					6/28/2010	2 yrs, 2 mos	Levy	26
	14-Feb	Harrod	Maricopa	death					8/4/2010	2 yrs, 5 mos +	Gierloff	29
	14-Feb	McCray	Maricopa	death					8/16/2010	2 yrs, 6 mos	Darby	30
2007					7	0	0	7				
	9-Aug	Veasquez	Maricopa	death					7/30/2010	2 yrs, 11 mos +	Darby	35
	12-Jul	Pandeli	Maricopa	death					6/15/2010	2 yrs, 11 mos	Countryman	35
	9-Jul	Andriano	Maricopa	death					n/a - pro bono			
	29-Jun	Garza	Maricopa	death					5/26/2010	2 yrs, 11 mos	Phalen	35
	18-Jun	Morris	Maricopa	death					3/9/2010	2 yrs, 8 mos +	Farnum	32
	13-Jun	Tucker	Maricopa	death					11/3/2009	2 yrs, 4 mos +	PCRPD	28
	31-May	Smith, J C	Maricopa	death					11/5/2009	2 yrs, 5 mos.	Dew	29
2006					5	1	1	7				
	15-Aug	Hampton	Maricopa	death					11/4/2009	3 yrs, 2 mos +	Levy	38
	14-Aug	Roque	Maricopa	life					NONE			
	14-Aug	McGill	Maricopa	death					6/1/2009	2 yrs, 9 mos.	Droban	33
	9-Aug	Ellison	Mohave	death					3/20/2009	2 yrs, 7 mos.	Roy	31
	6-Jun	Grell	Maricopa	remand					NONE			
	9-May	Johnson, R	Maricopa	death					11/17/2008	2 yrs, 6 mos.	PCRPD	30
	26-Apr	Newell	Maricopa	death					5/23/2008	2 yrs, 1 mo.	Droban	25
2005					5	0	2	7				
	6-Dec	Gomez	Maricopa	remand					NONE			
	17-Aug	Cromwell	Maricopa	death					3/31/2008	2 yrs, 7 mos.	PCRPD	31
	12-Aug	Anderson	Maricopa	death					12/10/2007	2 yrs, 7 mos.	PCRPD	31
	10-Aug	Glassel	Maricopa	death					9/10/2007	2 yrs, 1 mo.	PCRPD	25
	8-Jul	Lamar II	Maricopa	remand					NONE			
	11-May	Roseberry	Yavapai	death					5/15/2006	1 yr	Newman	12
	24-Feb	Carreon	Maricopa	death					n/a - pro bono			
Totals Since 2005					51	4	6	61				11/63
Total by County												
		50	Maricopa		83.61%	6.56%	9.84%				** removed 3/28/11	
		6	Pima									
		2	Yavapai									
		2	Mohave									
		1	Yuma									

Canter 5/27/10
10/17/10
2/16/11
subject - arrested
1/10/11 - sent
to NAT life

on indept review, found it
an ESTB self Aggravator +
6 Reduced to life.

on indept review, found
MAYB, evid for sole supporting Aggravator.
sent to NAT life
remand for new public
phase based on erroneous instruction.

* NAT life on indept review
Admission of end of arguments
Not harmless error.

Reduced to NAT life on
indep review
for resentencing (Ring)

conviction aff. sent - vac
(shackling issue)
sentencing/Ring
(July 2003 - Lamar I -
conviction BE affirmed pending ring)

*** Wallace I - one of three D.S.
remanded for resent based on findings
re Aggravators. (1984)
Wallace II - three D.S. affirmed (1987)
Wallace III - 1st Remand S / AC (1989)
IV - instruction not harmless
error. one of three D.S. of life.

indep review if date of offense is before Aug 1 2002

** Bocharski - remanded for lack
of funding for mitigation 2009