

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE A. GONZALES,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, COUNTY OF
CLARK, KATHLEEN DELANEY,
DISTRICT COURT JUDGE,
Respondents,
THE STATE OF NEVADA,
Real Party in Interest.

CASE NO.
Dt. Ct. No. C-12-283700-2
Electronically Filed
May 14 2015 03:38 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

APPENDIX

**PETITION FOR WRIT OF MANDAMUS,
OR IN THE ALTERNATIVE, A WRIT OF
PROHIBITION**

DAVID M. SCHIECK
CLARK COUNTY, NEVADA
SPECIAL PUBLIC DEFENDER
Nevada Bar #0824
CLARK W. PATRICK
Nevada Bar #9451
ALZORA B. JACKSON
Nevada Bar #2255
330 South Third St., #800
Las Vegas NV 89155
(702)455-6265

STEVEN WOLFSON
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
Nevada Bar #1565
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702)671-2500

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Attorneys for Petitioner

Counsel for Real Party in
Interest

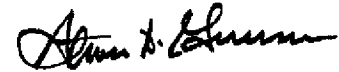
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX

DOCUMENT

PAGE NO.

Exhibits to Motion to Preclude the State From Seeking the Death Penalty Due To Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, In the Alternative to Stay Proceedings Until the Defense Team Can Safely Conduct Its Mitigation Investigation in Mexico (3/18/15)	25-68
Motion to Preclude the State From Seeking the Death Penalty Due To Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, In the Alternative to Stay Proceedings Until the Defense Team Can Safely Conduct Its Mitigation Investigation in Mexico (3/17/15)	1-24
Order Denying Motion to Preclude the State From Seeking the Death Penalty Due To Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, In the Alternative to Stay Proceedings Until the Defense Team Can Safely Conduct Its Mitigation Investigation in Mexico (4/8/15)	90-91
Reporter's Transcript of Proceedings April 6, 2015 (4/12/15)	81-89
State's Opposition to Defendant's Motion to Preclude the State From Seeking the Death Penalty Due To Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, In the Alternative to Stay Proceedings Until the Defense Team Can Safely Conduct Its Mitigation Investigation in Mexico (3/30/15)	69-80



CLERK OF THE COURT

1 MOT
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0824
5 CLARK W. PATRICK
6 Deputy Special Public Defender
7 Nevada Bar #9451
8 ALZORA B. JACKSON
9 Deputy Special Public Defender
10 Nevada Bar #2255
11 330 So. Third Street, Suite #800
12 Las Vegas, Nevada 89155
13 (702) 455-6265
14 FAX: (702) 455-6273
15 cpatrick@clarkcountynv.gov
16 ajackson@clarkcountynv.gov

17 Attorneys for GONZALES

18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

20 THE STATE OF NEVADA,
21 Plaintiff,
22 vs.
23 JOSE A. GONZALES, ID 2636822,
24 Defendant.

25 CASE NO. C-12-283700-2
26 DEPT. NO. 25

27 **MOTION TO PRECLUDE THE STATE FROM SEEKING
28 THE DEATH PENALTY DUE TO DEFENSE COUNSEL'S
INABILITY TO CONDUCT A THOROUGH AND
COMPLETE MITIGATION INVESTIGATION OR, IN THE
ALTERNATIVE TO STAY PROCEEDINGS UNTIL
THE DEFENSE TEAM CAN SAFELY
CONDUCT ITS MITIGATION INVESTIGATION IN MEXICO**

Date: March 30, 2015
Time: 9:00 a.m.

29 COMES NOW, Defendant, Jose Gonzales, by and through his attorneys, David M.
30 Schieck, Special Public Defender, Clark W. Patrick, Deputy Special Public Defender, and
31 Alzora B. Jackson, Deputy Special Public Defender, and respectfully requests that this
32 Honorable Court preclude the State from seeking the death penalty due to the defense counsel's
33 inability to conduct a thorough and complete mitigation investigation or, in the alternative, to

1 stay proceedings until the defense team can safely conduct its mitigation investigation in
2 Mexico.

3 This Motion is made and based upon the papers and pleadings on file herein, the
4 Points and Authorities herein, and the Declaration attached hereto, and any oral argument as may
5 be adduced at the time of the hearing of this matter.

6

7

NOTICE OF MOTION

8 TO: The State of Nevada, Plaintiff; and

9 TO: The Clark County District Attorney, Attorney for Plaintiff:

10 PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing
11 Motion on MARCH 30, 2015 at the hour of 9:00 a.m., or as soon thereafter as counsel may be
12 heard.

13

14

POINTS AND AUTHORITIES

15 I. Introduction

16 Defendant Jose Gonzales' Constitutional right to a complete investigation and
17 presentation of all mitigating evidence is improperly abridged and unreasonably compromised,
18 making his case legally unsuitable for the death penalty.

19 In a case where the State is seeking to impose the death penalty, the defense has the
20 constitutional obligation to present mitigation evidence during the penalty phase of the case. The
21 defendant has the Constitutional right to present mitigation evidence to the jury prior to its
22 decision as to whether it will impose a sentence of life with the possibility of parole, life without
23 the possibility of parole or the death penalty. A thorough, comprehensive background
24 investigation is the key to finding and assembling the evidence necessary to meet the
25 Constitutional requirements of the mitigation component of a death penalty defense. Ordinarily,
26 this investigation is a relatively straightforward matter that requires on-site investigation, in-
27 person interviews and other activities to collect relevant evidence.

28 In Jose's case, however, any Constitutionally-adequate investigation would require

1 defense counsel to collect evidence in violent areas of Mexico, in essence a war zone. The
2 United States Department of State recognized the extreme danger inherent in traveling to this
3 area and corroborates the existence of a nearly lawless, cartel-dominated environment, where
4 it simply is not reasonable to expect any attorney or mitigation investigator to conduct a
5 meaningful background investigation for purposes of presenting evidence in a death penalty
6 prosecution. The defense requests an Order from this Court prohibiting application of the death
7 penalty, or in the alternative, imposition of a stay until the defense can conduct an adequate
8 investigation and present relevant evidence to the jury during a penalty phase when the jury will
9 make its determination as to whether it will impose the death penalty.

10
11 **II. Facts Relating To The Unreasonable Limitations On Counsel's Ability To**
12 **Conduct A Mitigation Investigation In Mexico.**

13 The defense team has proceeded diligently with its mitigation investigation in the
14 United States. The investigation must now turn to the investigation of Jose's time in Mexico,
15 his family in Mexico and the culture of violence that surrounds them.

16 The defense team must continue its investigation in dangerous areas of Mexico to
17 meet its Constitutional obligations to Jose. The scope of the investigation must comply with
18 the American Bar Association Guidelines for the Appointment and Performance of Defense
19 Counsel in Death Penalty Cases (2003), the Supplementary Guidelines For the Mitigation
20 Function of Defense Teams in Death Penalty Cases, and Nevada's Indigent Defense
21 Standards (ADKT 411).

22 Pursuant to these Guidelines, the defense team believes its mitigation investigation
23 must be conducted in the following city in Mexico:

- 24 1. **Jiquilpan, Michoacan** - The defense team would expect to find evidence
25 going back as far as three generations, regarding Jose's personal and family
26 history. The defense team needs to interview numerous individuals there,
27 including Alejandro Gonzalez (father), Dolores Gonzalez (paternal
28 grandmother), Concepcion Sanchez (maternal grandmother), Liduvina Diaz

1 (maternal aunt) as well as other family members and friends. Juan C. Tenorio
2 Gonzalez, Esq., a non-related attorney who was instrumental in a child custody
3 case between Jose's parents.

4 **A. The State of Michoacan, Mexico - A State of Lawlessness and Violence.**

5 The State of Michoacan is the epicenter for the battle between the government and the
6 cartels. The Mexican government is spending approximately \$45 million USD in Michoacan
7 in 2014, adding additional army units and federales to battle the cartels. Despite the huge
8 strides made by the Mexican government during the first quarter of 2014, Mexico's National
9 Public Safety System reported a 55% increase in homicides over the first quarter of 2013, in
10 Michoacan. <http://www.breitbart.com> 9/22/14 (**Exhibit "A"**). The Huffington Post recently
11 published an article titled: "11 Numbers to Help You Understand the Violence Rocking
12 Mexico." [http://www.huffingtonpost.com/2014/10131/mexico-violence-](http://www.huffingtonpost.com/2014/10131/mexico-violence-numbers_n_6075258.html)
13 [numbers_n_6075258.html](http://www.huffingtonpost.com/2014/10131/mexico-violence-numbers_n_6075258.html). 10/31/14 (**Exhibit "B"**).

14 Recent headlines from Jiquilpan include: "Amid Vigilante Surge, Homicides Upp
15 45% in Michoacan, Mexico" <http://www.insightcrime.org> 9/12/14 (**Exhibit "C"**). "Mexico
16 Violence Leaves 22 Dead in Michoacan." <http://www.theguardian.com> 9/12/14 (**Exhibit**
17 **"D"**). "Six Killed in Clashes in Jiquilpan, Michoacan" <http://www.eluniversal.com> 9/12/14.
18 (**Exhibit "E"**). "6 Dead in Cartel-Style Killings in Western Mexico."
19 <http://www.abcnews.go.com> 9/22/14. (**Exhibit "F"**). "6 Dead in Clash Between Mexican
20 Vigilante Groups." <http://abcnews.go.com/International/print?id=27649690>. 12/16/14
21 (**Exhibit "G"**).

22 Articles from as recent as January 13, 2015, proclaim "Michoacan, the Birthplace of
23 Mexico's Drug War, is Still a Violent Quagmire." [https://news.vice.com/article/michoacan-](https://news.vice.com/article/michoacan-the-birthplace-of-mexicos-drug-war-is-still-a-violent-quagmire)
24 [the-birthplace-of-mexicos-drug-war-is-still-a-violent-quagmire](https://news.vice.com/article/michoacan-the-birthplace-of-mexicos-drug-war-is-still-a-violent-quagmire) (**Exhibit "H"**). And in the
25 Los Angeles Times: "Death Toll Rises in Mexico's Roiling Michoacan State."
26 <http://latimes.com>. (**Exhibit "I"**).

27 . . .

28

1 **B. The State Department Recognizes The Danger Posed By Travel To**
2 **Michoacan.**

3 As the U.S. Department of State has determined, concerns regarding the personal
4 safety of Americans while traveling in Michoacan are well-founded.

5 Attacks on Mexican government officials, law enforcement and military
6 personnel, and other incidents of organized crime-related violence, have
7 occurred throughout Michoacan. Federal authorities deployed some 9,000
8 federal security forces to Michoacan in January 2014 to address rising
9 insecurity, particularly in the entire western part of the state. Government
10 authorities incorporated some of the self-defense groups that had operated
11 independently of the government in recent months into a new state police unit
12 in May. Armed members of some other self-defense groups maintain
13 roadblocks and , although not considered hostile to foreigners or tourists, are
14 suspicious of outsiders and should be considered volatile and unpredictable.
15 Some groups in Michoacan are reputed to be linked to organized crime. **Defer
16 non-essential travel to the state of Michoacan.**

17 (Emphasis added.) U.S. Department of State, Bureau of Consular Affairs, August 25, 2014,
18 at: [http://travel.state.gov/content/passports/english/alertswarnings/mexico-travel-
20 warning.html](http://travel.state.gov/content/passports/english/alertswarnings/mexico-travel-
19 warning.html). (Exhibit "J").

21 **III. A Constitutionally-Sufficient Mitigation Investigation Is Not Possible.**

22 The defense team in Jose's case has made a good-faith effort to conduct the thorough
23 investigation necessary to prepare and present Jose's mitigating evidence. However, out of
24 justifiable fear for their personal safety, the defense team is incapable of conducting the
25 necessary investigation of Jose's background and family history in Mexico.

26 As explained previously by Jose's defense team, an adequate mitigation investigation
27 requires intensive, in-depth, on-site investigation, consisting of personally visiting important
28 locales, requesting and collecting documentary evidence and interviewing witnesses in
29 person. The applicable mitigation investigation Guidelines in Jose's case requires a visit to
30 an extremely dangerous location in Mexico to collect critical evidence. The process will
31 include interviews with numerous witnesses. The process requires that the defense team
32 spend significant time to earn the trust and develop the rapport necessary to obtain sensitive
33 facts about Jose, his formative years, the communities and family circumstances in which he
34 was raised.

1 It is manifestly impossible in this case to conduct an adequate mitigation investigation
2 by other means, such as telephone interviews. Jose has familial ties to Jiquilpan, Michoacan.
3 It is impossible to assess and develop evidence of mitigating factors without an on-site
4 investigation of the actual environment and in-person interviews of Jose's family. Even
5 documentary evidence such as medical, scholastic or employment records can often only be
6 obtained in Mexico by actually visiting and inspecting local repositories. See, e.g., Gregory J.
7 Kuykendall et. Al., *Mitigation Abroad: Preparing a Successful Case for Life for the Foreign*
8 *National Client*, 36 Hofstra L. Rev. 989, 1006 (2008) (noting that "record keeping and
9 retention practices are not standardized in Mexico, and it is far less common to find
10 computerized records databases" so that visits to the client's area of origin may be necessary
11 to obtain records for mitigation purposes).

12
13 **ARGUMENT**

14 Jose and his defense team cannot conduct the necessary investigation required to
15 present appropriate mitigation evidence and any further action by the State in pursuit of the
16 death penalty would give rise to violations of the Sixth, Eighth and Fourteenth Amendments
17 to the United States Constitution. Under these unusual circumstances, the defense
18 respectfully requests that this Court preclude the State from seeking the death penalty in this
19 case and proceeding in an extremely expensive and wasteful manner that is sure to result in a
20 series of Constitutional violations. In the alternative, this Court should stay this matter until
21 the defense team can safely conduct its mitigation investigation in Mexico.

22 **I. The Defense Cannot Conduct The Constitutionally Mandated Investigation**
23 **Necessary In This Case.**

24 It is well established that pursuant to the Sixth and Fourteenth Amendments of the
25 United States Constitution, counsel has a constitutional obligation to Jose to conduct a
26 thorough and complete mitigation investigation. The United States Supreme Court has made
27 clear that investigations into mitigating evidence "should comprise efforts to discover all
28 reasonably available mitigating evidence and evidence to rebut any aggravating evidence that

1 may be introduced by the prosecution.” Wiggins v. Smith, 539 U.S. 510, 523-24 (2003). In
2 addition, the guidelines set up by the American Bar Association regarding capital defense
3 work provide the applicable standards of performance of defense counsel. Wiggins,
4 incorporated in the 1989 ABA Guidelines. Id. Rompilla v. Beard, 545 U.S. 374 (2005), also
5 relied on the 2003 ABA Guidelines.

6 The Sixth Circuit in Hamblin v. Mitchell, 534 F.3d 482, 485-88 (6th Cir. 2003), held
7 that counsel must fully comply with the professional standards set forth in the 2003 ABA
8 Guidelines to the appointment and performance of defense counsel in death penalty cases.
9 Accordingly, counsel must explore:

- 10 a. Medical history, (including hospitalizations, mental and physical illness
11 or injury, alcohol and drug use, pre-natal and birth trauma, malnutrition,
12 developmental delays, and neurological damage).
- 13 b. Family and social history, (including physical, sexual or emotional
14 abuse; family history of mental illness, cognitive impairments, substance
15 abuse, or domestic violence; poverty, familial instability, neighborhood
16 environment and peer influence); other traumatic events such as
17 exposure to criminal violence, the loss of a loved one or a natural
18 disaster; experiences of racism or other social or ethnic bias; cultural or
19 religious influences; failures of government or social intervention (e.g.,
20 failure to intervene or provide necessary services, placement in poor
21 quality foster care or juvenile detention facilities).
- 22 c. Educational history (including achievement, performance, behavior, and
23 activities), special educational needs (including cognitive limitations
24 and learning disabilities) and opportunity or lack thereof, and activities.
- 25 d. Employment and training history (including skills and performance, and
26 barriers to employability).
- 27 e. Military service (including length and type of service, conduct, special
28 training, combat exposure, health and mental health services).
- 29 f. Prior juvenile and adult correctional experience (including conduct while
30 under supervision in institutions, of educational or training, and
31 regarding clinical services).

32 Hamblin, supra: Dickerson v. Bagley, 453 F.3d 690, 694 (6th Cir. 2006).

33 An incomplete mitigation investigation is constitutionally defective. Harris v. Bell,
34 417 F.3d 631, 638 (6th Cir. 2005). Indeed, this constitutionally mandated background
35 investigation is necessary to enable counsel to make strategic choices about presenting
36 mitigation defenses. Williams v. Taylor, 529 U.S. 362, 397 (2000).

1 It is also well established that the Eighth and Fourteenth Amendments require that the
2 sentencer, may not be precluded from considering, as a mitigating factor, any aspect of a
3 defendant's character or record and any of the circumstances of the offense that the
4 defendant proffers as a basis for a sentence less than death. Lockett v. Ohio, 438 U.S. 586,
5 604 (1978); Eddings v. Oklahoma, 455 U.S. 104, 112 (1982); Porter v. McCollum, 558 U.S.
6 30 (2009). As stated by United States Supreme Court, "virtually no limits are placed on the
7 relevant mitigating evidence a capital defendant may introduce concerning his own
8 circumstances." Payne v. Tennessee, 501 U.S. 808, 822 (1991).

9 "At the heart of effective representation is the independent duty to investigate and
10 prepare." Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982) See also, Porter v.
11 Wainwright, 805 F.2d 930, 933 (11th Cir. 1986); Tyler v. Kemp, 755 F.2d 741 (11th Cir.
12 1985). As the court held in Wade v. Armontrout, 798 F.2d 304 (8th Cir. 1986), investigation
13 is an essential component of the adversary process:

14 Because [the adversarial] testing process generally will not function properly
15 unless counsel has done some investigation into the prosecution's case and into
16 various defense strategies... 'counsel has a duty to make reasonable
17 investigations...'

18 Id. at 307 (quoting Kimmelman v. Morrison, 477 U.S. 365 (1986) and Strickland v.
Washington, 466 U.S. 668, 691 (1984)).

19 The investigation must include a thorough mitigation investigation in a capital case
20 where a man's life is at stake. The Supreme Court has held that the failure to adequately
21 investigate and present mitigating evidence can result in the denial of the accused's right to
22 the effective assistance of counsel that is guaranteed by the Sixth Amendment to United
23 States Constitution. Williams, 529 U.S. *supra*, See, Kenley v. Armontrout, 937 F.2d 1298,
24 1309 (8th Cir. 1991) (counsel ineffective for not producing non-statutory mitigation "[g]iven
25 th sympathetic light in which Kenley's past behavior could have been presented, in the
26 context of his family...background"). Additionally, counsel would be ineffective for
27 proceeding to trial without proper consultation with defense experts. See Elledge v. Dugger,
28 823 F.2d 1439, 1444-45 (11th Cir. 1987) *opinion withdrawn in part on denial of rehearing*,

1 833 F.2d 250 (11th Cir. 1987) (“counsel’s failure at least... to seek out an expert witness was
2 outside the range of competent assistance”); Blake v. Kemp, 758 F.2d 523, 529 (11th Cir.
3 1985) (“courts have ‘long recognized a particularly critical relation between expert
4 psychiatric assistance and minimally effective assistance of counsel’”); Profitt v. Waldron,
5 831 F.2d 1245, 1249 (5th Cir. 1987)([f]ailure to investigate... mental history constitutes an
6 impermissible deficiency in rendering in effective assistance...); see also, Jones v. Thigpen,
7 788 F.2d 1101 (5th Cir 1986); Petty v. McCotter, 779 F.2d 299, 301-02 (5th Cir. 1986);
8 Johnson v. Estelle, 704 F.2d 232 (5th Cir. 1983); Young v. Zant, 677 F.2d 792, 798 (11th Cir
9 1982); Evans v. Lewis, 855 F.2d 631, 637 (9th Cir. 1988).

10 It is plain that any mitigation investigation would require a lengthy stay, or a series of
11 trips, to one of the most dangerous places in the world. The defense team is led by
12 experienced death penalty counsel and investigators who well understand what is necessary
13 to adequately defend an individual in a death penalty case. Here, the mitigation investigation
14 would require interviews of several witnesses in a hotbed of violent cartel activity. Full and
15 free access to not only the witnesses, but full and free access to the underlying facts, is
16 absolutely critical.

17 Unfortunately, due to the chaos in Mexico, no one can effectively produce the wealth
18 of mitigation evidence that exists in Mexico. This is not just a matter of the danger to the
19 defense team; it is a question of practical reality. The mitigation investigator in Jose’s case
20 has identified a number of Mexico based witnesses who must be interviewed and Mexico
21 based records that must be obtained. The area of Mexico at issue in this case is marked by
22 populations that live in constant, genuine fear for their lives, where law enforcement is either
23 non-existent or, at a minimum, completely ineffective, and where insanely violent, well-
24 armed drug cartels rule. It is unreasonable to think that the defense team can travel to what
25 amounts to a war zone dominated by the Mexican drug cartel, with or without a security
26 detail, and expect to conduct meaningful witness interviews and collect other evidence to
27 introduce at trial.

28 Due to this undeniable reality, defense counsel will not have the ability to collect and

1 present valuable, constitutionally required mitigation evidence. The life and death decision
2 made by the jury would be rendered without any constitutional effective input on behalf of
3 Jose. Such a process renders the right to counsel, under the Sixth Amendment, a nullity. This
4 Court has an inherent gatekeeping and supervisory function to ensure Jose's constitutional
5 rights that attach during the trial process are protected. This Court is in a unique position to
6 rule that allowing the state to seek the death penalty against Jose will undoubtedly result in
7 the loss of the constitutional rights his defense team and this Court must ensure he receives.

8 Jose's family lives in a region of Mexico that has now become so violent and
9 dangerous that no qualified investigator is prepared to undertake a mitigation investigation.
10 Proceeding to trial without the benefit of a thorough mitigation investigation would violate
11 the Eighth Amendment's requirements of guided discretion and, in the event of a conviction,
12 individualized sentencing based on a consideration of mitigating factors. Proceeding to a
13 capital trial would also deprive Jose of the effective assistance of counsel, in breach of the
14 Sixth Amendment. These constitutional impediments are attributable not to Jose, but rather to
15 the state's insistence on seeking a death sentence. In these unique circumstances, the only
16 equitable remedy is to preclude the death penalty altogether.

17 Even if it were possible to find a culturally competent mitigation investigator willing
18 to undertake this exceptionally dangerous mission, it would be impossible for them to engage
19 in the interviews necessary to extract the information from the perspective of the mitigation
20 investigator already in place. This perspective is based upon an extensive, detailed and
21 meticulous mitigation investigation that Jose's current mitigation investigator has conducted
22 to date. The utilization of another mitigation investigator would deprive Jose of the current
23 mitigation specialist to readily attach nuances to information obtained and thus opportunities
24 to develop mitigation would necessarily be lost.

25 As an unavoidable consequence of these factors, it is absolutely impossible to conduct
26 the mitigation investigation in Mexico that is essential to Jose's adequate representation,
27 either now or at any time in the foreseeable future. Moreover, it is plain that these
28 circumstances give rise to additional violations of the Sixth, Eighth and Fourteenth

1 Amendments.

2 **II. In The Absence Of A Thorough Mitigation Investigation, Proceeding To A Death**
3 **Penalty Trial Would Violate The Eighth and Fourteenth Amendments.**

4 **A. A Thorough Mitigation Investigation Is Necessary To Meet The Eighth**
5 **Amendment Requirements Of Guided Discretion And Individualized**
6 **Sentencing.**

7 Two tenets are central to the United States Supreme Court's Eighth Amendment
8 jurisprudence as it applies to death sentencing procedures. First, "where discretion is
9 afforded a sentencing body on a matter so grave as the determination of whether a human life
10 should be taken or spared, that discretion must be suitably directed and limited so as to
11 minimize the risk of wholly arbitrary and capricious action." Gregg v. Georgia, 428 U.S. 153,
12 189 (1976). Second, "the fundamental respect for humanity underlying the Eight
13 Amendment... requires consideration of the character and record of the individual offender
14 and the circumstances of the particular offense as a constitutionally indispensable part of the
15 process of inflicting the penalty of death." Woodson v. North Carolina, 428 U.S. 280, 304
16 (1976) (plurality opinion). Accordingly, "the Eighth and Fourteenth Amendments require that
17 the sentencer... not be precluded from considering, as a mitigating factor, any aspect of a
18 defendant's character or record and any of the circumstances of the offense that the
19 defendant proffers as a basis for a sentence less than death." Lockett v. Ohio, 438 U.S. 586
20 (1978).

21 Thus, beginning with Furman v. Georgia, 408 U.S. 238 (1972), "the Court has
22 attempted to provide standards for a constitutional death penalty that would serve both goals
23 of measured, consistent application and fairness to the accused." Eddings v. Oklahoma, 455
24 U.S. at 111. Because sentences of death are "qualitatively different" from prison sentences,
25 Woodson, 428 U.S. at 305, "This Court has gone to extraordinary measures to ensure that the
26 prisoner sentenced to be executed is afforded process that will guarantee, as much as is
27 humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or
28 mistake." Eddings, 455 U.S. at 118 (O'Connor, J., concurring).

In the unique circumstances of this case, proceeding to a capital trial would violate

1 both of these Eight Amendment requirements. Both this Court and a jury would be prevented
2 from performing the essential function of guided discretion that is necessary "to narrow the
3 class of murderers subject to capital punishment... before a death sentence can ever be
4 imposed." Gregg, 428 U.S. at 196-97.

5 Furthermore, assuming that the jury were to convict Jose, a penalty phase at which the
6 jury was prevented from hearing (let alone considering) the fundamental mitigating evidence
7 that Jose could otherwise proffer "creates the risk that the death penalty will be imposed in
8 spite of facts which may call for a less severe penalty." Lockett, 438 U.S. at 605. Any death
9 sentence that might then be imposed on Jose without "the type of individualized
10 consideration of mitigating factors... required by the Eighth and Fourteenth Amendments in
11 capital cases" Id. at 606, would necessarily be vacated. See e.g. Eddings, 455 U.S. at 105;
12 Skipper v. South Carolina, 476 U.S. 1, 4 (1986); Penry v. Lynaugh, 492 U.S. 302, 318
13 (1989).

14 **B. The Eighth Amendment Violation In This Case Must Be Attributed To**
15 **The State.**

16 The State may argue that it is not responsible for Jose's inability to proffer mitigating
17 evidence. However, it is the Stat's continued insistence on seeking the death penalty that has
18 triggered this constitutional impasse, and the Supreme Court's jurisprudence makes clear that
19 **any act by the State which results in the preclusion of mitigating evidence is**
20 **unconstitutional.** "The Constitution requires States to allow consideration of mitigating
21 evidence in capital cases. Any barrier to such consideration must therefore fall." McKay v.
22 North Carolina, 494 U.S. 433, 442 (1990). As the Court has categorically declared:

23 Under our decisions, it is not relevant whether the barrier to the sentencer's
24 consideration of all mitigating evidence is interposed by statute, Lockett v.
25 Ohio, *supra*; Hitchcock v. Dugger, 481 U.S. 393 (1987); by the sentencing
26 court, Eddings v. Oklahoma, *supra*, or by an evidentiary ruling, Skipper v.
27 South Carolina, *supra*. **Whatever the cause, if petitioner's interpretation of**
28 **the sentencing process is correct, the conclusion would necessarily be the**
same: 'Because the [sentencer's] failure to consider all of the mitigating
evidence risks erroneous imposition of the death sentence, in plain violation of
Lockett, it is our duty to remand this case for sentencing.'

Eddings v. Oklahoma, 455 U.S. at 117, n. (O'Connor, J., concurring) (emphasis added, other

1 citations omitted); see also, Mills v. Maryland, 486 U.S. 367, 375 (1988).

2 The defense team realizes that the State is not responsible for the perilous situation in
3 Mexico that absolutely prevents the defense team from investigating potential defenses as
4 well as developing and preparing the case in mitigation. Nonetheless, it is **the State's**
5 **decision to proceed** despite this barrier to fundamental fairness that would trigger the Eighth
6 Amendment's protections, and "it would certainly be the height of arbitrariness to allow or
7 require the imposition of the death penalty under the circumstances so postulated..." Mills,
8 486 U.S. at 374.

9 **C. Where It Is Impossible To Conduct An Adequate Mitigation Investigation**
10 **Now Or In The Foreseeable Future, The Eighth Amendment Requires The**
11 **Preclusion Of The Death Penalty.**

12 As outlined above, defense counsel's ability to conduct a mitigation investigation in
13 Mexico, and investigation that is absolutely necessary to the defense, is physically impossible
14 to carry out. No alternative means exist whereby Jose can receive the through investigation
15 and presentation of mitigating evidence to which he is constitutionally entitled, nor is there
16 any likelihood that this constitutionally intolerable situation will improve with the passage of
17 time.

18 Through no fault of Jose and no lack of diligence by his counsel, the jury would here
19 be unconstitutionally, impermissibly and completely prevented from reaching a "meaningful
20 basis for distinguishing the few cases in which [the death penalty] is imposed from the many
21 cases in which it is not." Furman, 408 U.S. at 313 (White, J., concurring), quoted in Gregg
22 428 U.S. at 188. "The defendant's character, prior criminal history, mental capacity,
23 background, and age are just a few of the many factors" that "require consideration at the
24 sentencing phase" to prevent arbitrary and unfair death sentences. Simmons v. South
25 Carolina, 512 U.S. 154, 163 (1994); see also Skipper, 476 U.S. at 13-14 (1986) (Powell, J.,
26 concurring in judgment) (evidence concerning a defendant's "emotional history... bear[s]
27 directly on the fundamental justice of imposing capital punishment").

28 In Jose's case, however, these constitutionally crucial factors cannot be fully
developed and presented to the jury. The consideration of a death sentence in these

1 circumstances would be the epitome of "sentencing procedures that created a substantial risk
2 that it would be inflicted in a arbitrary and capricious manner." Gregg, 428 U.S. at 188. A
3 death penalty sentencing hearing conducted in such an evidentiary vacuum would simply be
4 another form of the unbridled discretion that the Supreme Court long ago declared to be
5 unconstitutional.

6 "Death is a different kind of punishment from any other which may be imposed in this
7 country" and it is thus "of vital importance to the defendant and to the community that any
8 decision to impose the death sentence be, and appear to be, based on reason rather than
9 caprice or emotion." Gardner v. Florida, 430 U.S. 349, 357 (1977) (opinion of Stevens, J.) In
10 a case where it is entirely impossible now or in the foreseeable future to carry out the
11 requirements of the Eighth and Fourteenth Amendments, it follows inexorably that the only
12 available recourse is to preclude the State from seeking the death penalty. Whatever the
13 underlying cause, the prohibition against a manifestly unfair death sentencing procedure is
14 categorical: the Constitution requires that "capital punishment be imposed fairly, and with
15 reasonable consistency, **or not at all.**" Eddings, 455 U.S. at 112 (emphasis added).

16
17 **III. Neither Proceeding With A Capital Trial Nor Ordering A Continuance**
18 **Can Meet The Requirements Of The Sixth Amendment In This Case.**

19 In circumstances where a defendant is **temporarily** prevented from presenting crucial
20 testimony or evidence, a trial court might reasonably consider on of two remedial options.
21 First, if the missing evidence is exclusively related to sentencing, a court might opt to
22 proceed to trial for a determination of guilt or innocence, on the understanding that a
23 continuance would later be granted if a sentencing hearing becomes necessary. Second,
24 where there are indications that the temporarily unavailable evidence may also bear on the
25 guilt determination state, a capital trial court might grant a continuance of sufficient duration
26 to permit the defense a further opportunity to secure and present that evidence at trial.
27 Neither option is viable under the circumstances of this case, however, and neither can meet
28 the clear requirements of the Sixth Amendment to the United States Constitution. Applying

1 either remedy to the circumstances facing Jose would compel him to made a Hobson's choice
2 between abandoning either this Sixth Amendment right to effective representation or his right
3 to a trial and sentencing within a reasonable amount of time.

4 The United States Supreme Court has long recognized that the Sixth Amendment right
5 to counsel "is the right to **effective** assistance of counsel." McMann v. Richardson, 397 U.S.
6 759, 771 n.14 (1970) (emphasis added). In order to meet the constitutional requirement of
7 effective assistance, the development of mitigating evidence must commence a the outset of
8 the proceedings, since the results of that investigation may bear not only on the penalty phase
9 but also on counsel's strategic choices regarding the first phase of the defense. Accordingly,
10 the mitigation investigation:

11 ...is required to begin as quickly as possible, because it may affect the
12 investigation of first phase defenses (e.g., by suggesting additional areas for
13 questioning police officers or other witnesses), decisions about the need for
expert evaluation (including competency, mental retardation, or insanity),
motion practice, and plea negotiations.

14 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty
15 Cases section 10.7, comment p. 82 (rev. ed. 2003) (hereinafter "ABA Guidelines").

16 Moreover, "it is imperative that counsel begin investigating mitigating evidence... well
17 before the prosecution has actually determined that the death penalty will be sought." ABA
18 Guidelines, p. 2.

19 It is well settled that the ABA Guidelines constitute the minimum professional
20 standards for capital defense counsel. See e.g. Wiggins, 539 U.S. at 524 (granting new
21 sentencing hearing after finding that defense counsel's conduct "fell short of the standards
22 for capital defense work articulated by the American Bar Association (ABA) standards to
23 which we have long referred as 'guides to determining what is reasonable' and that counsel's
24 performance fell below the Guidelines' "well-defined norms."). See also, Williams, 529 U.S.
25 at 396 (trial counsel ineffective because they had not "fulfilled their obligation to conduct a
26 thorough investigation of th defendant's background" as required under ABA Guidelines");
27 Wiggins, 539 U.S. at 523 (investigation was inadequate because "counsel abandoned their
28 investigation of petitioner's background after having acquired only rudimentary knowledge

1 of his history from a narrow set of sources”); Rompilla 545 U.S. at 387 (all recognizing the
2 ABA Guidelines as the normative standards for defense counsel in capital cases).

3 Allowing the state to proceed with a capital trial in Jose’s case without the benefit of a
4 thorough mitigation investigation would deprive him of the effective assistance of counsel
5 required under the ABA Guidelines and guaranteed under the Sixth Amendment. Without
6 access to mitigation material and other facts available only in Mexico, Jose’s counsel cannot
7 develop their theory of defense necessary for adequate: 1) capital trial preparation, including
8 the retention of expert witnesses, submitting pre-trial motions, conducting *voir dire*, and
9 every aspect of the first stage defense from its opening statement to the questioning of
10 witnesses and its closing argument. See e.g. United States v. Gray, 878 F.2d 702, 711 (3rd
11 Cir. 1989) (“[Counsel can hardly be said to have made a strategic choice against pursuing a
12 certain line of investigation when s/he has not yet obtained the facts on which such a decision
13 could be made.”); Knighon v. Maggio, 740 F.2d 1344, 1350 (5th Cir. 1984), *cert denied*, 469
14 U.S. 924 (1984) (petitioner entitled to relief if record shows that “counsel could not make a
15 valid strategic choice because he had made no investigation”) and 2) without the fruits of a
16 preliminary mitigation investigation, counsel also cannot adequately advise the Defendant.
17 See Battenfield v. Gibson, 236 F.3d 1215, 1229 (10th Cir. 2001) (defense counsel’s failure to
18 investigate defendant’s background “clearly affected his ability to competently advise
19 [defendant] regarding the meaning of mitigation evidence and the availability of possible
20 mitigation strategies.”).

21 Similarly, without the benefit of knowing even in the most general terms what
22 witnesses and evidence would be proffered in mitigation, the state cannot properly exercise
23 its discretion in determining the appropriate sentence to request or whether the interests of
24 justice are not better served by seeking a guilty plea by means of a plea agreement.
25 Prosecutorial discretion exercised in an evidentiary vacuum raises legitimate concern of
26 potential arbitrariness or, at a minimum, of a misuse of scarce judicial resources. See
27 Santobello v. New York, 404 U.S. 257, 260 (1971) (recognizing that the “disposition of
28 criminal charges by agreement between the prosecutor and the accused... is an essential

1 component of the administration of justice” without which “the States and the Federal
2 Government would need to multiply by many times the number of judges and court
3 facilities”); Bordenkircher v. Hayes, 434 U.S. 357, 365 (1978) (recognizing that the breadth
4 of prosecutorial discretion “carries with it the potential for both individual and institutional
5 abuse: so that “there are undoubtedly constitutional limits upon its exercise”); Santobello,
6 404 U.S. at 261 (observing that “all of these considerations presuppose fairness in securing
7 agreement between an accused and a prosecutor”).

8 There is nothing speculative about the essential nature and scope of the mitigating
9 evidence that Jose would develop and present, but for the impossibility of conducting the
10 necessary investigation in Mexico.

11 The sentencer in a capital case must be permitted to consider in mitigation “all
12 relevant facets of the character and record of the individual offender,” Skipper, 476 U.S. at 8,
13 but many of those “relevant facets” lie beyond defense counsel’s reach in Mexico. It is
14 simply not possible to carry out the core requirements of a constitutionally adequate
15 mitigation investigation: exploring Jose’s medical, employment, social and family history;
16 locating and interviewing family members, friends, neighbors and others who knew Jose,
17 and gathering physical evidence regarding Jose’s life and time in Mexico. See Haliym v.
18 Mitchell, 492 F.3d 680, 717 (6th Cir. 2007) (capital defense counsel has “an obligation to
19 conduct thorough and independent investigations relating to the issues of both guilt and
20 penalty.” (Citing ABA Guideline 10.7); that investigation should include “members of the
21 client’s immediate and extended family” as well as “medical history... and family and social
22 history”).

23 Proceeding to trial without first meeting the Sixth Amendment’s requirement of a
24 thorough defense investigation would thus render Jose’s capital trial fundamentally unfair. It
25 is settled law that the state is required to provide an indigent capital defendant with the
26 resources necessary to ensure fundamental fairness. See Ake v. Oklahoma, 470 U.S. 68, 77
27 (1985) (recognizing that “a criminal trial is fundamentally unfair if the State proceeds
28 against an indigent defendant without making certain that he has access to the raw materials

1 integral to the building of an effective defense.”); Britt v. North Carolina, 404 U.S. 226, 227
2 (1971) (reaffirming “the principle that the government must, as a matter of equal protection,
3 provide indigent prisoners with the basic tools of an adequate defense or appeal, when those
4 tools are available for a price to other prisoners”); Ross V. Moffitt, 417 U.S. 600, 612 (1974)
5 (fundamental fairness entitles indigent defendants to “an adequate opportunity to present
6 their claims fairly within the adversary system”).

7 Finally, the ultimate responsibility for ensuring that a capital defendant receives the
8 effective assistance of counsel guaranteed by the Sixth Amendment rests with the trial court.
9 The judiciary has a duty to ensure effective counsel. Foxworth v. Wainwright, 516 F.2d
10 1072, 1078 (5th Cir. 1975) (holding that the trial judge had an affirmative duty to ensure the
11 defendant’s constitutional right to effective counsel); Wheat v. United States, 486 U.S. 153,
12 161 (1988) (holding that judges “have an independent duty to ensure that criminal defendants
13 receive a trial that is fair and does not contravene the Sixth Amendment”). See also, ABA
14 Standards for Criminal Justice: Special Functions of the Judge, Standard 6-1.1(a) (2d ed.
15 1986) (“The trial judge has the responsibility for safeguarding both the rights of the accused
16 and the interests of the public in the administration of criminal justice. The adversary nature
17 of the proceedings does not relieve the trial judge of the obligation of raising on his or her
18 initiative, at all appropriate times and in an appropriate manner, matters which may
19 significantly promote a just determination of the trial”). Under these unique circumstances,
20 therefore, this Court cannot permit Jose’s case to proceed to a capital trial.

21
22 **IV. Ordering A Continuance With No Foreseeable Prospect Of An Adequate**
23 **Mitigation Investigation Would Deprive Jose Of The Due Process Right To A**
24 **Trial Within A Reasonable Amount of Time.**

25 Due to the unusual circumstances of this case, a continuance to account for the
26 intolerable violence in Mexico would necessarily require a substantial, if not interminable,
27 delay and therefore is not an appropriate remedy. Such a delay, prior to either phase of a
28 capital trial, will necessarily implicate Jose’s Sixth Amendment due process right to a trial
within a reasonable amount of time.

1 In the normal course of events, a trial court made aware that the defense had been
2 denied a constitutionally adequate opportunity to prepare for trial could exercise its discretion
3 and order a continuance. It is usual to grant a continuance if there is a problem in gathering
4 evidence or securing witness testimony. See e.g. Powell v. Alabama, 287 U.S. 45, 59 (1932)
5 (recognizing that a defendant charged with a serious crime “must not be stripped of his right
6 to have sufficient time to advise with counsel and prepare his defense”); Barker v. Wingo,
7 407 U.S. 514, 531 (1972) (“a valid reason, such as a missing witness, should serve to justify
8 appropriate delay”).

9 Here, because Jose’s trial and sentencing would be delayed for an inordinately long
10 period of time, his ability to gather and present mitigating evidence would be impaired. With
11 each passing day, as the anarchic situation in Mexico continued to deteriorate, the risk would
12 increase that mitigating “witnesses [would] die or disappear during a delay.” Id. at 532.
13 Incarcerated indefinitely while “evidence and witness disappear, memories fade, and events
14 lose their perspective,” factors beyond anyone’s control would render Jose “powerless to
15 exert his own investigative efforts to mitigate these erosive effects of the passage of time.”
16 Smith v. Hooey, 393 U.S. 374, 380 (1969).

17 Poised excruciatingly between life and death with no resolution in sight, Jose would
18 be subjected to the most intense form imaginable of the “emotional stress that can be
19 presumed to result in the ordinary person from uncertainties in the prospect of... receiving a
20 [more severe] sentence...” Strunk v. United States, 412 U.S. 434, 439 (1973); see also Smith
21 393 U.S. at 379-80 (recognizing that concerns regarding the effects of undue delay also apply
22 to already incarcerated prisoners.

23 The circumstances in this case are anything but usual: the normal curative remedy of a
24 continuance would not serve the purposes of justice where there is no end in sight to the
25 impediment which necessitated the delay, so that the only foreseeable consequence of the
26 continuance would be to deprive Jose of the opportunity to have a trial within a reasonable
27 amount of time.

28 In Jose’s case, the cause of the undue delay is the impossibility of conducting the

1 mitigation investigation - a task made necessary **only** by the State's insistence on seeking the
2 death penalty instead of life imprisonment. In deciding "whether the government or the
3 criminal defendant is more to blame for that delay," Doggett v. United States, 505 U.S. 647,
4 651 (1992), it is clear that Jose is surely not to blame for the inordinate delay necessitated
5 purely by the State's pursuit of a punishment beyond what the law requires.

6
7 **V. Under These Unique Circumstances, The Only Constitutionally Acceptable
8 Remedy Is To Preclude the Death Penalty.**

9 This case poses the difficult problem of how a court should proceed when all of the
10 normal courses of action would result in constitutional violations of various kinds. Without
11 the benefit of a thorough innocence phase and mitigation investigation in Mexico, Jose
12 cannot receive a sufficient defense. But with no foreseeable prospect of obtaining that
13 investigation, he cannot receive a trial in a reasonable amount of time.

14 "Without a sufficient defense, a sentence of death cannot be constitutionally imposed"
15 Klopper v. North Carolina, 386 U.S. 213, 226 (1967), acting as "a safeguard of the interests
16 of both the accused and the community as a whole." Dickey v. Florida, 398 U.S. 30, 50
17 (1970) (Brennan, J., concurring). The delay in the mitigation investigation is not attributable
18 to Jose, who should thus not be put in the position of having to choose between his Sixth
19 Amendment right to effective assistance of counsel or to have his trial delayed for an
20 unknown amount of time. See Barker v. Wingo, 407 U.S. 514, 527 (1972) ("A defendant has
21 no duty to bring himself to trial, the State has that duty as well as the duty of insuring that the
22 trial is consistent with due process.")

23 Clearly, proceeding with a capital trial at which Jose would be deprived of the means
24 necessary for an adequate defense, would render any resulting conviction or sentence
25 constitutionally unsupportable. The Sixth Amendment right to counsel "prevents the States
26 from conducting trials at which persons who face incarceration must defend themselves
27 without adequate legal assistance." Cuyler v. Sullivan, 446 U.S. 335, 344 (1980).
28 Accordingly, a criminal trial infected by ineffective assistance of counsel is so fundamentally

1 unfair that no conviction obtained thereby may be allowed to stand, irrespective of the
2 possible fact that the state did nothing itself to bring about the unfairness. Id. at 342-45.
3 Thus, the outcome of a capital trial in which it is apparent from its inception that defense
4 counsel is prevented from providing effective assistance would be void on its face.

5 The State has created this impasse by laying a charge that puts the death penalty in
6 play. It is well within the power of the State to break the constitutional logjam by simply
7 withdrawing the death penalty component. But, if the State continues on this course, then it
8 remains for this Court to preserve Jose's fundamental rights and preclude the death penalty
9 by staying the trial immediately until Jose can conduct a meaningful mitigation investigation
10 in Mexico. The only appropriate remedy for these extraordinary circumstances is preclusion,
11 so as to make the development of the unavailable but essential mitigating evidence legally
12 unnecessary.

13
14 **VI. In the Alternative, The Court Should Grant A Continuance To Preserve Jose's
15 Right To Effective Representation And A Fair Trial.**

16 Should this Court decide not to preclude the death penalty, Jose is then left with no
17 alternative but to request a continuance. He does so reluctantly on the basis that:

18 [a] clear choice between two alternative courses of action does not always
19 permit a petitioner to make a voluntary decision. If a choice presented to a
20 petitioner is constitutionally offensive, then the choice cannot be voluntary.

21 Wilks v. Israel, 627 F.2d 32, 35 (7th Cir. 1980); see also, United States ex rel. Martinez, 526
22 F.2d 750, 755-56 (2nd Cir. 1975) (finding that "appellant was given no freedom of choice to
23 decide whether he wished to [invoke his Sixth Amendment rights]. His choice, if choice it
24 can be called, was based entirely on his bowing to the inevitable.") Confronted with the
25 alternative of abandoning his right to effective legal representation and a fair trial, Jose is
26 compelled to jettison his fundamental right to "a prompt inquiry into criminal charges,"
27 Dickey 398 U.S. at 37-38, as the lesser of two evils.

28 While justice "should be administered with dispatch, the essential ingredient is orderly
expedition and not mere speed." Smith v. United States, 360 U.S. 1, 10 (1959). A

1 continuance should be granted in the interests of justice where more time is required to
2 prepare an adequate defense. See Powell, *supra*; see also United States v. Bogard, 846 F.2d
3 563, 566 (9th Cir. 1988) (“The concept of fairness, implicit in the right to due process, may
4 dictate than an accused be granted a continuance in order to prepare an adequate defense.”)

5 Denial of a motion for continuance raises constitutional concerns if there is an
6 unreasoning and arbitrary “insistence upon expeditiousness in the face of a justifiable request
7 for delay.” Ungar v. Sarafite, 376 U.S. 575, 589 (1964); see also United States ex rel.
8 Martinez, 526 F.2d 750 (2nd Cir. 1975) (repeating the Ungar Court’s caution that refusal to
9 grant a justifiable request for delay “can render the right to defend with counsel an empty
10 formality”). There is no mechanical test for determining when the denial of a continuance is
11 so arbitrary as to violate due process. Rather, the answer lies in the specific facts of each
12 case, and the reasons offered for the continuance. Ungar 376 U.S. at 589; Bogard 846 F.2d at
13 566.

14 The United States Supreme Court has declared that while “the Constitution nowhere
15 specifies any period which must intervene between the required appointment of counsel and
16 trial, the denial of opportunity for appointed counsel to confer, to consult with the accused
17 and to **prepare his defense**, could convert the appointment of counsel into a sham and
18 nothing more than a formal compliance with the Constitution’s requirement that an accused
19 be given the assistance of counsel.” Avery v. Alabama, 308 U.S. 444, 446 (1940) (emphasis
20 added). Adequate time for defense preparation is one of the essential constitutional rights
21 afforded an accused, so that unreasonable time restraints imposed by a trial court violate the
22 Sixth Amendment. See e.g., United States v. King, 664 F.2d 1171, 1173 (10th Cir. 1981);
23 United States v. Poston, 902 F.2d 90, 96 (D.C. Cir. 1990); accord United States v.
24 Verderame, 51 F.3d 249, 252 (11th Cir. 1995) (also observing that “[i]n our system of justice,
25 the Sixth Amendment’s guarantee to assistance of counsel is paramount, insuring the
26 fundamental human rights of life and liberty.”)

27 It is beyond question that the physical impossibility of gathering and presenting
28 essential mitigating evidence in a death penalty case constitutes justifiable grounds for a

1 delay and that a refusal to grant the request would be unreasonable. In these circumstances,
2 the denial of a continuance would deprive Jose of the means and time necessary to prepare an
3 adequate defense, which would “detract from the perception of the trial as a decisive and
4 portentous event.” Wainwright v. Sykes, 433 U.S. 72,, 91 (1977).

5 A trial court’s refusal to grant a continuance that is clearly necessary to ensure an
6 adequate defense is the quintessential basis for an appellate finding of abuse of discretion
7 warranting reversal. See generally, Dillion v. Duckworth, 751 F.2d 895 (7th Cir. 1984) (retrial
8 warranted in capital murder case where trial judge arbitrarily denied defense counsel’s
9 request for continuance based on inability to provide effective assistance); United States v.
10 Fessel, 531 F.2d 1275 (5th Cir. 1976) (refusal to grant continuance to permit defendant to
11 secure testimony and evidence necessary to insanity defense warranted reversal); Bennett v.
12 Scroggy, 793 F.2d 772 (6th Cir. 1986) (denial of continuance necessary to obtain attendance
13 of favorable witness effectively denied appellant the opportunity to present his only defense:
14 see also Romine v. State, 305 S.E.2d 93, 102 (Ga. 1983) (error to fail to grant continuance of
15 penalty phase so that defendant’s grandfather could be present to testify).

16 “Although rulings on motions for continuance are traditionally best left to the trial
17 court’s discretion, a judge is not imbued with the power to abrogate a criminal defendant’s
18 constitutional rights.” King 664 F.2d at 1173. Adequate time for defense preparation is one
19 of the rights afforded an accused under the Sixth Amendment guarantee of the right to
20 counsel. See Powell v. Alabama, 287 U.S. 45 (1932). Interference with a defendant’s right to
21 counsel will warrant reversal so long as it “had or threaten(ed) some adverse effect upon the
22 effectiveness of counsel’s representation...” United States v. Morrison, 449 U.S. 361, 365
23 (1981). Unquestionably, proceeding with a capital trial before the defense can investigate and
24 prepare its innocence stage defense and case in mitigation (dispite its diligent efforts to do
25 so) would be highly prejudicial to Jose’s effective representation. At a bare minimum,
26 therefore, the Sixth Amendment requires a continuance in these circumstances.

27 ...

28

1 **CONCLUSION**

2 Due to the absolute impossibility either now or in the foreseeable future of conducting
3 the mitigation investigation in Mexico that is essential to the defense of this capital case,
4 permitting the state to seek a death sentence would violate Jose's rights under the Sixth,
5 Eighth and Fourteenth Amendments to the United States Constitution. Jose therefore
6 respectfully requests that this Honorable Court grant his motion to preclude the death penalty.
7 Should the Court decide not to preclude the death penalty, Jose requests a continuance so as
8 to ensure the preservation of his constitutional rights to a fair trial and effective
9 representation.

10 DATED this 17TH day of March, 2015.

11
12 SUBMITTED BY:

13 DAVID M. SCHIECK
14 SPECIAL PUBLIC DEFENDER

15 /s/ CLARK W. PATRICK

16 _____
17 CLARK W. PATRICK
18 ALZORA B. JACKSON
19 Attorneys for Gonzales

20 **CERTIFICATE OF ELECTRONIC FILING**

21 I hereby certify that service of the above and foregoing, was made on 3/17/15, by

22 Electronic Filing to:

23 DISTRICT ATTORNEY'S OFFICE
24 motions@clarkcountynvda.com

25 Co-defendant Yvonne Cabrera:

26 BRET WHIPPLE, ESQ. Bret@mylasvegaslawyer.com
27 PATRICIA ERICKSON, ESQ. pme@pmericksonlaw.com

28 /s/ KATHLEEN FITZGERALD

Legal Executive Assistant for
Special Public Defender

CLERK OF THE COURT

1 EXH
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0824
5 CLARK W. PATRICK
6 Deputy Special Public Defender
7 Nevada Bar #9451
8 ALZORA B. JACKSON
9 Deputy Special Public Defender
10 Nevada Bar #2255
11 330 So. Third Street, Suite #800
12 Las Vegas, Nevada 89155
13 (702) 455-6265
14 FAX: (702) 455-6273
15 cpatrick@clarkcountynv.gov
16 ajackson@clarkcountynv.gov

17 Attorneys for GONZALES

18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

20 THE STATE OF NEVADA,
21
22 Plaintiff,

CASE NO. C-12-283700-2
DEPT. NO. 25

23 vs.

24 JOSE A. GONZALES, ID 2636822,
25
26 Defendant.

27 **EXHIBITS TO**
28 **MOTION TO PRECLUDE THE STATE FROM SEEKING**
THE DEATH PENALTY DUE TO DEFENSE COUNSEL'S
INABILITY TO CONDUCT A THOROUGH AND
COMPLETE MITIGATION INVESTIGATION OR, IN THE
ALTERNATIVE TO STAY PROCEEDINGS UNTIL
THE DEFENSE TEAM CAN SAFELY
CONDUCT ITS MITIGATION INVESTIGATION IN MEXICO

Date: March 30, 2015
Time: 9:00 a.m.

COMES NOW, Defendant, Jose Gonzales, by and through his attorneys, David M. Schieck, Special Public Defender, Clark W. Patrick, Deputy Special Public Defender, and Alzora B. Jackson, Deputy Special Public Defender, and submits the attached Exhibits A through J to the Motion to Preclude the State from Seeking the Death Penalty Due to Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, in the

1 Alternative to Stay Proceedings Until the Defense Team Can Safely Conduct its Mitigation
2 Investigation in Mexico which were not attached to the motion filed March 17, 2015.

3 DATED this 18TH day of March, 2015.

4
5 SUBMITTED BY:

6 DAVID M. SCHIECK
7 SPECIAL PUBLIC DEFENDER

8 /s/ CLARK W. PATRICK 

9 CLARK W. PATRICK
10 ALZORA B. JACKSON
11 Attorneys for Gonzales

12 CERTIFICATE OF ELECTRONIC FILING

13 I hereby certify that service of the above and foregoing, was made on 3/18/15, by
14 Electronic Filing to:

15 DISTRICT ATTORNEY'S OFFICE
motions@clarkcountyda.com

16 Co-defendant Yvonne Cabrera:

17 BRET WHIPPLE, ESQ. Bret@mylasvegaslawyyer.com
18 PATRICIA ERICKSON, ESQ. pme@pmericksonlaw.com

19 /s/ KATHLEEN FITZGERALD

20 _____
21 Legal Executive Assistant for
22 Special Public Defender

EXHIBIT A

000027



HOMICIDE UP 55% IN DRUG-PLAGUED MEXICAN STATE OF MICHOACÁN



By FRANCIS MARTEL (COLUMNIST)/FRANCIS MARTEL | 24 Apr 2014 | POST A COMMENT /BIG-PEACE/2014/04/24/HOMICIDE-UP-55-IN-DRUG-PLAGUED-MEXICAN-STATE-OF-MICHOACÁN-COMMENTS



While President Enrique Peña Nieto's campaign against violence is helping subdue crime in many parts of Mexico, the southwestern state of Michoacán, home to some of the most violent drug cartels in the nation, experienced a 55% spike in homicides in 2014.

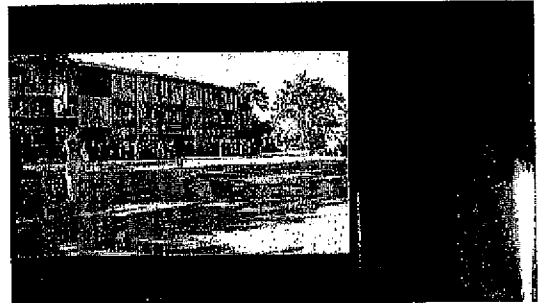
A report in Spanish newspaper *El País* (http://internacional.elpais.com/internacional/2014/04/23/actualidad/1398280525_444963.html) new statistics from Mexico's National Public Safety System that expose the dangerous state of affairs in a province marred by its attractiveness to large drug cartels and propensity for inter-cartel wars that often impact the lives of civilians. Michoacán police registered 272 homicides between January and March 2014; only 175 homicides occurred during those same months in 2013. The new statistics are part of a growing trend: Michoacán registered 162 homicides during the first three months of 2012, and only 152 homicides in the equivalent period of 2008.

Michoacán has also suffered a significant increase in other crimes. As *El País* notes, the state also saw an increase in armed robberies, kidnappings, and incidents of rape. Rape reports were up almost 30% this year, from 84 reports of incidents in the first three months of 2013 to 108 this year.

The statistics from other areas of Mexico proves that Michoacán is facing a unique problem. On a national level, homicides dropped 12% during the first three months of the year. There are currently 4,047 homicides on the record for 2014; this time last year, Mexico had registered 4,610. Of those 4,610, 961 were in Michoacán.

The higher homicide rate comes as a surprise to some, as the Mexican government made gigantic strides in the war on drug cartels during the first quarter of the year. In February, Mexican officials arrested Joaquín 'El Chapo' Guzmán (<http://www.breitbart.com/Breitbart-Texas/2014/02/23/Cartel-Kingpin-Arrest-Signals-End-Of-Era>), the head of the notorious Sinaloa cartel and one of the most dangerous and

BREITBART VIDEO PICKS



More without



<http://www.breitbart.com/exclusive/american-heart/>

MOST POPULAR

• [Democrats Launch Campaign to Get Rush Limbaugh Off the Air](http://www.breitbart.com/Big-Journalism/2014/09/22/Democrats-get-Limbaugh-off-air/) (<http://www.breitbart.com/Big-Journalism/2014/09/22/Democrats-get-Limbaugh-off-air/>)

17 comments • 0 minutes ago

• [The Ancient War Between the Judeo-Christian West and Islam](http://www.breitbart.com/Big-Peace/2014/09/21/The-Ancient-War-Between-the-Judeo-Christian-West-and-Islam/) (<http://www.breitbart.com/Big-Peace/2014/09/21/The-Ancient-War-Between-the-Judeo-Christian-West-and-Islam/>)

162 comments • 0 minutes ago

• [Thousands Take to the Streets Worldwide To Demand More Taxes, Less Energy](http://www.breitbart.com/Breitbart-London/2014/09/21/Thousands-Take-To-Streets-For-Climate-March/) (<http://www.breitbart.com/Breitbart-London/2014/09/21/Thousands-Take-To-Streets-For-Climate-March/>)

196 comments • 2 minutes ago

• [The List: Every Journalist in the Game Turns Pro Group Revealed](http://www.breitbart.com/Breitbart-The-List/2014/09/21/Every-Journalist-in-the-Game-Turns-Pro-Group-Revealed/) (<http://www.breitbart.com/Breitbart-The-List/2014/09/21/Every-Journalist-in-the-Game-Turns-Pro-Group-Revealed/>)

clusive drug lords in Latin America. Guzmán had risen from the ashes of the Guadalajara cartel of the 1980s to become the leader of his own organization of drug traffickers, a group that had caused mayhem for decades in southwestern Mexico.

The arrest of El Chapo was not enough, however, and the rise in drug-related violence in Michoacán proved just how sophisticated drug cartel operations can be. This week, Mexican officials announced a mass arrest (<http://www.breitbart.com/system/wire/67825b6b-d6eb-4ca4-9032-0862ea17c8a6>) of more than one hundred drug-affiliated criminals in the state—all posing as anti-drug cartel vigilantes. The Mexican government's inability to reach the most remote areas of the state, controlled by violent organized crime groups, has resulted in a counter-offensive by armed civilians, particularly against the large Knights Templar drug cartel (<http://www.breitbart.com/Big-Peace/2014/01/13/Mexicans-Relying-On-Vigilante-Self-Help-Groups-To-Fight-Cartels>).

The AFP notes (<http://www.breitbart.com/system/wire/67825b6b-d6eb-4ca4-9032-0862ea17c8a6>) that senior federal official Alfredo Castillo explained that police had had their suspicions of these groups for some time, but could not find infiltrated organized crime members until now: "The suspected criminals clearly covered their activities by posing as members of the self-defense groups in that town, wearing white shirts with the words 'Free Huacamo' and 'Self-Defense Group.'"

Despite the tragic news from Sinaloa, many are optimistic that this time, the increase in homicides is a product of a significant diminishing of the power of the Knights Templar, coupled with the fall of El Chapo—a last gasp of the old order. That is not to say that the end of the Knights Templar would signify and end to the power of organized crime in the region. In *Forbes*, [Tristan Reed explains](http://www.forbes.com/sites/stratfor/2014/04/17/mexicos-drug-war-substantial-changes-occur-in-michoacan/) (<http://www.forbes.com/sites/stratfor/2014/04/17/mexicos-drug-war-substantial-changes-occur-in-michoacan/>): "the massive losses for the Knights Templar in such a short period will likely trigger substantial shifts in organized crime dynamics in Michoacan, including the expansion of old or the creation of new, smaller criminal groups into the void left by the Knights Templar."

Related Video

promphilewecarboxa28a607_uom_source=ballbeton51stools_uib_medium=bytsocod51aboda_uifm_santee=burbs2:Ballon Main Column)
yitemplate=60f0x51aboda_uom_source=ballbeton51stools_uib_medium=bytsocod51aboda_uifm_santee=burbs2:Ballon Main Column)

We Recommend

(http://nymag.com/thecut/2014/09/all-the-looks-from-the-2014-met-gala.html?mid=lookab_cut_slideshow)
Most Outrageous Gowns at the Met Gala
The Cut

(http://nymag.com/thecut/2014/09/all-the-looks-from-the-2014-met-gala.html?mid=lookab_cut_slideshow)
all-the-looks-from-the-2014-met-gala.html?mid=lookab_cut_slideshow)

(http://doublicel.com/uk/2886168?BITPAS_ID%3D7
https://www.americanexpress.com/us/en-business/openforum/articles/5-things-successful-people-do-that-others-dont?extlink-of-syndication-Recommended_Reeds-Tobola-109704871-p)
5 Things Successful People Do That Others Don't
American Express OPEN

(http://doublicel.com/uk/2886168?BITPAS_ID%3D7
https://www.americanexpress.com/us/en-business/openforum/articles/5-things-successful-people-do-that-others-dont?extlink-of-syndication-Recommended_Reeds-Tobola-109704871-p)

(http://talk.4mat.com/MON/2014/09/22/1699418
7 Bad Habits That Are Secretly Driving Your Co-Workers Crazy
Monster
(http://talk.4mat.com/MON/2014/09/22/1699418)

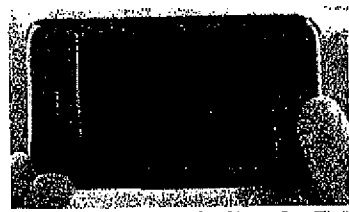
(http://www.moneynews.com/MKTNews-stuffretireplan-social-security-need-2014/08/07/286916?d1_1br=227112&utm_source=taboola
Burn Before 1968? These 200 Secret Deals Are For You
Moneynews

London/2014/09/21/GameJournalPro
-we-reveal-every-journalist-on-the-list)

209 comments 9 minutes ago

Three Afghan Soldiers Disappear from Cape Cod Base
(http://www.breitbart.com/Big-Peace/2014/09/22/Three-Afghan-Soldiers-Disappear-from-Cape-Cod-Base)
218 comments 0 minutes ago

Fox News National
President: No danger from social media threat that prompted dramatic lookdown at Alabama
(http://feeds.foxnews.com/~v/foxnews/national/~3/24FN
28 Sep 2014, 8:07 AM PDT
Alaska television reporter quits on air to promote medical marijuana business
(http://feeds.foxnews.com/~v/foxnews/national/~3/ur-8dP3A3aB/1)
20 Sep 2014, 7:45 AM PDT
Bankrupt judge is asked to stop Detroit water shut-off; city says water can't be free
(http://feeds.foxnews.com/~v/foxnews/national/~3/X-eSv
28 Sep 2014, 7:12 AM PDT
US existing home sales drop 1.8 percent in August; slowdown in investors buying homes
(http://feeds.foxnews.com/~v/foxnews/national/~3/Mnro
28 Sep 2014, 7:08 AM PDT
Death of student after fraternity gathering may be alcohol-related, prosecutor says
(http://feeds.foxnews.com/~v/foxnews/national/~3/z1Q1u
22 Sep 2014, 6:46 AM PDT)



(/System/Breitbart%20Send%20A%20Tip?
page=%20Big-Peace%202014%20of04%2024%
20Homicide-up-55-in-Drug-Plagued-
Mexican-State-of-Michoac-n)

NEWSmax

Lois Lerner Speaks: 'I Did Nothing Wrong' (http://engine.newsmaxfeednetwork.com/eng/1hd16NzE1MzeslmF0JjoxMywiYnC
&utm_source=Breitbart&utm_medium=
Obama Fumbles Using Famous Reagan Phrase
(http://engine.newsmaxfeednetwork.com/eng/1hd16NzE1MzeslmF0JjoxMywiYnC
&utm_source=Breitbart&utm_medium=

EXHIBIT B

000030

iOS app (http://itunes.apple.com/us/app/the-huffington-post/id308621789?mt=8)

Log In Create Account

Android app (https://play.google.com/store/apps/details?id=com.huffpost) [Screenshot]

6380

December 29, 2014
(https://www.facebook.com/sharer/sharer.php?u=http%3A%2F%2Fwww.huffingtonpost.com%2F%2F4%2F10%2F31%2Fmexico-violence-numbers_n_6075258.html)

Tweet:
(https://twitter.com/intent/tweet?language&ext=1%3DNumbers+To+Help+You+Understand+The+Violence+Rocking+Mexico+http%3A%2F%2Fwww.huffingtonpost.com/world)

Editor: U.S.

Like 460k

Follow

Newsletters

Huffington Post Search

FRONT PAGE (http://www.huffingtonpost.com) POLITICS (http://www.huffingtonpost.com/politics/) BUSINESS (http://www.huffingtonpost.com/business/) MEDIA (http://www.huffingtonpost.com/the-world-post) * Bergevin Inevitable on Governance (http://bergevin.org) * Chinafile (http://www.chinafile.com)



(http://www.huffingtonpost.com/2014/12/28/afghanistan_n_6386802.html)
U.S. Formally Ends War in Afghanistan
(http://www.huffingtonpost.com/2014/12/28/afghanistan-war-ends_n_6386802.html)



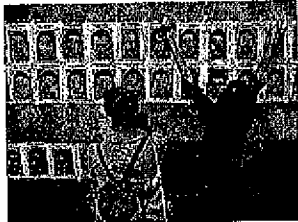
(http://www.huffingtonpost.com/2014/12/28/asia-airline_n_6386842.html)
Missing AirAsia Plane Likely 'At The Bottom Of The Sea' (http://www.huffingtonpost.com/2014/12/28/asia-airline-java-sea_n_6386842.html)



(http://www.huffingtonpost.com/2014/12/27/misstravel_n_6385946.html)
AirAsia Flight From Indonesia To Singapore Loses Contact With Air Traffic Control
(http://www.huffingtonpost.com/2014/12/27/misstravel-airasia-flight_n_6385946.html)

11 Numbers To Help You Understand The Violence Rocking Mexico

The Huffington Post | By Eline Cordts (eline.cordts@huffpost.com) | Posted: 10/31/2014 1:28 pm EDT | Updated: 11/26/2014 1:59 pm EST



Every week, we bring you one overlooked aspect of the stories that made news in recent days. Have you noticed the media forgetting all about another story's basic facts? Tweet @TheWorldPost (https://twitter.com/TheWorldPost) or let us know on our Facebook page (https://www.facebook.com/the-world-post).

On Sept. 26, dozens of students at a Mexican teachers' college went missing (http://www.huffingtonpost.com/2014/10/30/mexico-missing-students_n_6069706.html?hpid=hp_top-story-table-table-11#hpid=hp_top-story-table-table-11) after a protest in the city of Iguala. They were last seen being hauled off into police vans and haven't been heard from since.

While searching for the missing students, investigators have uncovered a string of mass graves, police working for drug cartels and government officials at the helm of criminal operations.

While overall violence in Mexico has decreased (http://www.stratfor.com/weekly/mexicos-drug-war-persisting-violence-and-new-president#axzz3HjpoVrNZ) in recent years, the current investigation has once again put the spotlight on the ruthless force of the drug cartels, brutal behavior by state security forces, and rampant corruption that are haunting parts of the country.

Here are 11 numbers that will help you understand the security situation in Mexico.

ADVERTISEMENT

JOIN SRM THE #1 RESOURCE FOR HR PROFESSIONALS BECOME A MEMBER

PRESENTED BY DISCOVER The Seven Financially Fatal Sins We All Made This Year (And How To Atone) (http://www.huffingtonpost.com/2014/12/19/financially-fatal-sins_n_6201230.html) Quick Read (http://www.huffingtonpost.com/2014/12/19/financially-fatal-sins_n_6201230.html) Comments (http://www.huffingtonpost.com/2014/12/19/financially-fatal-sins_n_6201230.html#comments) [12.21.2014]

SUGGESTED FOR YOU

43

The number of students missing since the Iguala protest in September. According to witnesses (<http://www.newyorker.com/news/news-desk/isis-mexico-disappearance-forty-three>) the students were heading out of the city when several ~~gangs~~ came under fire by police and masked gunmen. By the night's end, six people had been shot dead. The body of one student was later found with his face skinned and his eyes gouged out. Dozens of young men were seen (<https://www.facebook.com/wharshaver/photos/a/21632325345/21632325345/?type=3&theater>) near Iguala in the search for the missing students. The remains that have been identified through DNA tests so far have not belonged to the missing students. The results of additional DNA tests are still pending.

12

The number of clandestine graves found (<http://www.bbc.com/news/world-latin-america-25419448>) near Iguala in the search for the missing students. The remains that have been identified through DNA tests so far have not belonged to the missing students. The results of additional DNA tests are still pending.

85,000

The total number of people estimated to have been killed (<http://www.reuters.com/article/2014/03/07/us-mexico-violence-women-idUSBR6A2608P20140307>) since the the administration of former President Felipe Calderón launched its war on the drug cartels.

The International Crisis Group explains (<http://www.crisisgroup.org/en/regions/latin-america-caribbean/mexico/048-pena-nieto-challenge-criminal-cartels-and-rule-of-law-in-mexico.aspx>) that drug cartel violence in Mexico began to escalate in 2004, under former President Vicente Fox. After assuming office in 2006, Calderón launched a massive crackdown against the criminal organizations, relying in large part on the army. While security forces seized record amounts of drugs and were able to capture or kill dozens of cartel bosses, the offensive came at a price.

Violence between rival cartels and the security forces lead to years of intense bloodshed. The security forces' brutal tactics compromised their legitimacy. And while the aggressive action made it harder for cartels to make money from the drug trade, it also fostered the growth of smaller criminal groups that relied on criminal activities other than smuggling drugs, such as kidnappings and extortion.

Calderón's successor, current President Enrique Peña Nieto, vowed at the start of his presidency (<http://www.bbc.com/news/world-latin-america-10681249>) to reverse Calderón's approach and reduce the role of the military in the fight against the cartels.

8,000

The number of people reported missing or disappeared from the start of Peña Nieto's administration in late 2012 until May 2014, according to Mexico's Interior Minister Osorio Chong (<http://www.hrw.org/news/2014/10/08/mexico-disappearances-response-falls-short>). The official later clarified that the actual number of "people not found" topped 22,000, a list that includes people who were reported missing during both the Calderón and Peña Nieto administrations.

22,732

The number of homicides in the country reported in 2013, according to Mexico's National Statistics Institute (<http://online.wsj.com/articles/mexican-homicide-rate-fell-12-5-in-2013-statistics-agency-says-1406155624>) (Inegi). Inegi reports that the main cause of deaths was firearms, followed by knives and strangling. The data do not specify how many of the cases were related to organized crime.

The 2013 rate, which is equivalent to about 19 homicides per 100,000 residents, is a significant drop from the number of cases at the height of the war on the cartels, when rates spiked to 23 homicides per 100,000. The investigative journalism group InSight Crime points out, however, that the statistics don't include bodies that were never found (<http://www.insightcrime.org/news-analysis/mexico-president-trumpeta-security-improvements/>).

By comparison, the 2012 murder rate in the United States (<http://www.rawstory.com/rs/2013/09/09/u-s-murder-rate-higher-than-nearly-all-other-developed-countries-fbi-data/>) was 4.7 per 100,000 people. The highest national murder (<http://www.cnn.com/2014/04/10/world/un-world-murder-rates/>) rate in 2012 was recorded in Honduras, with 90.4 homicides per 100,000.

10.7 Million

The estimated number of households from which at least one member was the victim of crime in 2013, according to a self-reported survey conducted earlier this year by Mexico's National Statistics Agency (<http://www.insightcrime.org/news-briefs/6062-mexico-victimization-survey-highlights-reporting-gap>). The number is equivalent to nearly 40 percent of Mexican households.

InSight Crime notes that the survey numbers are far higher than Mexico's official crime statistics, suggesting that a large number of offenses may go unreported. The group calculates that according to the data, 90 percent of crimes were never reported in 2013. (<http://www.insightcrime.org/news-briefs/6062-mexico-victimization-survey-highlights-reporting-gap>)

When it comes to violence in Mexico, the violence rocking Mexico (aka the 3A's: Acapulco, Tijuana, and San Diego) is especially pronounced when it comes to kidnappings, InSight Crime adds. While the study indicates 120,000 people were estimated to have been the victim of kidnapping in 2013, only 1,698 cases were reported.

1,698

The number of reported kidnappings in 2013, which is up 15 percent (<http://www.insightcrime.org/news-analysis/mexicos-kidnapping-hotspots>) from the year before. The number of kidnappings has grown every year since Calderón launched his massive crackdown on the cartels.

2,764

The number of women murdered in Mexico (<http://www.reuters.com/article/2014/09/07/us-mexico-violence-women-idUSBR2A2608F20140907>) In 2012, Reuters notes that the number rose 155 percent between 2007 and 2012. In northeastern Mexico, the rate jumped by an even higher 500 percent between 2004 and 2010. The most dangerous state for women in 2012 was Chihuahua, with 22.7 murders for every 100,000 female residents.

47,000

The number of migrants estimated to have been killed in the past six years due to organized crime while crossing Mexico on their way to the United States. This figure, compiled by the Institute for Women in Migration (<http://www.iwm.int/files/live/sites/iwm/files/phn/docs/Fatal-Journeys-Tracking-Lives-Lost-during-Migration-2014.pdf>), includes both Central Americans and Mexicans. According to the National Commission for Human Rights, at least 70,000 migrants disappeared in Mexico between 2007 and 2012.

600 Percent

The rise in the number of reported cases of torture at the hands of Mexico's police or armed forces in the past decade. Amnesty International reports that more than 1,500 people filed a complaint about torture or ill-treatment by authorities (<http://www.amnesty.org/en/news/mexico-shocking-rise-reports-torture-and-ill-treatment-authorities-turn-blind-eye-2014-09-24>) in 2013, a 600 percent rise from the number of complaints in 2003. The complaints included accusations of beatings, death threats, sexual violence, electric shocks and near-asphyxiation. A separate Amnesty survey found that 64 percent of Mexicans are afraid they would be tortured by authorities if they were to be detained.

7

The number of torturers convicted in Mexico's federal courts, according to Amnesty. The group notes that according to Mexico's Federal Judicial Council, federal courts dealt with 123 prosecutions for torture between 2005 and 2013. Just seven of those cases resulted in convictions under federal law.

More From The World Post On The Search For The Missing Students:

- [Mexico Is Looking For 43 Missing Students. What Has Been Found Is Truly Terrifying](http://www.huffingtonpost.com/2014/10/30/mexico-missing-students_n_6069706.html?hpid=hp-ref-world)
- [On The Blog, Enough! Mexico Is Ready To Explode](http://www.huffingtonpost.com/2014/10/30/mexico-missing-students_n_6069706.html?hpid=hp-ref-world)

MORE: [Mexico, Mexico Violence, Mexico Violence Numbers, Mexico Homicides, Mexico Violence Death Toll, Missing Persons, Mexico Missing Students, Juarez Mexico Students, WorldPost America](#)

Suggest a correction

FOLLOW HUFFPOST

Email Address

Sign me up!

The Morning Email WorldPost

Get top stories and blog posts emailed to me each day.

<http://www.time.com/>

[Watch Aziz Ansari Get Ridiculous With Grover on Sesame Street](http://time.com/3528686/aziz-ansari-sesame-street-grover/)

[Led Zepplin Loses First Round in 'Stairway to Heaven' Lawsuit](http://time.com/3528655/led-zepplin-loses-first-round-in-stairway-to-heaven-lawsuit/)

[Tinder Thinks You'll Pay to Find a Match. Swive Right?](http://time.com/3528478/tinder-mobile-dating-app/)

[Time - Politics](http://www.time.com/)

EXHIBIT C

000034



Vigilante groups in Michoacan

Homicide and extortion levels have risen significantly this year in Michoacan, southwest Mexico, indicating that vigilante groups have not proven successful at reducing violence, and may be contributing to the worsening security situation.

Homicides increased by almost 45 percent in Michoacan in the first six months of 2014 compared to the same

period last year, according to statistics released by Mexico's Secretary for National Public Security (SESNSP) (pdf). In total, 555 homicides were reported in the state between January and June 2014, up from 384 murders in that period in 2013.

The months of March and May this year marked the first time homicides have reached 100 in a month since the government began its records in 2006, reported Milenio.

According to the figures, extortion has also increased by over 40 percent in the state. Between January and June this year 225 extortion cases were reported, up from 157 cases in the same period in 2013. These figures mark the highest level in a six-month period since 2009, according to Milenio.

InSight Crime Analysis

The recent government figures indicate that although Michoacan's self-defense groups may have weakened the Knights Templar cartel, they have not succeeded in improving the state's security situation. In fact -- despite a January agreement between vigilantes and government authorities to incorporate self-defense groups into an official rural defense force -- the vigilantes may be contributing to a deteriorating security situation.

SEE ALSO: Mexico's Security Dilemma: Michoacan's Militias

Although Michoacan's security commissioner launched the rural defense forces in May, only around 3,000 of the estimated 20,000 vigilantes had applied to join the force by the registration deadline. Self-defense forces that either chose not to take part or were excluded from the process have continued to operate in the region, with one rogue group taking over a town near the port of Lazaro Cardenas in late June. The rise of the militias has led to a large quantity of unregulated arms in the region, including high-power weapons such as AK-47s, AR-15s, and sniper rifles.

There have also been indications that some vigilantes have become criminalized, raising the question of whether the groups might themselves be extorting locals.

The rise in homicides and extortion is likely attributable in part to a scramble for territory among criminal groups looking to fill the power vacuum left by the depleted Knights Templar. One of the groups attempting to take over what remains of the Knights' criminal empire is the Jalisco New Generation Cartel (CJNG), which the Mexican government has claimed worked with Michoacan's vigilante groups in their fight against the Knights Templar.

What are your thoughts? [Click here](#) to send InSight Crime your comments.

We also encourage readers to copy and distribute our work for non-commercial purposes, provided that it is attributed to InSight Crime in the byline, with a link to the original at both the top and bottom of the article. Check the Creative Commons website for more details of how to share our work, and please send us an email if you use an article.

EXHIBIT D

000037

This site uses cookies. By continuing to browse the site you are agreeing to our use of cookies. [Find out more here](#)

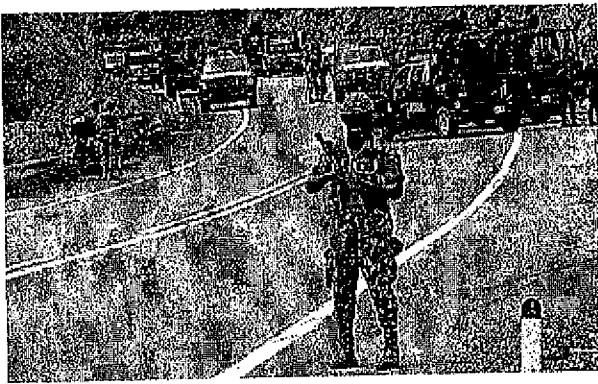
theguardian

Search

Mexico violence leaves 22 dead in Michoacan

Gunmen blocked roads and ambushed police as fighting intensifies between police and drug cartel in western Mexico

Associated Press in Mexico City
theguardian.com, Wednesday 24 July 2013 02:26 EDT



Federal agents and soldiers stand guard on a road in Michoacan where officers were ambushed leaving 20 gunmen and two federal agents dead. Photograph: Str/EPA

Violent clashes across the Mexican state of Michoacan killed at least 20 gunmen and two federal police officers, the government said.

Gunmen blocked roads and ambushed police patrols in at least six different areas of Michoacan on Tuesday, the interior department said in a statement.

The department said federal agents repelled the attacks, killing 20 and wounding an unknown number of assailants. Two police officers died in the shootouts and 15 were wounded, it said.

Fighting between the Knights Templar drug cartel and federal police has been intensifying over the past week in western Mexico. At least four police officers have been killed in shootouts with gunmen in Michoacan since Thursday.

On Monday, five people were killed when gunmen opened fire on a group of community self-defence members gathered on a plaza in the Michoacan town of Los Reyes.

About 300 masked community vigilantes wearing similar T-shirts arrived at city hall in Los Reyes and announced they would take over policing the town. Minutes later three assailants opened fire on the crowd, killing three members of the self-defence group, a police officer and a passer-by, prosecutors said.

Self-defence squads have been set up in recent months in Michoacan by people who say they are fighting violence, kidnappings and extortions carried out by drug cartels.

Also on Tuesday, authorities in the northern state of Chihuahua said police found the bodies of six men in a remote village where several homes and cars were set ablaze.

A statement from Chihuahua state prosecutors said two of the victims found in the village of Mesa de la Reforma had been decapitated and all six were shot.

Four of the victims were wearing law enforcement uniforms and bulletproof vests but are not believed to have been police officers or soldiers, prosecutors said.

The bodies were found on Monday. The village is part of the town of Guadalupe y Calvo, which is in the "Golden Triangle", an area used to grow marijuana and opium poppies.



Get the Guardian's daily US email

Our editors' picks for the day's top news and commentary delivered to your inbox each morning.

[Sign up for the daily email](#)

More from the Guardian

[What's this?](#)



Boris Johnson's parliamentary fate to be decided at Ruislip hustings
12 Sep 2014



The new group at freshers' week - helicopter parents
08 Sep 2014



Move to name Madrid square after Thatcher criticised as 'disrespectful'
12 Sep 2014



Ninety-year-old gay couple marries in Iowa after 72 years together
08 Sep 2014

More from around the web

[What's this?](#)

Promoted content by Outbrain



'Aunt Jemima' heirs sue Pepsi, Quaker Oats for \$2 billion in royalties
(Fortune)



Fast-Food Workers Could Face Robot Armageddon: Industrial Roundup
(Tark Better Business Center)



Book Lovers Are Asking: Why Didn't I Find Out About This Website Sooner?
(The BookBub Bulletin)



Flare pans: A faster, greener way to boil liquids
(Tech Page One)

Recommended by

EXHIBIT E

EL UNIVERSAL.com.mx

Six killed in clashes in Jiquilpan, Michoacán

Dalia Martínez / correspondent | El Universal

07:27 Friday 02 May 2014

Twitter 0

This is the second shoot out in the area in less than 48 hours

At least six men were killed in a shoot out in the municipality of Jiquilpan, Michoacán. One of the victims was identified as a former local policeman.

This the second clash in less than 48 hours in the area, and it is considered part of a new dispute between the New Generation cartel, from Jalisco, and the Templar Knights.

According to the Public Security Ministry (SSP) in Michoacan, the combat began around 9:00 pm in Jiquilpan, and then move to Sahuayo, near the state of Jalisco.

Preliminary reports indicate that a crossfire began around 10:00 pm in the bar K-ONE, in Jiquilpan, on the road from this town to San José de Gracia-Manzanillo.

An armored group entered the bar, apparently looking for two persons, one of them a former municipal police, and when the couple tried to run away they were killed in the place.

The aggressors escaped on a truck and a few moments later another group of armed men went after them. The members of the first group were found dead on one of the main streets of the town.

The Mexican army was deployed in the area and the criminals were dispersed, but two men were found dead on other street and a few hours later another series of shoot outs were reported and two corpses were found in the aftermath.

So far, neither the Public Security Ministry or the Office of the Attorney General have an official report on the clashes.

[Regresar](#)
[Imprimir](#)

© Queda expresamente prohibida la republicación o redistribución, parcial o total, de todos los contenidos de EL UNIVERSAL

EXHIBIT F

000043



6 Dead in Cartel-Style Killings in Western Mexico

6 men dead in cartel-style killings in west Mexico state; drug lord's brother also found slain

The Associated Press

MORELIA, Mexico

The bound bodies of six men were found dumped on a street Friday in the western Mexico state of Michoacan, where authorities have claimed to be making headway against drug gang violence.

The dead men were found next to a hand-lettered sign in which a drug cartel claimed responsibility for the killings.

The Michoacan state prosecutors' office said in a statement that the bodies found in the city of Uruapan had bullet wounds. Photos showed the men's heads were wrapped in what appeared to be packing tape and their hands were tied behind their backs.

A sign left next to the bodies made an apparent reference to the New Generation drug cartel: "We are here now, and we are here to save you, Respectfully, the Michoacan New Generation Cartel."

New Generation is based in the neighboring state of Jalisco and has been battling the Michoacan-based Knights Templar cartel.

The Knights Templar gang was partly expelled from Michoacan by an armed vigilante movement and the Jalisco gang appears to be trying to move in.

In another part of the state, prosecutors reported finding the body of Aquiles Gomez, the brother of the Knights Templar's top remaining leader, Servando Gomez alias "La Tuta," or the Teacher. The body was found with a bullet wound in the Pacific coast port city of Lazaro Cardenas.

Servando Gomez remains at large and is believed to be hiding in the mountains of Michoacan

Following the vigilante uprising against the Knights Templar in early 2013, the federal government stepped up army and police presence in Michoacan and effectively deputized many of the vigilantes.

Despite those efforts, many people in Michoacan say the security situation remains grim.

"It is hasn't improved; this has all been cosmetic," writer and activist Homero Aridjis said. "There has been a political strategy, of declaring this (the security crisis) is over by decree."

Aridjis said some parts of the largely agricultural state have come to resemble the wild west, with roving bands of thieves stealing horses and cattle from farm families.

"This is destroying the farm economy, which is vital," Aridjis said.

Copyright 2014 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

EXHIBIT, G

000045



6 Dead in Clash Between Mexican Vigilante Groups

Clash between rival 'self-defense' groups leaves 6 dead in Mexican state of Michoacan

By ALBERTO ARCE

The Associated Press

MEXICO CITY

A clash between two rival "self-defense" groups in the western state of Michoacan on Tuesday left six people dead, including the son of one of the group's founders, officials and militia members said.

Alfredo Castillo, the federal government's security commissioner for Michoacan, told Grupo Formula radio that the groups fought at a barricade at the entrance to the community of La Ruana. He said it appeared that four from one side had been killed and two from the other.

"La Ruana is the only place where we have two leaders with influence," Castillo said.

The vigilante groups emerged more than a year ago when farmers and ranchers organized and armed themselves to confront drug traffickers in the violent state. In May, some members of "self-defense" groups were demobilized and integrated into a government-sanctioned rural police force.

Castillo said that a group led by a man nicknamed "El Americano" had been upset for several months by the way Hipolito Mora, the leader of the other group, had been taking over land in the area that had previously been controlled by the Knights Templar cartel. They had also disagreed over who would speak for the "self-defense" groups.

Castillo said the various groups must not try to expand their areas of influence.

"Each has to stay in his community," he said. "If we have clashes between different communities we'll practically have a civil war."

"We can't have strongmen," he said, adding that "those responsible for murder will be held accountable."

Mora told Milenio television that his group was attacked by a heavily armed rival.

Mora said there were "five or six dead, we don't have time to count them, among them my son."

Castillo said through his Twitter account that federal forces were trying to control the situation. A message left for his spokesman by The Associated Press was not immediately returned.

Tuesday's confrontation occurred in an agricultural region called the "Tierra Caliente," or Hot Land. It was supposed to be an area the federal government had gotten under control through the demobilization of the "self-defense" groups, which had largely succeeded in pushing the Knights Templar cartel out of

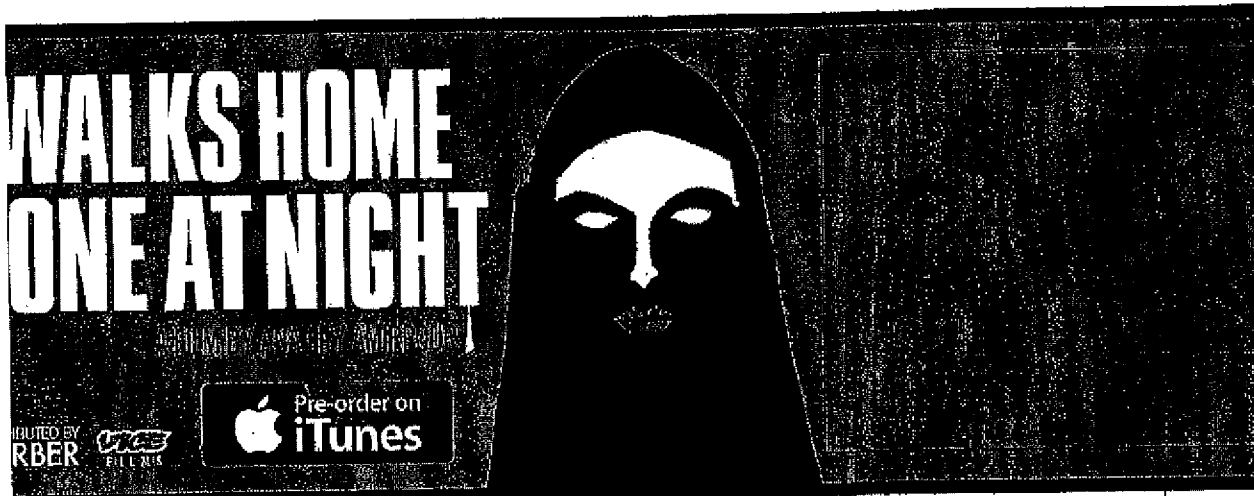
the state, something federal police and troops had been unable to do.

Copyright 2014 The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.

Copyright © 2014 ABC News Internet Ventures

EXHIBIT *A*

000048



BETA	ABOUT (ABOUT)	THE	CHANNELS	EN
https://news.vice.com				



AMERICAS (/TOPIC/AMERICAS)

Michoacan, the Birthplace of Mexico's Drug War, Is Still a Violent Quagmire

Share Tweet



By David Agren ([/contributor/david-agren](#))

January 13, 2015 | 12:10 pm

In December 2006, former Mexican president Felipe Calderón launched the country's current war against organized crime by sending troops to his home state Michoacan (<https://news.vice.com/topic/michoacan>), a place that is now bristling with tension and renewed fears after a string of shootings in recent days.

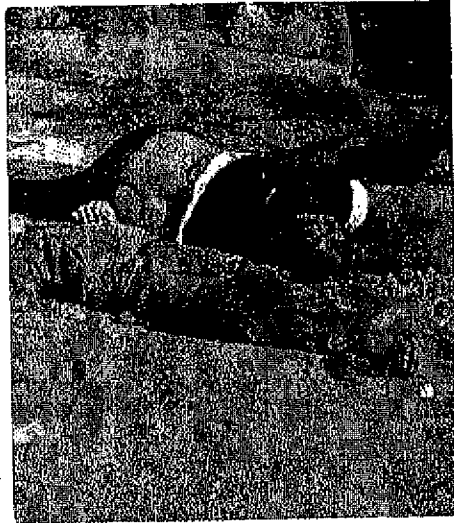
One year after the federal government sent a special commissioner to take over (<http://www.excelsior.com.mx/nacional/2014/01/16/938497>) security in Michoacan, claiming the commissioner would disarm the militias that had risen up against drug gangs, the state is still violent and impunity still pervades for serious crimes such as extortion, kidnapping, and homicide.

The militias remain armed and the violence appears to show no sign of letting up, signalling the persistent inability of federal forces to create tranquility for residents caught in the cross-fire between opposing forces.

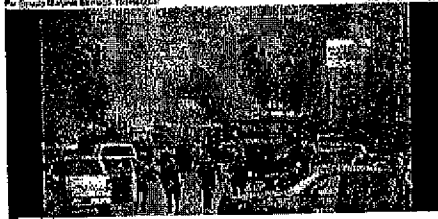
On Sunday morning, five autodefensa militia members from the tiny Pacific coast community of Huahua were killed after being ambushed (http://www.milenio.com/policia/emboscan_comunitarios_Aquila-matan_cinco_comunitarios_Aquila-muerenenfrentamiento_0_444555735.html) by a group of unidentified armed men on a dirt road heading toward a ranch called El Socorro.

Last Tuesday, January 6, nine people died after what authorities called a shootout between federal forces and members of another civilian militia who had been occupying the city hall in Apatzingán, about 315 miles west of Mexico City.

But witnesses insisted some of the victims tried to surrender, screaming, "Don't shoot," according to the Associated Press (<http://www.thestate.com/2015/01/10/3920340/clashes-in-western-mexico-call.html>). Graphic photos circulated online (<https://twitter.com/YaMeCanseDELPRI/status/552539297799491584>) of a group of victims found in a pile embracing one another, suggesting an intentional massacre.



enfrentamiento en Apatzingán



NO VEAS TELEVISA
@YaMeCanseDELPRI

Follow

A few hours ago in Apatzingan Mexico. @EPN Government kills family @TheEconomist @BarackObama @FT @WSJ @NewYorker

10:56 AM - 6 Jan 2015

2 RETWEETS



Federal officials on Monday denied the accusations of extrajudicial executions of the militia members who were forced out of the building, and said all but two of the victims were struck by friendly fire.

A shootout in mid-December between rival self-defense groups in the town of La Ruana, near Apatzingán, killed 11, including the son of lime grower Hipólito Mora (<https://news.vice.com/article/michoacan-mexico-breaks-bad-again-after-shootout-between-rival-militias-kills-11>), who founded the vigilante movements formed to fend off the Knights Templar drug cartel.

Michoacan Breaks Bad, Again, After Shootout Between Rival Militias Kills 11. Read more here. (<https://news.vice.com/article/michoacan-mexico-breaks-bad-again-after-shootout-between-rival-militias-kills-11>)

The Knights Templar symbolizes the fruits of the divide-and-conquer strategy of Mexico's federal security forces, for better or worse. The gang formed after the crippling of the cartel La Familia Michoacana — making the Knights Templar another example of a cartel emerging from a split or destruction (<https://news.vice.com/article/latest-mexican-drug-lord-arrest-is-a-fatal-blow-to-the-beltrn-leyva-cartel>) of a larger group.

The cult-like "Familia" helped spark Calderon's military push against organized crime by bowling human heads onto a dance floor in 2006. La Familia split in 2010, sparking a criminal war over control of Michoacan's lucrative meth and agricultural markets. The Knights Templar faction prevailed.

The gang then dove deeper into illegal activities (<https://news.vice.com/video/fighting-mexico-39-s-knights-templar-cartel>) such as extortion, to the point that shoe shine boys and fruit vendors paid them part of their profits, until the self-defense groups began forming in February 2013, and started running them off.

Now the self-defense groups appear to be fighting each other, or carrying out the same illegal acts they once combatted.

Further clouding the battle lines, former cartel members in some cases join the ranks of the vigilantes forces, a phenomenon leading to fatal confrontations between opposing (https://news.vice.com/article/mexico-s-self-defense-militias-follow-cartels-into-deadly-internal-conflict) self-defense groups.

Mexico's Self-Defense Militias Follow Cartels Into Deadly Internal Conflict. Read more here. (https://news.vice.com/article/mexico-s-self-defense-militias-follow-cartels-into-deadly-internal-conflict)



Alberto Suárez Inda, the recently appointed archbishop of Morelia, Michoacan. (Photo by David Agren)

"There's a big confusion," said Archbishop Alberto Suárez Inda of Morelia, the Michoacan state capital, in an interview with VICE News.

"They changed their shirts and now they're self-defense forces," he said of the so-called *arrepentidos*, or "repentant ones" who leave criminal gangs to join the vigilantes.

Pope Francis elevated Suarez to cardinal only recently, on Jan. 5. The appointment was widely seen as a sign of the Vatican's dissatisfaction with the poor security situation in Michoacan, which has claimed the lives of priests and lay church members alike.

For one parish priest in the state's *Tierra Caliente* region, or "Hot Land" — so named for its scorching climate, but also reflective of the "heat" created by organized crime — the situation has deteriorated over the last year.

"We're a little worse off now," said Father Patricio Madrigal, a pastor in the town of Nueva Italia, and one of the many priests who's offered spiritual support to those fighting back. "Before, we all had the same enemy. Now we don't know. No one is protecting us."

New Rural Police Force Emerges After 'Death' of *Autodefensas*. Read more here.

(<https://news.vice.com/article/new-rural-police-force-emerges-after-the-death-of-mexicos-autodefensas>)

The shootouts and slayings — plus lingering suspicions that the government gave guns and badges to unsavory locals characters — show that Michoacan is in morass, leaving many residents wondering if the region's long history of illegal activity is impossible to overcome.

"Many of the people that got involved with self-defense groups, besides being citizens, many are farmers, many have had some sort of relations with narcotics trafficking," said Miguel Angel Sanchez, editorial director at the Michoacan news agency Quadratín.

"The state, or the groups of the state, that should be guaranteeing security, are not only are not guaranteeing security, but they're acting like criminal groups. They're following the strategies of the hit men," he said.

'It's what happens when you put in a political operator.'

The situation has also generated uncomfortable questions on whether fighting crime was ever the top concern of an image-conscious federal government.

President Enrique Peña Nieto started his term in December 2012 by simply not talking about insecurity, which was seen as detrimental to Mexico's international image as the administration promoted a pro-Investment agenda.

He eventually responded to the crisis in Michoacan, though, by appointing a trusted operator, Alfredo Castillo (<http://www.redpolitica.mx/yopolitico/perfil/alfredo/castillo-cervantes>), as the state's new commissioner for security and development. The appointment on January 15, 2014 — a year ago this Thursday — made Castillo the de facto governor of Michoacan, or a federally mandated "viceroy," as some critics contend.

"There's an intention of putting a happy face on things, and permit the people to continue doing business," said Sanchez.

Castillo pinned badges on some of the vigilantes, arming them and naming them to a Rural Force (<https://news.vice.com/article/new-rural-police-force-emerges-after-the-death-of-mexicos-autodefensas>), and thereby spreading a media message of a Michoacan moving toward peace.

"Castillo has been putting out fires from the moment he arrived, and has also started some others," Jorge Kawas, an independent security analyst, told VICE News. "It's what happens when you put in a political operator."

In recent months, the focus of news coverage on Mexico turned to Guerrero, where students from the Ayotzinapa Normal School were attacked and kidnapped by a local police force.

"The killing of these [43] students made it so that national and international attention turned toward Guerrero," Sanchez said. "But this doesn't mean that things have been resolved in Michoacan."

The Michoacan state attorney general's office said it was investigating Sunday's attack on the Pacific coast, and federal and military forces sent reinforcements to the region. One of the victims was identified as Rafael Meraz Arteaga, commander of the *autodefensa* militia in Huahua.

Watch the VICE News documentary: Fighting the Knights Templar Cartel.

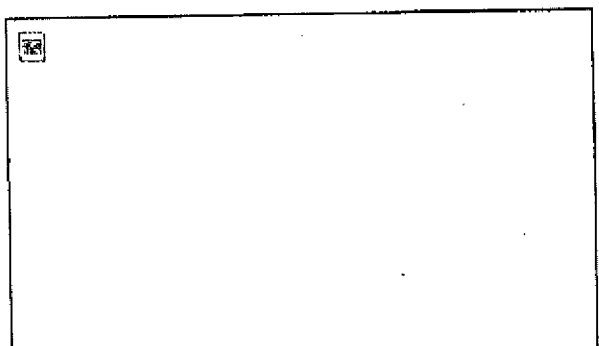
(<https://news.vice.com/video/fighting-mexico-39-s-knights-templar-cartel>)

In photo above, Mexican federal police forces patrol a street in Apatzingán, Michoacan, on Jan. 8, 2014.

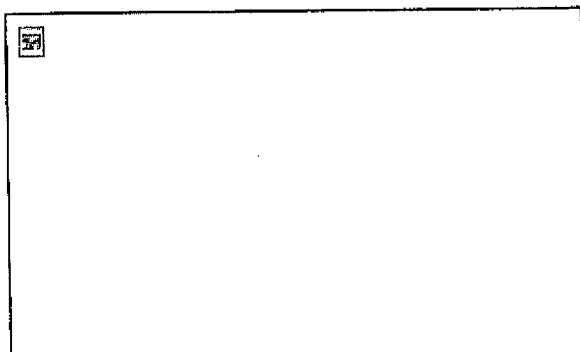
Follow David Agren on Twitter @el_reportero (https://twitter.com/el_reportero).

TOPICS: *americas (/topic/americas), mexico (/topic/mexico), michoacán (/topic/michoacan), apatzingan (/topic/apatzingan), vigilantes (/topic/vigilantes), militias (/topic/militias), guerrero (/topic/guerrero), alfredo castillo (/topic/alfredo-castillo), la ruana (/topic/la-ruana), huahua (/topic/huahua), self defense (/topic/self-defense), knights templar (/topic/knights-templar), drug war (/topic/drug-war)*

RECOMMENDED



([/video/vice-news-capsule-tuesday-march-17](https://video.vice-news-capsule-tuesday-march-17))
VICE News Capsule - Tuesday, March 17
([/video/vice-news-capsule-tuesday-march-17](https://video/vice-news-capsule-tuesday-march-17))



([/video/a-roundtable-with-president-barack-obama-the-cost-of-education](https://video/a-roundtable-with-president-barack-obama-the-cost-of-education))
A Roundtable with President Barack Obama: The Cost of Education ([/video/a-roundtable-with-president-barack-obama-the-cost-of-education](https://video/a-roundtable-with-president-barack-obama-the-cost-of-education))

EXHIBIT I

000057



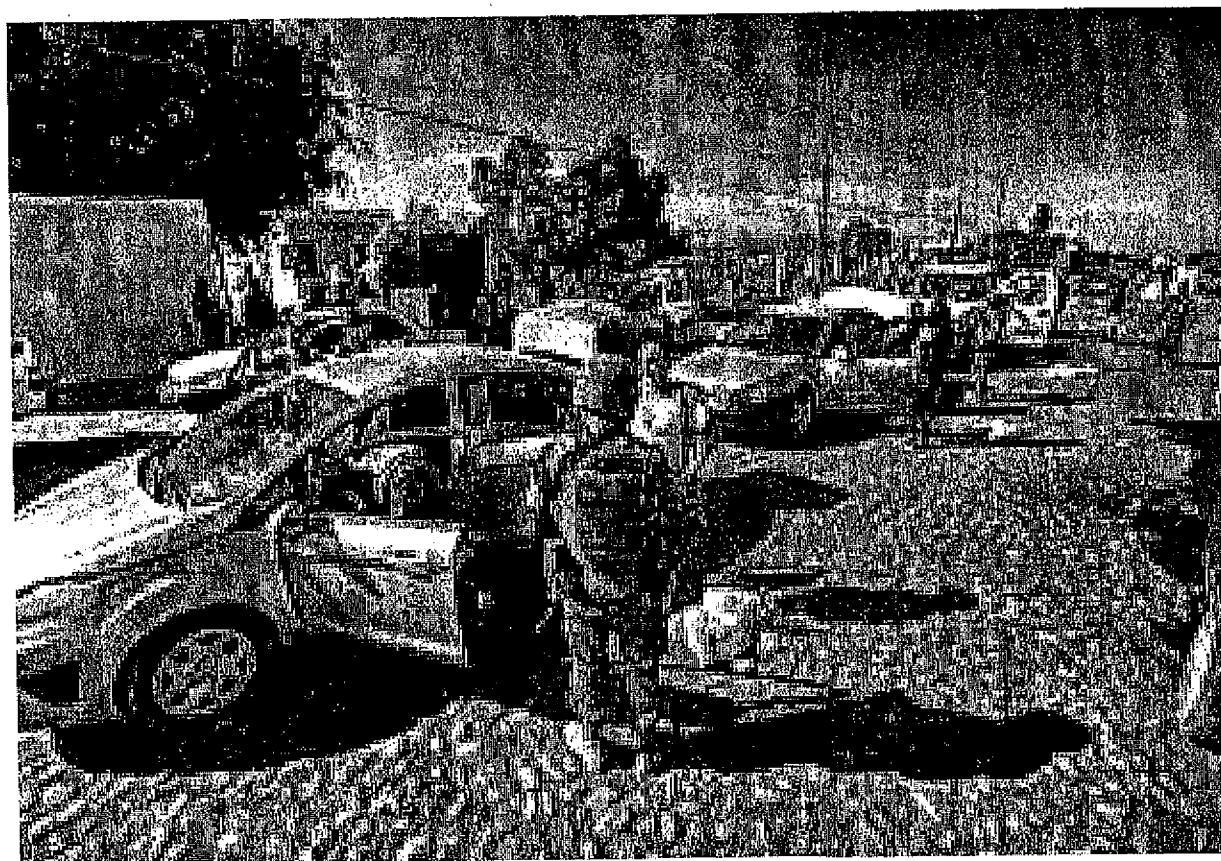
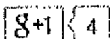
ADVERTISEMENT

Death toll rises in Mexico's roiling Michoacan state

Email

Facebook 73

Twitter 211



1 of 18

ALFREDO ESTRELLA / APP/GETTY IMAGES

Vigilante groups in Michoacan state of Mexico register weapons

BY TRACY WILKINSON

January 12, 2015, 9:19 p.m.

Five more members of a vigilante "self-defense" group were killed during the weekend in a spiral of violence sweeping parts of Mexico's troubled Michoacan state, showcased by the government in the last year as a security success story.

At least 25 people have been killed in the last month in a string of ambushes, clashes and other shootings involving vigilantes, drug traffickers, civilians and the army and federal police. It has not always been clear who shot whom.

The dead included the son of one of the top founders of the so-called self-defense paramilitary organizations that rebelled against traffickers and local authorities in Michoacan two years ago.

In an attempt to restore order after the rise of the vigilante groups, President Enrique Peña Nieto early last year poured federal forces into Michoacan and appointed longtime aide Alfredo Castillo as federal commissioner for the area. Castillo attempted to convert the vigilantes into a more formal rural police force, but many refused to join or disarm.

The raging killings, kidnappings and extortion that had long dominated Michoacan, where drug gangs for years controlled police departments and city halls in many parts of the state, seemed to decline. Several top leaders of the principal cartel, the Knights Templar, were captured.

But violence erupted again late last year. Criminal gangs, including one offshoot of the Knights Templar calling itself the Viagras, re-infiltrated Michoacan cities, and factious rivalry among the vigilante groups also triggered clashes.

For Peña Nieto, pacifying Michoacan and Castillo's role as federal commissioner are tests of whether the government's most highly touted security policy can work.

Castillo on Dec. 23 dispatched more federal troops to the western part of Michoacan around the city of Apatzingan, a particularly restive agricultural region that sits on the edge of territory known as Tierra Caliente, or Hot Land.

One of the worst incidents occurred Jan. 6. Nine people were shot to death during a federal operation to take back Apatzingan City Hall from gunmen who occupied it last month.

Initially, Castillo said the dead, most of whom were in vehicles outside City Hall and included at least two women, were killed by the army and police after opening fire. Several witnesses who spoke to reporters, however, gave different versions, including one that suggested the dead were not armed.

Castillo on Monday changed his account of the shooting. In a presentation to journalists, he said autopsies and further investigation indicated five of the nine were killed either by crossfire or friendly fire — they had bullet wounds from weapons used by federal police and by gangsters. Two others were killed by federal police, one was killed by friendly fire and the ninth was hit by a car and killed, he said.

Several "were killed by their own companions," Castillo said.

It is not clear whether the Mexican public will believe this description from a government already suffering from a severe loss of confidence. Mexicans are still outraged by the suspected killing of 43 college students by corrupt police and officials and the shooting deaths of 22 suspected gang members in which three soldiers were charged with homicide.

In the ambush of five people that was reported Monday, victims included a leader of a vigilante group near Apatzingan. They were killed Sunday as they drove through the mountainous region; six were injured.

The first major shootout that may have lighted the fuse was on Dec. 16 near the town of La Ruana. Eleven people were killed, including the 32-year-old son of a leading vigilante founder, Hipolito Mora. Mora claimed his group was attacked first by a rival faction and shot back only after two of its members were killed. The battle lasted two hours, he said.

Both Mora and the head of the other faction, Luis Antonio Torres, known as "El Americano" because he was born in California, were arrested and remain in jail.

Castillo came under withering criticism after it was reported that while the La Ruana clash unfolded, he was lunching in Polanco, Mexico City's swankiest neighborhood, and then seen entering a Rolex store. He later said he was in Polanco because a work meeting at presidential headquarters nearby was canceled at the last minute, and he was merely accompanying a friend into the Rolex shop.

Some local officials, residents and others have suggested it was inevitable that security in Michoacan would once again deteriorate. The government's decision to rely on vigilantes for security, even if only temporarily, is like unleashing Frankenstein, they said.

The vigilante movement "is understandable ... understandable that they are fed up and want justice and to be able to defend themselves," said Alberto Suarez, archbishop of Morelia, the Michoacan capital, who is part of a new crop of cardinals being elevated next month.

But, he told the Reforma newspaper, "none of these groups have the right to kill. It is outside the law."

News assistant Cecilia Sanchez in The Times' Mexico City bureau contributed to this report.

Related Content

Third priest killed this year in Mexico's Guerrero state

EXHIBIT J

000061



Mexico Travel Warning

LAST UPDATED: AUGUST 15, 2014

The U.S. Department of State warns U.S. citizens about the risk of traveling to certain places in Mexico due to threats to safety and security posed by organized criminal groups in the country.

U.S. citizens have been the target of violent crimes, such as kidnapping, carjacking, and robbery by organized criminal groups in various Mexican states. For information on security conditions in specific regions of Mexico, which can vary, travelers should reference the state-by-state assessments further below. This Travel Warning replaces the Travel Warning for Mexico, issued January 9, 2014, to update information about the security situation and to advise the public of additional restrictions on the travel of U.S. government (USG) personnel.

This Travel Warning replaces the Travel Warning for Mexico, issued January 9, 2014, to update information about the security situation and to advise the public of additional restrictions on the travel of U.S. government (USG) personnel.

General Conditions:

Millions of U.S. citizens safely visit Mexico each year for study, tourism, and business, including more than 150,000 who cross the border every day. The Mexican government dedicates substantial resources to protect visitors to major tourist destinations, and there is no evidence that organized criminal groups have targeted U.S. visitors or residents based on their nationality. Resort areas and tourist destinations in Mexico generally do not see the levels of drug-related violence and crime that are reported in the border region or in areas along major trafficking routes.

Nevertheless, U.S. travelers should be aware that the Mexican government has been engaged in an extensive effort to counter organized criminal groups that engage in narcotics trafficking and other unlawful activities throughout Mexico. The groups themselves are engaged in a violent struggle to control drug trafficking routes and other criminal activity. Crime and violence are serious problems and can occur anywhere. U.S. citizens have fallen victim to criminal activity, including homicide, gun battles, kidnapping, carjacking, and highway robbery. While many of those killed in organized crime-related violence have themselves been involved in criminal activity, innocent persons have also been killed. The number of U.S. citizens reported to the Department of State as murdered in Mexico was 71 in 2012 and 81 in 2013.

Gun battles between rival criminal organizations or with Mexican authorities have taken place in towns and cities in many parts of Mexico. Gun battles have occurred in broad daylight on streets and in other public venues, such as restaurants and clubs. During some of these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area. Criminal organizations have used stolen cars, buses, and trucks to create roadblocks on major thoroughfares, preventing the military and police from responding to criminal activity. The location and timing of future armed engagements is unpredictable. We recommend that you defer travel to the areas specifically identified in this Travel Warning and exercise extreme caution when traveling throughout the other areas for which advisories are in effect.

The number of kidnappings throughout Mexico is of particular concern and appears to be on the rise. According to statistics published by the Mexican Secretaria de Gobernacion (SEGOB), in 2013 kidnappings nationwide increased 20 percent over the previous year. While kidnappings can occur anywhere, according to SEGOB, during this timeframe, the states with the highest numbers of kidnappings were Tamaulipas, Guerrero, Michoacán, Estado de Mexico, and Morelos. Additionally, according to a widely publicized study by the agency responsible for national statistics (INEGI, the National Institute of Statistics and Geography), Mexico suffered an estimated 105,682 kidnappings in 2012; only 1,317 were reported to the police. Police have been implicated in some of these incidents. Both local and expatriate communities have been victimized. Nearly 70 kidnappings of U.S. citizens were reported to the U.S. Embassy and consulates in Mexico between January and June of 2014.

U.S. citizens are encouraged to lower their personal profiles and to avoid displaying indicators of wealth such as expensive or expensive-looking jewelry, watches, or cameras. U.S. citizens are encouraged to maintain awareness of their surroundings and

avoid situations in which they may be isolated or stand out as potential victims.

Kidnappings in Mexico have included traditional, "express," and "virtual" kidnappings. Victims of traditional kidnappings are physically abducted and held captive until a ransom is paid for release. "Express" kidnappings are those in which a victim is abducted for a short time and forced to withdraw money, usually from an ATM, then released. A "virtual" kidnapping is an extortion-by-deception scheme wherein a victim is contacted by phone and convinced to isolate themselves from family and friends until a ransom is paid. The victim is coerced (by threat of violence) to remain isolated and to provide phone numbers for the victim's family or loved ones. The victim's family is then contacted and a ransom for the "kidnapped" extracted. Recently, some travelers to Mexico staying at hotels as guests have been targets of such "virtual" kidnapping schemes.

Of particular safety concern are casinos, sportsbooks, or other gambling establishments and adult entertainment establishments. U.S. government personnel are specifically prohibited from patronizing these establishments in the states of Coahuila, Durango, Zacatecas, Aguascalientes, San Luis Potosi, Nuevo Leon, and Tamaulipas.

Carjacking and highway robbery are serious problems in many parts of the border region, and U.S. citizens have been murdered in such incidents. Most victims who complied with carjackers' demands have reported that they were not physically harmed. Carjackers have shot at vehicles that have attempted to flee. Incidents have occurred during the day and at night, and carjackers have used a variety of techniques, including roadblocks, bumping/moving vehicles to force them to stop, and running vehicles off the road at high speeds. There are indications that criminals target newer and larger vehicles, especially dark-colored SUVs. However, even drivers of old sedans and buses coming from the United States have been targeted. While violent incidents can occur anywhere and at any time, they most frequently occur at night and on isolated roads. To reduce risk when traveling by road, we strongly urge you to travel between cities throughout Mexico only during daylight hours, to avoid isolated roads, and to use toll roads ("cuotas") whenever possible.

The Mexican government has deployed federal police and military personnel throughout the country as part of its efforts to combat organized criminal groups. U.S. citizens traveling on Mexican roads and highways by car or bus may encounter government checkpoints, staffed by military or law enforcement personnel. In some places, criminal organizations have erected their own unauthorized checkpoints, at times wearing police and military uniforms, and have killed or abducted motorists who have failed to stop at them. You should cooperate at all checkpoints.

The Department imposes restrictions on U.S. government employees' travel in Mexico. Since July 2010, USG employees are prohibited from driving on non-official travel from the U.S.-Mexico border to or from the interior of Mexico or Central America. One exception is that personal travel by motor vehicle is permitted on Highway 15 toll road between Hermosillo and Nogales during daylight hours.

U.S. government personnel and their families are prohibited from personal travel to all areas to which it is advised to "defer non-essential travel". When travel for official purposes is essential, it is conducted with extensive security precautions. U.S. government personnel and their families are allowed to travel for personal reasons to the areas where no advisory is in effect or where the advisory is to exercise caution. While the general public is not forbidden from visiting places categorized under "defer non-essential travel," U.S. government personnel will not be able to respond quickly to an emergency situation in those areas due to security precautions that must be taken by U.S. government personnel to travel to those areas.

For more information on road safety and crime along Mexico's roadways, see the Department of State's Country Specific Information.

State-by-State Assessment:

Below is a state-by-state assessment of security conditions throughout Mexico. Travelers should be mindful that even if no advisories are in effect for a given state, crime and violence can still occur. For general information about travel and other conditions in Mexico, see our Country Specific Information.

Aguascalientes: You should exercise caution when traveling to the areas of the state that border the state of Zacatecas, as criminal organization activity in that region continues. There is no advisory in effect for daytime travel to the areas of the state that do not border Zacatecas; however, intercity travel at night is not recommended.

Baja California: Tijuana, Rosarito, Ensenada and Mexicali are major cities/travel destinations in the state of Baja California - Exercise caution in the northern state of Baja California, particularly at night. Criminal activity along highways and at beaches is a continuing security concern. In 2013, homicide rates in Tijuana and Rosarito increased 48 percent and 67 percent compared to the previous year, according to the Baja State Secretariat for Public Security, and both cities experienced further increases in homicide rates during the first half of 2014. While most of these homicides appeared to be targeted criminal organization assassinations, turf battles between criminal groups have resulted in violent crime in areas frequented by U.S.

citizens. Shooting incidents, in which innocent bystanders have been injured, have occurred during daylight hours.

Baja California (Sur): Cabo San Lucas and La Paz are major cities/travel destinations in the state of Southern Baja California - No advisory is in effect.

Campeche: No advisory is in effect.

Chiapas: San Cristobal de las Casas is a major city/travel destination in Chiapas - No advisory is in effect.

Chihuahua: Ciudad Juarez, Chihuahua City, and Copper Canyon are major cities/travel destinations in Chihuahua - Exercise caution in traveling to the business and shopping districts in the northeast section of Ciudad Juarez and its major industrial parks, and the central downtown section and major industrial parks in Chihuahua City. U.S. citizens should defer non-essential travel to other areas of these cities and anywhere else in the state of Chihuahua and travel during daylight hours between cities. In Ciudad Juarez, personal travel by U.S. government employees outside the north/central and northeast portion of the city near the Consulate General is restricted and private U.S. citizens should defer non-essential travel to those areas as well. In Chihuahua City, U.S. government personnel and their family members are permitted to travel only to the central business districts and the city's airport. Personal vehicular travel during daylight hours by U.S. government personnel and family members is authorized between Ciudad Juarez and Chihuahua using the Highway 45 toll road. Although homicide rates in Ciudad Juarez have decreased markedly from a peak several years ago, the city still has one of the highest homicide rates in Mexico. Crime and violence remain serious problems throughout the state of Chihuahua, particularly in the southern portion of the state and in the Sierra Mountains, including Copper Canyon. U.S. citizens do not, however, appear to be targeted based on their nationality.

Coahuila: Defer non-essential travel to the state of Coahuila except the city of Saltillo, where you should exercise caution. Violence and criminal activity along the highways are continuing security concerns, particularly along the northern border between Piedras Negras and Nuevo Laredo. The state of Coahuila continues to experience high rates of violent crimes and narcotics-related murders. Criminal organizations continue to compete for territory and coveted border crossings to the United States. Violent crime, including murder, kidnapping, and armed carjacking, continues to be a concern.

Colima: Manzanillo is a major city/travel destination in Colima - Defer non-essential travel to the areas of the state of Colima that border the state of Michoacán, including the city of Tecoman. The security situation along the Michoacán border continues to be the most unstable in the state, with gun battles occurring between rival criminal groups and with Mexican authorities. Intercity travel at night is not recommended.

Durango: Defer non-essential travel to the state of Durango except the city of Durango, where you should exercise caution. Violence and criminal activity along the highways are a continuing security concern. Several areas in the state continue to experience high rates of violence and remain volatile and unpredictable. U.S. government personnel may not travel outside the city of Durango and must abide by a curfew of 1 a.m. to 6 a.m. within a secured venue.

Estado de Mexico: Toluca and Teotihuacan are major travel destinations in Estado de Mexico - Defer non-essential travel to the municipalities of Coacalco, Ecatepec, Nezahualcoyotl, La Paz, Valle del Chalco, Solidaridad, Chalco, and Ixtapaluca, which are eastern portions of the greater Mexico City metropolitan area, located just to the east of the Federal District of Mexico and Benito Juarez airport, unless traveling directly through the areas on major thoroughfares. These areas have seen high rates of crime and insecurity. You should also defer non-essential travel on any roads between Santa Marta in the southeast portion of the state and Huitzilac in the state of Morelos, including the Lagunas de Zempoala National Park and surrounding areas.

Guanajuato: San Miguel de Allende and Leon are major cities/travel destinations in Guanajuato - No advisory is in effect.

Guerrero: Acapulco, Ixtapa, Taxco and Zihuatanejo are major cities/travel destinations in Guerrero - Defer non-essential travel to the northwestern and southern portions of the state (the area west and south of the town of Arcella on the border with Estado de Mexico in the north and west and south of the town of Tlapa near the border with Oaxaca), except for the cities of Acapulco, Zihuatanejo, and Ixtapa. In those cities, you should exercise caution and stay within tourist areas. You should also exercise caution and travel only during daylight hours on toll highway ("cuota") 95D between Mexico City and Acapulco. Use the toll road towards the Playa Diamante area and avoid the highway running through the city of Acapulco for travel to and from Acapulco. In Acapulco, defer non-essential travel to areas further than 2 blocks inland of the Costera Miguel Aleman Boulevard, which parallels the popular beach areas. Lodging for U.S. government personnel is limited to the "Hotel Zone" of Acapulco, beginning from the Hotel Avalon Excalibur Acapulco in the north and going south through Puerto Marquez including the Playa Diamante area. Any activity outside the Hotel Zone for U.S. government personnel is limited to the coastal area from La Quebrada to the beginning of the Hotel Zone and only during daylight hours. In general, the popular tourist area of Diamante, just south of the city, has been less affected by violence. Flying into the coastal cities in southern Guerrero remains the preferred

method of travel. You should defer non-essential travel by land between Acapulco and Zihuatanejo/Ixtapa, travel to Zihuatanejo/Ixtapa only by air, and exercise caution while in Zihuatanejo/Ixtapa. If traveling by land, use toll highway 200 between Acapulco and Zihuatanejo/Ixtapa. You should also exercise caution in the northern region of Guerrero (the area north of the town of Arcelia on the border with Estado de Mexico in the north and north and east of the town of Tlapa near the border with Oaxaca). The state of Guerrero was the most violent state in Mexico in 2013, with 2,087 homicides and 207 reported cases of kidnapping, according to the Mexican Secretariado Ejecutivo Nacional de Seguridad Publica. Self-defense groups operate independently of the government in many areas of Guerrero. Armed members of these groups frequently maintain roadblocks and, although not considered hostile to foreigners or tourists, are suspicious of outsiders and should be considered volatile and unpredictable.

Hidalgo: No advisory is in effect.

Jalisco: Guadalajara, Puerto Vallarta, and Lake Chapala are major cities/travel destinations in Jalisco - Defer non-essential travel to areas of the state that border the states of Michoacán and Zacatecas. The security situation along the Michoacán and Zacatecas borders continues to be unstable and gun battles between criminal groups and authorities occur. Concerns include roadblocks placed by individuals posing as police or military personnel and recent gun battles between rival criminal organizations involving automatic weapons. You should exercise caution in rural areas and when using secondary highways, particularly along the northern border of the state. Except for the areas of the state that border Michoacán, there is no advisory in effect for daytime travel within major population centers or major highways in the state of Jalisco. Intercity travel at night is not recommended. There is no recommendation against travel to Guadalajara and Puerto Vallarta. There is also no recommendation against travel on principal highways in Jalisco between Guadalajara including the portions that cross into the southern portions of the state of Nayarit.

Mexico City (also known as the Federal District): No advisory is in effect. See also the discussion in the section on Estado de Mexico for areas within the greater Mexico City metropolitan area.

Michoacán: Morelia is a major city/travel destination in Michoacán - Defer non-essential travel to the state of Michoacán except the cities of Morelia and Lázaro Cardenas and the area north of federal toll road 15D, where you should exercise caution. U.S. government employees are prohibited from traveling by land in Michoacán except on federal toll road 15D during daylight hours. Flying into Morelia and Lázaro Cardenas is the recommended method of travel. Attacks on Mexican government officials, law enforcement and military personnel, and other incidents of organized crime-related violence, have occurred throughout Michoacán. Federal authorities deployed some 9,000 federal security forces to Michoacán in January 2014 to address rising insecurity, particularly in the entire western part of the state. Due to criminal activity in Lázaro Cardenas, the Mexican military assumed direct control of the port in late 2013. Government authorities incorporated some of the self-defense groups that had operated independently of the government in recent months into a new state police unit in May. Armed members of some other self-defense groups maintain roadblocks and, although not considered hostile to foreigners or tourists, are suspicious of outsiders and should be considered volatile and unpredictable. Some groups in Michoacán are reputed to be linked to organized crime.

Morelos: Cuernavaca is a major city/travel destination in Morelos - Exercise caution in the state of Morelos due to the unpredictable nature of organized crime violence. You should also defer non-essential travel on any roads between Huitzilac in the northwest corner of the state and Santa Marta in the state of Mexico, including the Lagunas de Zempoala National Park and surrounding areas. On August 24, 2012, two U.S. government employees were injured after being fired upon by Federal Police officers on a non-toll road north of Tres Marias, Morelos. Numerous incidents of organized crime-related violence have also occurred in the city of Cuernavaca.

Nayarit: Defer non-essential travel to areas of the state of Nayarit that border the states of Sinaloa or Durango, as well as all rural areas and secondary highways. There is no recommendation against travel to the Vallarta-Nayarit area in the southern portion of the state known as the Riviera Nayarit, Tepic, Xalisco, and San Blas, or to principal highways in the southern portion of the state used to travel from Guadalajara to Puerto Vallarta. Intercity travel at night is not recommended.

Nuevo Leon: Monterrey is a major city/travel destination in Nuevo Leon - Defer non-essential travel to the state of Nuevo Leon except the metropolitan area of Monterrey, where you should exercise caution. Although the level of organized crime-related violence and general insecurity in Monterrey has decreased dramatically within the last 18 months, sporadic incidents of violence have occurred in the greater Monterrey area. Security services in and around Monterrey are robust and have proven responsive and effective in combating violent crimes; however, instances of violence remain a concern in the more remote regions of the state. Criminal organizations have kidnapped, and in some cases murdered, U.S. citizens, even when ransom demands are met. As a result of a Department of State assessment of the overall security situation, U.S. government personnel and their dependents may not travel outside the San Pedro Garza Garcia municipal boundaries between 1 a.m. and 6 a.m., except for travel to the airport after 5 a.m.

Oaxaca: Oaxaca, Huatulco and Puerto Escondido are major cities/travel destinations in Oaxaca - No advisory is in

effect.

Puebla: No advisory is in effect.

Queretaro: No advisory is in effect.

Quintana Roo: Cancun, Cozumel, Playa del Carmen, Riviera Maya and Tulum are major cities/travel destinations in Quintana Roo - No advisory is in effect.

San Luis Potosi: Defer non-essential travel to the state of San Luis Potosi, except the city of San Luis Potosi, where you should exercise caution. Violence and criminal activity along highways are continuing security concerns. U.S. government personnel may not travel outside the City of San Luis Potosi and must abide by a curfew of 1 a.m. to 6 a.m. within a secured venue.

Sinaloa: Mazatlan is a major city/travel destination in Sinaloa - Defer non-essential travel to the state of Sinaloa except the city of Mazatlan, where you should exercise caution, particularly late at night and in the early morning. One of Mexico's most powerful criminal organizations is based in the state of Sinaloa, and violent crime rates remain high in many parts of the state. Travel off the toll roads in remote areas of Sinaloa is especially dangerous and should be avoided. We recommend that any travel in Mazatlan be limited to Zona Dorada and the historic town center, as well as direct routes to/from these locations and the airport.

Sonora: Nogales, Puerto Peñasco, Hermosillo, and San Carlos are major cities/travel destinations in Sonora - Sonora is a key region in the international drug and human trafficking trades and can be extremely dangerous for travelers. Travelers throughout Sonora are encouraged to limit travel to main roads during daylight hours. The region west of Nogales, east of Sonoyta, and from Caborca north, including the towns of Saric, Tubutama, and Altar, and the eastern edge of Sonora bordering Chihuahua, are known centers of illegal activity, and non-essential travel between these cities should be avoided. Travelers should also defer non-essential travel to the eastern edge of the state of Sonora, which borders the state of Chihuahua (all points along that border east of the northern city of Agua Prieta and the southern town of Alamos), and defer non-essential travel within the city of Ciudad Obregon and south of the city of Navojoa. You should exercise caution while transiting Vicam in southern Sonora due to roadblocks that can be instituted *ad hoc* by local indigenous and environmental groups. U.S. citizens visiting Puerto Peñasco should use the Lukeville, Arizona/Sonoyta, Sonora border crossing, and limit driving to daylight hours.

Tabasco: Villahermosa is a major city/travel destination in Tabasco - No advisory is in effect.

Tamaulipas: Matamoros, Nuevo Laredo, Reynosa, and Tampico are major cities/travel destinations in Tamaulipas - Defer non-essential travel to the state of Tamaulipas. All U.S. government employees are prohibited from personal travel on Tamaulipas highways outside of Matamoros, Reynosa, and Nuevo Laredo due to the risks posed by armed robbery and carjacking, particularly along the northern border. Travelling outside of cities after dark is not recommended. While no highway routes through Tamaulipas are considered safe, the highways between Matamoros-Ciudad Victoria, Reynosa-Ciudad Victoria, Ciudad Victoria-Tampico, Monterrey-Nuevo Laredo, and Monterrey-Reynosa, are more prone to criminal activity. In Matamoros, U.S. government employees are subject to movement restrictions between midnight and 6 a.m.

Matamoros, Reynosa, Nuevo Laredo, and Ciudad Victoria have experienced numerous gun battles and attacks with explosive devices in the past year. Violent conflicts between rival criminal elements and/or the Mexican military can occur in all parts of the region and at all times of the day. The number of reported kidnappings for Tamaulipas is among the highest in Mexico, and the number of U.S. citizens reported to the consulates in Matamoros and Nuevo Laredo as being kidnapped, abducted, or disappearing involuntarily in the first half of 2014 has also increased. In May 2014, a Mexican state and federal security initiative was announced focused on combating increased violence in the state.

Tlaxcala: No advisory is in effect.

Veracruz: Exercise caution when traveling in the state of Veracruz. The state of Veracruz continues to experience violence among rival criminal organizations. Mexican federal security forces continue to assist state and local security forces in providing security and combating organized crime.

Yucatan: Merida and Chichen Itza are major cities/travel destinations in Yucatan - No advisory is in effect.

Zacatecas: Defer non-essential travel to areas of Zacatecas near the border with other Mexican states. Exercise caution in the interior of the state including the city of Zacatecas. Robberies, carjackings, and organized criminal activity remain a concern. Gun battles between criminal groups and authorities have occurred in the area of the state bordering the state of Jalisco. Extreme caution should be taken when traveling in the remainder of the state. U.S. government personnel may not travel outside the city of Zacatecas after dark and must abide by a curfew of 1 a.m. to 6 a.m. within a secured venue.

Mexico Travel Warning

Further Information

For more detailed information on staying safe in Mexico, please see the State Department's Country Specific Information for Mexico.

For the latest security information, U.S. citizens traveling abroad should regularly monitor the State Department's Internet web site, where the current Worldwide Caution, Travel Warnings, and Travel Alerts can be found. Follow us on Twitter and the Bureau of Consular Affairs page on Facebook as well. Up-to-date information on security can also be obtained by calling 1-888-407-4747 toll free in the United States and Canada or, for callers outside the United States and Canada, a regular toll line at 001-202-501-4444. These numbers are available from 8:00 a.m. to 8:00 p.m. Eastern Time, Monday through Friday (except U.S. federal holidays). U.S. citizens traveling or residing overseas are encouraged to enroll with the State Department's Smart Traveler Enrollment Program. For any emergencies involving U.S. citizens in Mexico, please contact the U.S. Embassy or U.S. Consulate with responsibility for that person's location in Mexico. For information on the ten U.S. consular districts in Mexico, complete with links to Embassy and Consulate websites, please consult the Mexico U.S. Consular District map. The numbers provided below for the Embassy and Consulates are available around the clock. The U.S. Embassy is located in Mexico City at Paseo de la Reforma 305, Colonia Cuauhtemoc, telephone from the United States: 011-52-55-5080-2000; telephone within Mexico City: 5080-2000; telephone long distance within Mexico 01-55-5080-2000. U.S. citizens may also contact the Embassy by e-mail.

Consulates (with consular districts):

- Ciudad Juarez (Chihuahua): Paseo de la Victoria 3650, telephone. (011)(52)(656) 227-3000.
- Guadalajara (Nayarit, Jalisco, Aguas Calientes, and Colima): Progreso 175, telephone (011)(52)(333) 268-2100.
- Hermosillo (Sinaloa and the southern part of the state of Sonora): Avenida Monterrey 141, telephone (011)(52)(662) 289-3500.
- Matamoros (the southern part of Tamaulipas with the exception of the city of Tampico): Avenida Primera 2002, telephone (011)(52)(868) 812-4402.
- Merida (Campeche, Yucatan, and Quintana Roo): Calle 60 no. 338-K x 29 y 31, Col. Alcala Martin, Merida, Yucatan, Mexico 97050, telephone (011)(52)(999) 942-5700 or 202-250-3711 (U.S. number).
- Monterrey (Nuevo Leon, Durango, Zacatecas, San Luis Potosi, and the southern part of Coahuila): Prolongacion Ave. Alfonso Reyes No. 150, Col. Valle Poniente, Santa Catarina, Nuevo Leon, 66196, telephone (011)(52)(818) 047-3100.
- Nogales (the northern part of Sonora): Calle San Jose, Nogales, Sonora, telephone (011)(52)(631) 311-8150.
- Nuevo Laredo (the northern part of Coahuila and the northwestern part of Tamaulipas): Calle Allende 3330, Col. Jardin, telephone (011)(52)(867) 714-0512.
- Tijuana (Baja California Norte and Baja California Sur): Paseo de Las Culturas s/n Mesa de Otay, telephone (011) (52) (664) 977-2000.
- All other Mexican states, the Federal District of Mexico City, and the city of Tampico, Tamaulipas, are part of the Embassy's consular district.

Consular Agencies:







- Acapulco: Hotel Emporio, Costera Miguel Aleman 121 - Suite 14, telephone (011)(52)(744) 481-0100 or (011)(52)(744) 484-0300.
- Cancun: Blvd. Kukulcan Km 13 ZH Torre La Europea, Despacho 301 Cancun, Quintana Roo, Mexico C.P. 77500, telephone (011)(52)(998) 883-0272.
- Los Cabos: Las Tiendas de Palmilla Local B221, Carretera Transpeninsular Km. 27.5, San José del Cabo, BCS, Mexico 23406 telephone, (624) 143-3566 Fax: (624) 143-6750.
- Mazatlán: Playa Gaviotas #202, Zona Dorada, telephone (011)(52)(669) 916-5889.
- Oaxaca: Macedonio Alcalá no. 407, Interior 20, telephone (011)(52)(951) 514-3054, (011) (52)(951) 516-2853.
- Piedras Negras: Abasolo #211, Zona Centro, Piedras Negras, Coah., telephone, (011)(52)(878) 782-5586.
- Playa del Carmen: "The Palapa," Calle 1 Sur, between Avenida 15 and Avenida 20, telephone (011)(52)(984) 873-0303 or 202-370-6708(a U.S. number).
- Puerto Vallarta: Paradise Plaza, Paseo de los Cocoteros #1, Local #4, Interior #17, Nuevo Vallarta, Nayarit, telephone (011)(52)(322) 222-0069.
- San Miguel de Allende: Centro Comercial La Luciernaga, Libramiento Manuel Zavala (Pepe KBZON), telephone (011)(52)(415) 152-2357.

Embassies & Consulates

- [About Us](#)
- [Newsroom](#)
- [Passport Statistics](#)
- [Legal Considerations](#)

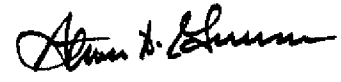
- [Find a U.S. Embassy or Consulate](#)
- [Contact Us](#)
- [Careers](#)
- [Consular Notification and Access](#)

STAY CONNECTED

-  [Dipnote Blog](#)
-  [@travelgov](#)
-  [Facebook](#)
-  [Youtube](#)
-  [Flickr](#)
-  [RSS](#)

[travel.state.gov](#) •
 [U.S. Passports & International Travel](#) •
 [Students Abroad](#) •
 [U.S. Visa](#) •
 [Intercountry Adoption](#) •
 [International Parental Child Abduction](#)

[Privacy](#) •
 [Copyright & Disclaimer](#) •
 [FDIA](#) •
 [No FEAR Act Data](#) •
 [Office of the Inspector General](#) •
 [USA.gov](#) •
 [GobiernoUSA.gov](#)
 This site is managed by the Bureau of Consular Affairs, U.S. Department of State.



CLERK OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL V. STAUDAHER
Chief Deputy District Attorney
Nevada Bar #008273
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

IVONNE CABRERA, aka
Yvonne Cabrera #1617623
JOSE GONZALES, aka
Jose Alejandro Gonzales,
#2636822

Defendants.

CASE NO: C-12-283700-2

DEPT NO: XXV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO PRECLUDE THE
STATE FROM SEEKING THE DEATH PENALTY DUE TO DEFENSE
COUNSEL'S INABILITY TO CONDUCT A THOROUGH AND COMPLETE
MITIGATION INVESTIGATION OR, IN THE ALTERNATIVE, TO STAY
PROCEEDINGS UNTIL THE DEFENSE TEAM CAN SAFELY CONDUCT ITS
MITIGATION INVESTIGATION IN MEXICO**

DATE OF HEARING: APRIL 6, 2015
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL V. STAUDAHER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Preclude The State From Seeking The Death Penalty Due To Defense Counsel's Inability To Conduct A Thorough And Complete Mitigation Investigation, Or, In The Alternative, To Stay

1 Proceedings Until The Defense Team Can Safely Conduct Its Mitigation Investigation In
2 Mexico.

3 This Opposition is made and based upon all the papers and pleadings on file herein, the
4 attached points and authorities in support hereof, and oral argument at the time of hearing, if
5 deemed necessary by this Honorable Court.

6 POINTS AND AUTHORITIES

7 FACTS

8 On April 26, 2012, North Las Vegas Detectives responded to 2039 Webster
9 apartment C in North Las Vegas, in reference to a possible gunshot victim. When the
10 detectives arrived, they learned that the initial responding officers on scene had come in
11 contact with two gunshot victims. Police located one of these victims, Melissa Marin
12 (hereinafter "Marin"), at the gateway entrance to the apartment complex and the other,
13 Ashley Wantland (hereinafter "Wantland"), at the front door of apartment C. Both victims
14 were conscious.

15 Officers asked Marin who had shot them and she responded that a subject known to
16 her as "Smokey" had done it. Officers then spoke with Wantland who told officers that she
17 and her boyfriend had been shot and that her boyfriend was still inside the residence. Both
18 Marin and Wantland were subsequently transported to University Medical Center (UMC)
19 for treatment of their multiple gunshot wounds.

20 Officers then went into the residence to check for additional victims and located two
21 deceased victims in separate bedrooms who were later identified as Erik Quezada-Morales
22 (hereinafter "Morales") and James Headrick (hereinafter "Headrick"). During the protective
23 sweep of the residence, officers noticed that a bathroom window was open and various
24 bathroom items apparently knocked to the floor. Officers also noted that there were foot
25 prints inside the bath tub and it appeared as though someone may have entered the residence
26 through the bathroom window. Officers also saw several cartridge shell casings in the
27 bedrooms, as well as the hallway and living room.

28

1 Police then sealed the residence while Detectives obtained a search warrant. Justice
2 of the Peace Tyrrell approved the search warrant and the subsequent search revealed
3 numerous expended shell casings in addition to deceased victim Morales in the south east
4 bedroom and deceased victim Headrick in the north east bedroom. Both victims appeared
5 to have suffered numerous gunshot wounds.

6 Police also found the bathroom in disarray with the shower curtain knocked down
7 and a crowbar on the floor. Crime scene personnel took photographs, recovered evidence
8 and processed the scene for prints and DNA.

9 While at the scene, detectives learned that Marin was able to talk and was providing
10 information to officers at UMC. Detectives responded to UMC and interviewed Marin.
11 Marin told detectives that two suspects came into her residence, a Hispanic male known to
12 her as "Smokey" and a female known to her as "Chinola." Marin stated that earlier in the
13 morning she heard knocking at her bedroom door. Marin said she recognized Chinola's
14 voice and that Chinola asked her to open the door. Marin said that at about the same time
15 her boyfriend, Morales, got up to answer the door and she heard several gunshots. Marin
16 said she told her boyfriend not to open the door. Marin said the door was then forced open
17 and she saw Smokey with a gun pointed at them. Marin said she pleaded with Smokey not
18 to shoot them, but he proceeded to shoot both she and Morales several times. Marin said
19 that she then saw Smokey and Chinola flee together out of the front door of the residence.

20 Marin stated that despite her injuries, she was able to go into Wantland and Headrick's
21 room where she saw Headrick lying on the floor and Wantland lying in the bed, both with
22 apparent gunshot wounds. Marin said Wantland was still alive and she was able to get
23 Wantland up from the bed and get out of the residence.

24 Detectives asked Marin if she knew why Smoky and Chinola shot them. Marin
25 responded that they let Chinola use their vehicle and Chinola failed to bring it back. Marin
26 said, Morales had called Chinola and left a message, asking her to return the vehicle. Marin
27 said this exchange started some type of verbal altercation and she believes that was the
28 reason why Smokey and Chinola came over and shot them.

1 Marin was able to give police directions to Chinola's residence which was located at
2 1927 Bassler in North Las Vegas. With the names supplied by Marin, police were able to
3 identify Ivonne Cabrera as a possible female suspect who used the name Chinola. Police
4 obtained and showed Marin a picture of Cabrera and Marin positively identified Chinola as
5 the suspect who entered Marin's apartment and shot both her and Morales.

6 At approximately 11:00 p.m., on the same day, police, who were watching the Bassler
7 location, observed Cabrera get in a vehicle with several other subjects. Police saw Cabrera
8 packing numerous items into the trunk of the vehicle before leaving. Police subsequently
9 stopped Cabrera's vehicle and detained her. Police located a large quantity of Cabrera's
10 clothing in the trunk of the vehicle, some of which were consistent with the clothing that the
11 witnesses had described Cabrera wearing at the time of the shooting. It appeared as though
12 Cabrera was trying to escape before being apprehended.

13 Detectives then responded to the location where Cabrera was being detained and took
14 her into custody. Detectives transported Cabrera to the Detective bureau where she was
15 questioned after being advised of her Miranda rights.

16 During Cabrera's taped interview, she initially denied any involvement in the
17 shooting. Later, however, Cabrera admitted to going to the victim's residence with Smokey.
18 Cabrera said she knew Smokey had a gun at the time. Cabrera said that Smokey climbed
19 through the bathroom window and then let her into the apartment through the front door.
20 Cabrera admitted to knocking on the bedroom doors and asking the victims to let them into
21 the rooms. Cabrera said that Smokey fired his gun at the victims about nine times. Cabrera
22 further stated that they both fled from the residence following the shooting, leaving in the
23 gray Dodge Intrepid they had borrowed from Morales.

24 Cabrera said they later abandoned the vehicle on Bonanza Road and that they were
25 picked up by Smokey's sister. Cabrera said Smokey told her that he was only going to scare
26 the victims. Cabrera told police that she did it because she was scared. After the shooting,
27 however, Cabrera made no attempt to contact the police. Cabrera was then questioned as to
28

1 why she and Smokey went to the apartment and shot the victims. Cabrera would only
2 respond that there was some type of problem between them.

3 **INJURIES TO LIVING VICTIMS:**

4 According to medical personnel at UMC, Marin suffered bullet "grazes" to her right
5 buttock and her right arm. Marin also suffered gunshot wounds to her left shoulder, right
6 arm, back and right breast. Marin had to have a tube inserted into her chest cavity to drain
7 the blood which had collected around her lungs. It also appeared as though she suffered some
8 broken bones from the gunshots.

9 Wantland also suffered multiple gunshot wounds: two to her right arm; at least two
10 in her chest; and one at the base of her chin underneath her jaw. According to the nurses, at
11 the time of her initial hospitalization there were two bullets still inside Wantland's body (one
12 had lodged in her tongue and one was near her right breast). Wantland also had to have a
13 chest tube inserted to drain blood from around her lungs.

14 **AUTOPSY:**

15 On April 27, 2012, Dr. Gary D. Telgenhoff conducted an autopsy of Morales and
16 Headrick. Dr. Telgenhoff determined that cause of death for both victims was multiple
17 gunshot wounds and the manner of death was homicide.

18 **FOLLOW UP INVESTIGATION:**

19 On April 28, 2012, Police identified Jose Alejandro Gonzales as a possible suspect
20 who went by the name of "Smokey." Gonzales fit the description of the suspect given by
21 both of the surviving victims. Armed with this information, police obtained a photo of
22 Gonzales and took that photo to the North Las Vegas Jail where Cabrera was being detained.
23 Police showed Cabrera the photograph of Gonzales and she identified him as the suspect
24 who went into the residence with her and shot the victims. Cabrera wrote on the edge of the
25 picture, "this is the guy that shot the individuals," and signed her name. Cabrera further told
26 police that Gonzales and she were the only ones who entered the residence on the night of
27 the shooting.

28

1 Police later went to UMC and contacted victims Marin and Wantland. Based on the
2 fact that the victims both knew Smokey and Chinola police showed them the photographs
3 of Cabrera and Gonzales. Marin positively identified Gonzales as the person who shot both
4 her and Morales. Wantland had previously told police that she had met Gonzales before and
5 she could identify him from a picture. When Wantland viewed the picture of Gonzales she
6 positively identified him as the person who shot both her and Headrick. Wantland also
7 identified Cabrera as the other suspect.

8 On April 26, 2012, crime scene investigators processed the exterior of northeast
9 bedroom window, exterior and interior of bathroom window, exterior of sliding glass door,
10 exterior of the living room window and bath tub/shower walls of the shooting scene at 2039
11 Webster St "C" for fingerprints. All recovered latent lifts suitable for comparison purposes
12 were compared to Jose Gonzalez and Ivonne Cabrera. Of particular interest were the latent
13 lifts collected from the bath tub edge opposite of the bathroom window, the apparent entry
14 point for the perpetrators. The results of the comparisons of the latent prints collected from
15 that location showed a positive match to Jose Alejandro Gonzalez, specifically his left
16 middle finger.

17 **SUBSEQUENT APPREHENSION OF JOSE GONZALES:**

18 On June 11, 2012, at approximately 0133 hours, the primary operator of the Z portal
19 at the Otay Mesa Port of Entry boarder crossing near San Diego, California, processed a gray
20 Chevrolet Impala (NVUS/4PEG102) driven by Marsha Darlene Miller (hereinafter "Miller")
21 as it attempted to enter the United States. As the Impala went thru the Z portal for X ray
22 examination, the operator observed anomalies in the trunk area of the vehicle.

23 As Miller applied for entry into the United States as the driver of the silver Chevy
24 Impala, she presented a Nevada State Driver's License as her only form of identification, and
25 declared herself to be a US Citizen. Miller was abnormally talkative and her hands were
26 shaking as she presented her documents. Miller stated that she was in Mexico "for fun" and
27 presented two negative declarations.
28

1 The passenger in the vehicle was Crystal Hoag (hereinafter "Hoag" - the girlfriend of
2 Jose Alejandro Gonzales). Hoag also presented an identification card from Nevada and
3 declared that she was a US Citizen. When the customs agent at the port of entry queried
4 Hoag's name in her computer she received a computer generated alert from the Federal
5 Bureau of Investigation (FBI). The customs agent then referred the vehicle and its occupants
6 into the vehicle secondary lot for further inspection.

7 The Otay Mesa Port of Entry Port Enforcement Team who received the Impala for
8 further inspection discovered an individual concealed in the truck of the Impala who was
9 attempting to elude Customs and Border Protection (CBP) inspection. That individual was
10 identified at JOSE ALEJANDRO GONZALES (aka Jose Alex Gonzales). The San Ysidro
11 Port of Entry Criminal Enforcement Unit was then immediately contacted at approximately
12 0215 hours with an immediate response and confirmation on Gonzales' warrant of arrest for
13 double homicide from the State of Nevada. Subject was referred to the aforementioned CBP
14 enforcement Unit for further processing and disposition. Defendant Gonzales was later
15 transported back to Clark County, Nevada.

16 ARGUMENT

17 **I. THERE IS NO LEGAL BASIS TO STRIKE THE NOTICE OF INTENT TO** 18 **SEEK DEATH, OR TO PRECLUDE THE STATE FROM SEEKING THE** 19 **DEATH PENALTY IN THE INSTANT CASE**

20 Nevada Supreme Court Rule 250(4)(c) states that:
21 No later than 30 days after the filing of an information or
22 indictment, the state must file in the district court a notice of intent
23 to seek the death penalty. The notice must allege all aggravating
24 circumstances which the state intends to prove and allege with
25 specificity the facts on which the state will rely to prove each
26 aggravating circumstance.

27 Nevada Supreme Court Rule 250(4)(e) states that:

28 The state may at any time declare that it will not seek the death
penalty or withdraw its notice of intent to seek the death penalty,
and the provisions of this rule will no longer apply. The state also
may at any time withdraw an allegation of an aggravating
circumstance.

The State complied with the above requirements and filed a valid notice of intent to
seek death in the instant case. Nowhere in Rule 250 is there a provision which would allow

1 the defense to strike a valid notice of intent to seek death or otherwise prevent the State from
2 seeking death in a case because of a claimed inability of the part of the defense to conduct a
3 "complete" mitigation investigation.

4 Defendant, in his motion, cites to many cases dealing with the issue of mitigation,
5 however, not a single cited case supports the position Defendant has proffered regarding
6 preventing of the State from seeking death because of the perceived inadequacy of a defense
7 mitigation investigation. There is simply no case authority which supports the relief sought
8 by Defendant in his motion. As such, there is no legal basis for this Court to strike or
9 otherwise prevent the State from seeking death in this case.

10 **II. THE AMERICAN BAR ASSOCIATION STANDARDS ARE ONLY** 11 **GUIDELINES TO WHAT REASONABLE MEANS, NOT ITS DEFINITION**

12 The United States Supreme Court in the case of Bobby v. Van Hook, 558 U.S. 4, 130
13 S.Ct. 13 (2009), addressed the issue of reasonableness of mitigation in light of the American
14 Bar Association (ABA) Guidelines. In Bobby, a case involving a defense counsel's decision
15 not to seek more mitigation evidence, the Sixth Circuit originally ruled that the ABA
16 guidelines should be looked upon as essentially commands delineating what mitigation
17 efforts should be made by defense counsel to provide effective assistance of counsel. Bobby
18 v. Van Hook, 558 at 6, 130 S. Ct. at 16. The Supreme Court, however, disagreed and
19 reversed the Sixth Circuit on this issue stating:

20 "No particular set of detailed rules for counsel's conduct can
21 satisfactorily take account of the variety of circumstances faced by
22 defense counsel or the range of legitimate decisions regarding how
23 best to represent a criminal defendant."

24 Id. at 7, 130 S. Ct at 16 (quoting Strickland v. Washington, 466
25 U.S. 668, 688-689 (1984)).

26 The Court discussed the ABA Guidelines in effect in 1985, as well as the 131 page
27 ABA Guidelines for capital defense counsel which were published in 2003. The Court noted
28 that these directives expanded defense counsel's broad duties in criminal cases into something
well beyond what was reasonable under the Sixth Amendment. The Court highlighted the
following examples of the expanded ABA requirements in its discussion:

1 the requirement that counsel's investigation cover every period of
2 the defendant's life from "the moment of conception and that
3 counsel contact "virtually everyone... who knew [the defendant]
4 and his family" and obtain records "concerning not only the client,
5 but also his parents, grandparents, siblings, and children."

6 Id. at 8, 130 S. Ct. at 17 (quoting ABA Guidelines 10.7, comment., at
7 80-85).

8 The Court stated that the interpretation of the Sixth Circuit, that such guidelines were
9 commands that all capital defense counsel must comply with, was error. Id. The Court went
10 on to state that:

11 Strickland stressed, however, that "American Bar Association
12 standards and the like" are "only guides" to what reasonableness
13 means, not its definition. We have since regarded them as such.
14 What we have said of state requirements is *a fortiori* true of
15 standards set by private organizations: "[W]hile States are free to
16 impose whatever specific rules they see fit to ensure that criminal
17 defendants are well represented, we have held that the Federal
18 Constitution imposes one general requirement: that counsel make
19 objectively reasonable choices."

20 Id. (internal citations omitted).

21 The Court in addressing the effectiveness of counsel in their mitigation investigation
22 specifically analyzed such things as when the mitigation investigation began, how often lay
23 witnesses and immediate family were contacted (not how), how far in advance of trial
24 mitigation experts were employed and what efforts were utilized by defense counsel to
25 obtain pertinent records.

26 In the instant case, there is no indication whatsoever that defense counsel has been
27 remiss in any of these areas. In fact, it appears as though they have engaged in a coordinated
28 and thorough effort to obtain records and to look into the background of Defendant. The
fact that they are unwilling or unable to visit with persons in another country because of the
claimed dangerousness of that area where those persons live does not rise to the level of an
inadequate mitigation investigation or of ineffective assistance of counsel.

Moreover, if defense counsel truly believes that such information is important to a
complete mitigation investigation, then they should attempt to obtain the desired information
via alternative means. (i.e., through the use of telephone, internet, Skype or social media

1 sources, as well as the utilization of local investigators in the areas in question so defense
2 counsel doesn't have to actually travel to areas where these potential witnesses live).

3 Here like in Bobby, the State submits that "there comes a point at which evidence
4 from more distant relatives can reasonably be expected to be only cumulative, and the search
5 for it distractive from more important duties." Id. at 11, 130 S. Ct. at 19. Under, Bobby, it
6 is not considered unreasonable if defense counsel fails to interview every living member of
7 Defendant's family or every doctor, therapist, teacher or counselor who ever dealt with or
8 treated Defendant.

9 Additionally, Justice Alito in his concurring opinion reiterated these points as
10 follows:

11 I join the Court's percuriam opinion but emphasize my
12 understanding that the opinion in no way suggests that the
13 American Bar Association's Guidelines for the Appointment and
14 Performance of Defense Counsel in Death Penalty Cases (rev. ed.
2003) (2003 Guidelines or ABA Guidelines) have special
relevance in determining whether an attorney's performance meets
the standard required by the Sixth Amendment.

15 **III. MITIGATION INVESTIGATION IN CAPITAL CASES DOES NOT**
16 **REQUIRE IN PERSON INVESTIGATION AND INTERVIEWING OF ALL**
17 **POTENTIAL INDIVIDUALS RELATED TO A DEFENDANT REGARDLESS**
18 **OF WHERE THEY RESIDE**

19 Defense counsel essentially has taken the position that simply because the instant case
20 subjects Defendant to a potential sentence of death that this alone requires a different set of
21 standards be employed for mitigation investigation under the Sixth Amendment. Defense
22 counsel claims that because this is a capital case, they are required to perform a level of
23 mitigation investigation that necessitates personal travel to and interview of any and all
24 persons associated with Defendant. Defense counsel further claims that because of the
25 dangerousness of the area where such persons reside that it is impracticable for them to
conduct said investigation.

26 The defense has not, however, articulated specifically what mitigation investigation
27 they would not do if the death penalty was not in play. In other words, what specific
28 mitigation investigation would they not perform if this were a case where the maximum

1 potential punishment was life without the possibility of parole? Furthermore, defense
2 counsel has not articulated any actual guidelines which control said differences in mitigation
3 which comport with both the Sixth Amendment and the decisions by the United States
4 Supreme Court on this issue.

5 Because there is no Constitutional basis and no case law that Defendant can cite to in
6 support of his motion to strike and or preclude the State from seeking death, there is no basis
7 for this Court to grant the relief requested. The alternative argument offered by Defendant
8 that the case should be stayed until such time as the dangerousness of the region where the
9 mitigation witnesses reside becomes safe for travel is equally flawed. Defendant has not
10 cited to a single source to support such a request. To stall the prosecution of a capital case
11 because the defense believes they must personally travel to and interview mitigation
12 witnesses regardless of where they are located perverts the criminal justice system.
13 Allowing a defendant to indefinitely prevent the administration of justice because he comes
14 up with some inaccessible distant relative who may possess some information helpful to his
15 sentencing is ludicrous and goes against public policy.


16 CONCLUSION

17 Based on the foregoing arguments, the State respectfully requests that Defendant's
18 motion be denied.

19 DATED this 30th day of March, 2015.

20 Respectfully submitted,

21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #001565

24 BY 
25 MICHAEL V. STAUDAHER
26 Chief Deputy District Attorney
27 Nevada Bar #008273

28 //
//

1 CERTIFICATE OF FACSIMILE TRANSMISSION AND/OR ELECTRONIC MAIL

2 I hereby certify that service of State's Opposition, was made this 30th day of March,
3 2015, by facsimile transmission and/or e-mail to:

4 ALZORA B. JACKSON, ESQ AND
5 CLARK W. PATRICK.
6 ATTORNEYS FOR DEFENDANT GONZALES

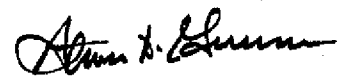
7 cpatrick@clarkcountynv.gov
8 ajackson@clarkcountynv.gov
9 kfitzger@clarkcountynv.gov

10 BRET WHIPPLE, ESQ.
11 bret@mylasvegaslawyer.com
12 PATRICIA ERICKSON, ESQ.
13 pme@pmericksonlaw.com

14 ATTORNEYS FOR CO-DEFENDANT CABRERA
15 FAX #384-3664

16 BY 
17 Employee of the District Attorney's Office
18
19
20
21
22
23
24
25
26
27

28 12FN0864A-B/MVS/jr/MVU



CLERK OF THE COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,) Case No: C-12-283700-1
) C-12-283700-2
vs.)
) Dept. No: 25
IVONNE CABRERA, aka Yvonne)
Cabrera; JOSE GONZALES, aka)
Jose Alejandro Gonzales,)
)
Defendants.)
)
)
)
)

BEFORE THE HONORABLE KATHLEEN DELANEY

APRIL 6, 2015, 9:00 A.M.

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

APPEARANCES:
(See separate page)

REPORTED BY: BRENDA SCHROEDER, CCR NO. 867

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Plaintiff:

MICHAEL STAUDAHER, ESQ.
Chief Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

For Defendant JOSE GONZALES:

CLARK W. PATRICK, ESQ.
Deputy Special Public Defender
330 S. Third Street, Suite 800
Las Vegas, Nevada 89155

ALZORA B. JACKSON, ESQ.
Deputy Special Public Defender
330 S. Third Street, Suite 800
Las Vegas, Nevada 89155

For Defendant IVONNE CABRERA:

PATRICIA M. ERICKSON, ESQ.
601 S. Tenth Street, Suite 206
Las Vegas, Nevada 89101

BRETT O. WHIPPLE, ESQ.
JUSTICE LAW CENTER
1100 S. Tenth Street
Las Vegas, Nevada 89104

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 MONDAY, APRIL 6, 2015, 9:00 A.M.

3 PROCEEDINGS

4 * * *

5 THE COURT: Are we ready to call Jose Gonzales
6 and Ivonne Cabrera?

7 MR. PATRICK: Yes, Your Honor.

8 THE COURT: Seeing Ms. Cabrera and Mr. Gonzales
9 present in custody.

10 MR. PATRICK: Good morning, Your Honor. Clark
11 Patrick and Alzora Jackson present for Mr. Gonzales.

12 MR. WHIPPLE: Good morning, Your Honor. Brett
13 Whipple and Patty Erickson on behalf of Ivonne Cabrera.

14 MR. STAUDAHER: Michael Staudaher on behalf of
15 the State, Your Honor.

16 THE COURT: Thank you. We have on the calendar
17 a status check for trial setting as to Ms. Cabrera. And
18 then for Mr. Gonzales -- I won't repeat the title because
19 it's extremely lengthy, but essentially what is a motion
20 to continue. We had spoken before or there was a verbal
21 representation by Ms. Erickson that Ms. Cabrera may wish
22 to join in what was referenced by the State. And I think
23 it is accurate that there had already been a request for
24 continuance by Ms. Cabrera and that that would not
25 necessarily be appropriate at this time.

3

1 And, Judge, while it is sort of a motion to
2 continue, it's actually much bigger than that. It's a
3 motion that goes directly to Mr. Gonzales' Sixth, Eighth
4 and Fourteenth Amendment rights. And as the Court said,
5 there is sort of a component to the continuance motion
6 and, I know that the Court reads everything that is
7 filed, and so this kind of also goes back to our previous
8 motion to continue and the memo that we filed for
9 adequate time to prepare for a death penalty case.

10 The mitigation in this case, Judge, that we're
11 talking about is not mitigation that would be nice to
12 have or that if we had time or if it was something we
13 could do, we'd do. The mitigation that we're talking
14 about in Mexico is paramount and of great importance to
15 Mr. Gonzales because we are talking about his father; his
16 biological father and his maternal grandparents. These
17 aren't cousins. These aren't acquaintances. These are
18 people that have a direct influence and have a great
19 influence on Mr. Gonzales' life up until the point where
20 he was arrested for this offense so we have to talk to
21 them.

22 And the State in part of their Opposition says,
23 Well, there's other ways to talk to them; you can Skype,
24 you can phone call. And that's true. But these people
25 are not the type of people that a phone call would do.

5

1 However, the Court would acknowledge, and I
2 think all the parties were of course aware that the Court
3 did have an in-camera discussion with counsel with regard
4 to circumstances that were taking place with regard to
5 the mitigation investigation as far as Mr. Gonzales' case
6 is concerned, and to some degree as far the guilt phase
7 investigation as to Ms. Cabrera. And representations had
8 been made in court previously about difficulties, for
9 lack of a better word, with investigators who had since
10 left the employment of counsel's office for Ms. Cabrera.

11 We have since then had the motion to continue,
12 as I will call it, filed. The Court has certainly
13 reviewed those matters. Also the State's Opposition
14 thereto, which the Court received. And I think
15 addressing first and foremost in many ways the way in
16 which it is styled, which talks about striking the Notice
17 of Intent to Seek Death Penalty or to preclude the
18 seeking of death penalty.

19 At this point, I want to open for any argument
20 from Mr. Gonzales' counsel that they wish to highlight
21 for the record. I will hear from Mr. Staudaher and then
22 we'll see if there is anything further that Ms. Cabrera's
23 counsel would like to put in the record and then we will
24 make our final determination.

25 MR. PATRICK: Thank you, Your Honor.

4

1 These are people that you need a face-to-face meeting
2 with.

3 Also, in Mr. Gonzales' past his parents had a
4 divorce. There was some child custody issues. In the
5 same town where his father and grandparents live is a
6 notary or lawyer that did a lot of work for Mr. Gonzales'
7 father. A lot of that work was actually filed in
8 Superior Court in Los Angeles. And he is also somebody
9 that is more important than a mere phone call or a mere
10 Skype to talk to.

11 Record gathering in Mexico, as the Court is
12 aware, is hard. And we are talking about a small town;
13 very third-world. And it's one thing to call or send a
14 letter to get records and it's another thing to go and
15 look at somebody in the face and say, Do you have any
16 records?

17 And I learned that firsthand on a mitigation
18 trip that I took with my mitigation specialist a couple
19 years ago. We went to China and we went to Korea and we
20 went to the Philippines. And we had sent many letters,
21 many phone calls to the Chinese institutions that's we
22 wanted records from; schools, clinics and things like
23 that. And we got very little, if anything or even an
24 answer from them.

25 Once we walked up and went into the building and

6

1 looked at a person face to face with an interpreter, we
2 found that there were records available. We got those
3 records and it was a much different process.

4 So simply saying that a phone call or a Skype
5 will get this done, I know it won't happen. I've tried
6 it before. You need to be face to face, especially with
7 people like I am saying, Mr. Gonzales' parents and his
8 maternal grandparents.

9 Another thing the State talks about in their
10 Opposition is what's the difference between doing
11 mitigation in this case and the mitigation in a case
12 where the harshest penalty could be life without parole.

13 Well, there's a huge difference. And the United
14 States Supreme Court and the Nevada Supreme Court has
15 said for years on many cases that this is a huge
16 difference. And it's both under the Eighth Amendment and
17 the Sixth Amendment. The Supreme Court as early as 1988
18 under the Eighth Amendment the death penalty has been
19 treated differently from all other punishments.

20 *Furman v. Georgia, Woodson v. North Carolina,*
21 the Supreme Court said again and again the death penalty
22 is different. The awesomeness of the penalty of death
23 makes it different than any other case. And if this was
24 not a death-penalty case, then, yeah, maybe we don't need
25 the detailed records out of Mexico. Maybe we can do a

7

1 are not guidelines, they are not suggestions. They are
2 the minimum professional standards that myself and
3 Ms. Jackson as capital counsel need to do in order to
4 properly represent Mr. Gonzales.

5 And the cases are staggering. Starts with
6 *Wiggins v. Smith, Williams v. Taylor, Rompilla v. Beard,*
7 *Lockett v. Ohio, Eddings v. Oklahoma, Porter v. McCollum,*
8 *Payne v. Tennessee,* and on and on, that it's
9 constitutionally mandated background investigation as set
10 forth by the ABA Guidelines that we need to do for
11 Mr. Gonzales.

12 And the Nevada Supreme Court has seen that. And
13 they have incorporated those same guidelines into Rule
14 250 in the Eighth Judicial Rules and ADTK 411. So it's
15 not aspirational. It's something that we need to do and
16 that must be done in order to properly, zealously and
17 effectively represent Mr. Gonzales.

18 Finally, the State said that there is no law
19 that allows this Court to strike the death penalty and
20 that is absolutely not true. Again, the Supreme Court
21 has held that trial judges have an affirmative duty to
22 ensure defendants' Sixth Amendment rights.

23 And that is exactly what this whole motion is
24 about. It is Jose's Sixth Amendment rights. He cannot
25 have effective counsel, he cannot have an effective

9

1 Skype phone call or a phone call with Mr. Gonzales'
2 father. Maybe we can do a phone call with Mr. Gonzales'
3 grandparents. But that is not the case here. This is a
4 death-penalty case and we are required by the Supreme
5 Court of both Nevada and the United States to do
6 mitigation three generations back. And we are talking
7 about the first two generations of people that we cannot
8 properly talk to, not properly mitigate by not being able
9 to go to Mexico.

10 Mr. Gonzales' maternal grandparents are too old
11 to travel to the United States. And his father has been
12 deported and cannot travel to the United States, so that
13 is completely out.

14 The Supreme Court of Nevada in 2006, *Summers v.*
15 *State,* the US Supreme Court's decision since 1976
16 recognized that death is different. And it is different.
17 And what we do on a non-death-penalty case is simply just
18 not adequate enough for what we need to do for
19 Mr. Gonzales in this case.

20 One of the State's favorite arguments, and I've
21 heard it many times before, Well, Your Honor, the ABA
22 Guidelines, they're just guidelines. They are ideas.
23 They are suggestions. Well, again, that is simply not
24 true. And the United States Supreme Court has gone over
25 and over this. And in the whole wide range of cases they

8

1 trial, he cannot have a fair trial unless we do the
2 constitutional mandated mitigation that we need to do.
3 And this court can absolutely do what it takes to protect
4 Jose's Sixth Amendment rights, his Eighth Amendment
5 rights and his Fourteenth Amendment rights.

6 And at the end of the day, that's what we're
7 arguing here is that he can simply not have a death
8 penalty imposed fairly and with reasonable consistency as
9 required by the Supreme Court unless we can do the proper
10 mitigation.

11 And if the Court is not willing to strike the
12 death penalty, which the Court does have the authority
13 to, the Court has wide discretion in what goes on before
14 it, then, yes, a continuance will be needed until such
15 time that we can complete the necessary mitigation to
16 effectively represent Jose.

17 THE COURT: I will give an opportunity for
18 rebuttal, Mr. Patrick.

19 Go ahead, Mr. Staudaher.

20 MR. STAUDAHER: A couple things, and maybe I
21 will take it in reverse order. As far as the continuance
22 on that basis, there is not even the glimmer that the
23 political situation in Mexico will change in any
24 foreseeable future. So to grant a continuance on that
25 basis, essentially, places this case in an indefinite

10

1 suspension for its duration until political change
 2 happens outside of this country to allow it to go
 3 forward, which just can't be within the guidelines of the
 4 ABA or the Constitution to allow such a thing to take
 5 place. So I would say that at least from that
 6 perspective there's no basis for a continuance under
 7 those circumstances.

8 Secondly, with regard to th central question I
 9 asked in the motion of the defense, and I have not heard
 10 anything articulated differently today, other than, and
 11 this is with regard to what they would do in a death case
 12 versus non-death case as far as mitigation goes. I still
 13 have not heard what they would do in this case or what
 14 they would not do in this case depending on whether it
 15 was a death or non-death matter.

16 Specifics, not just saying generally we may not
 17 have to do something; we may not have to do this; we may
 18 not have to do that is not specific. If they can come
 19 into court and represent to this Court that in cases that
 20 are non-death, meaning, that the maximum potential
 21 penalty is life without the possibility of parole, that
 22 they don't do outside the country mitigation work. That
 23 they don't have to do certain things. Specifically that
 24 those things are not on the table then we are talking
 25 about a different animal.

11

1 I have yet to ever hear defense counsel in
 2 almost any case come forward and say, We would not do
 3 this, we would not do that if this case was a non-death
 4 case.

5 Now to say that they would not do the mitigation
 6 in a non-death case versus a death case, there is no
 7 basis in either the ABA guidelines or the cases that were
 8 cited by counsel saying that these specific things must
 9 be done.

10 And as much as counsel would like to rely upon
 11 the Constitution as well as the case law to support what
 12 they are asking for in their motion, there is not a
 13 single authoritative source that they have been able to
 14 point to that says this Court would have the authority to
 15 strike a death notice which has been duly and validly
 16 processed and provided for to both them and to this Court
 17 in a capital murder case, which would allow this Court to
 18 just unilaterally strike a validly processed and proper
 19 death notice in this or any other case.

20 There is not a single thing -- we've talked
 21 about the case that's come up the Supreme Court, the one
 22 case that I cited related to this, which was the *Bobby*
 23 case, 2009, US Supreme Court overruling exactly what they
 24 are asking for, not as far as the death, but that the ABA
 25 Guidelines be used as the authoritative source for what

12

1 must be and must not be done in a mitigation sort of
 2 investigation, they address that squarely and said that
 3 ultimately it comes down to this, that counsel has to
 4 make objectively reasonable choices in what they do and
 5 don't do with regard to mitigation. That there is not
 6 some sort of checklist of things that they must do.

7 I heard in the argument that they are mandated
 8 to go back three generations. I have yet to see anything
 9 that says either the US Supreme Court has ever come back
 10 and said, Yes, the Constitution as we interpret it for
 11 mitigation investigation should go back three generations
 12 and that all individuals within that three generational
 13 span must be talked to, interviewed personally, all of
 14 those things.

15 There simply is just no basis for what they are
 16 asking for. And what they are saying to this court is
 17 what the standard is. The standard as the Supreme Court
 18 has said is reasonably objective choices by defense
 19 counsel in their mitigation work.

20 If there are alternatives, and they have not
 21 even attempted to do these alternatives; I'm talking
 22 about electronics, telephone -- actually, if they need
 23 in-person work they can hire a local investigator. They
 24 hire people all the time to do work as far as their
 25 investigation and mitigation.

13

1 In fact that was one of the bases the Court has
 2 brought forth in this matter for continuance by one of
 3 the defense counsels that the investigator is not
 4 available or is leaving the office or might not be
 5 available down the road or that they have to get a new
 6 investigator. So, clearly, that is not outside the realm
 7 of possibility or reasonableness.

8 I mean counsel does not do the investigation
 9 primarily. They may want to aspirationally go down and
 10 speak to an individual, but it is not mandated in any
 11 way, shape or form. They can do that; hire local counsel
 12 if they need to have somebody go and investigate locally
 13 or interview locally and that is augmenting with other
 14 sources, which the Nevada Supreme Court in my cases now
 15 is pushing sort of alternative means of testimony even in
 16 trials as far as video and audio link to try facilitate
 17 that to occur and to reduce the cost associated with the
 18 litigation.

19 So there is no basis to say that those
 20 mechanisms can't be employed if they believe objectively
 21 that they are needed in this particular case because it
 22 is a death case, because it's a murder case, because he
 23 is subjected to various punishments and penalties
 24 potentially if he is convicted, that those are important
 25 for a mitigation defense. That is what we're faced with.

14

1 I cited the specific case law from the US
 2 Supreme Court that says that they don't need to do these
 3 things, and they only have to do what is reasonable
 4 objectively not what they want to do.
 5 And, again, opening the floodgates, you have --
 6 essentially, if the Court were to rule in this particular
 7 instance to, one, strike the death notice; and two, to
 8 indefinitely suspend a trial until political situations
 9 in another country were resolved, which may never occur,
 10 think about the implications for other matters.
 11 That any time an attorney who is representing a
 12 death defendant, or even a non-death defendant since they
 13 have not articulated specifics in this matter, if they
 14 were to come forth to this court and say their objective
 15 personal belief in representing their client is that they
 16 must do this and this and this, and I'm talking about A,
 17 B and C mitigation, and that because we cannot do that
 18 for whatever reason that this Court must, one, strike the
 19 death notice; and two, suspend the trial until such time
 20 that that changes.
 21 It essentially would open the door to any
 22 defendant and any defense attorney coming forward and
 23 proffering even the most tenuous sort of examples to try
 24 and get their point across to strike the death notice and
 25 to get the trial pushed off to whenever they want it.

15

1 father face to face and his grandparents face to face.
 2 On a non-death penalty case where there is no
 3 chance of the State killing Mr. Gonzales, a phone call, a
 4 Skype is adequate. Records that we get and have already
 5 gotten are adequate. We can put on the mitigation case
 6 when we're not fighting for his life with the mitigation
 7 that we have and that is available to us now and in our
 8 next trip that we are making next week down to Southern
 9 California.
 10 The ABA Guidelines are very specific about going
 11 back three generations, and the US Supreme Court is very
 12 specific that we need to follow ABA Guidelines.
 13 Mr. Staudaher talks about the *Bobby* case. The
 14 *bobby* case was discussed under AEDTA, which requires
 15 federal courts to apply doubly defective standards to the
 16 IAC. That is not applicable in Nevada State court, so
 17 the *Bobby* case is not even persuasive, let alone
 18 precedence that this Court needs to follow.
 19 Mr. Staudaher talked about hiring local
 20 investigators or local mitigation specialists in Mexico.
 21 I touched on that in my motion. I am not going to go
 22 over too much of it except to say in China we had that
 23 and they were not as tenacious as we were when we went
 24 there.
 25 And local mitigation specialist does not always

17

1 I do not see that there is a basis for it
 2 legally. I don't see that the Court has legitimate
 3 authority to do what they're asking, and I don't see that
 4 there is anything beyond what the US Supreme Court has
 5 said is constitutionally mandated for mitigation work in
 6 this matter that would give them anything remotely close
 7 to the relief they are seeking in their motion.
 8 THE COURT: Thank you, Mr. Staudaher.
 9 Mr. Patrick, any rebuttal?
 10 MR. PATRICK: Yes, Your Honor. It seems like
 11 Mr. Staudaher is saying this is an "and" situation.
 12 Strike the death penalty and a continuance. That's not
 13 true. It is an "or" situation. It's either strike the
 14 death penalty or we need more time to get this trial
 15 ready because of the situation in Mexico.
 16 And I agree with Mr. Staudaher; the situation in
 17 Mexico may never get better, which is why this Court
 18 needs to strike the death penalty because at that point
 19 then this trial can go forward.
 20 And Mr. Staudaher said that he didn't hear us
 21 specifically saying anything about what we do death
 22 penalty versus non-death penalty in this case. And my
 23 apologies to him. I thought I was very clear in my
 24 argument that if this was not a death-penalty case we do
 25 not need to travel to Mexico. We do not need to see his

16

1 work when you are talking about a foreign country because
 2 they don't have any real guidelines and they are not as
 3 tenacious as we are. We went down there. We sat. We
 4 waited. We told them, We are not leaving until we get
 5 these records. Hiring somebody local that just may not
 6 happen.
 7 And this Court does have the authority to strike
 8 the death penalty under the Constitution. Mr. Staudaher
 9 says, Well, we didn't give you any precedence to do that.
 10 Well, we did. It's called the United States
 11 Constitution; it's call the Nevada Constitution.
 12 Mr. Staudaher did not give you any authority
 13 that you can't as a sitting judge in this district court
 14 strike the death penalty.
 15 THE COURT: Thank you, Mr. Patrick.
 16 I know that this is obviously not the motion,
 17 but at this point I would like Ms. Erickson and Mr.
 18 Whipple, if there is anything in terms of for the Court's
 19 consideration from your client's perspective that the
 20 Court needs to consider.
 21 I did not obviously mean to suggest it and sort
 22 of referring it to what is pending as a motion to
 23 continue to take away anything from the seriousness of
 24 what is being argued. But what the Court is looking at
 25 is ultimately when this case will go forward and how this

18

1 case will go forward and I want to have the full
2 circumstances in the record.
3 MS. ERICKSON: Yes, Judge. I took the
4 investigator down to meet with Ms. Cabrera. He has
5 reviewed the documents that I provided to him. He has
6 begun the beginning of the investigation that needs to be
7 done for the guilt phase. We are doing what we need to
8 do. We are on top of what we need to do now.

9 I think that a September setting would be
10 acceptable to both mine and Mr. Whipple's trial
11 calendars. I cannot do it in November or December
12 because I have a murder case that has been litigating for
13 the last four and a half years, so that needs to go in
14 November/December.

15 THE COURT: Thank you. A couple of sort of
16 background thoughts to orient from the decision I believe
17 I will give you today. Certainly death is different, the
18 Court does agree. The defense does not have a lot of
19 cases I don't think to agree with, but I think there is
20 one case that was indicated and distinguish that when
21 someone is facing the death penalty it is different. And
22 this court I believe would have the authority to strike
23 the death penalty notice and in the appropriate
24 circumstances.

25 I do not, however, find that these circumstances
19

1 warrant the Court to exercise that extraordinary
2 jurisdiction. I don't find anything that is existing in
3 this circumstance that would support the Court making the
4 determination that the death penalty would need to be
5 removed here because there is a difficulty, admittedly a
6 significant difficulty perhaps in some circumstances
7 amounting to close to impossibility, but a difficulty
8 conducting the mitigation investigation in another
9 country.

10 I think that in the totality of the cases that
11 we have that it is imperative that defense counsel be as
12 tenacious as they possibly can. The defense counsel in
13 this case will have the opportunity to be that tenacious.
14 There are exceedingly difficult circumstances that exist
15 in Mexico and I do not envy anyone in the position of
16 needing to do that type of work there. There is nothing
17 easy or comfortable or safe, frankly, potentially about
18 it, however, it can, be done.

19 And I think, and although I don't like the
20 slippery-slope-type argument, if they don't do something
21 because down the road it's going to have this impact,
22 this is this case, this is these defendants and that is
23 all that matters. But when I look at the circumstance I
24 certainly can acknowledge that counsel has been diligent
25 in his efforts to obtain the mitigation evidence it has
20

1 obtained so far.

2 And I think Mr. Staudaher is correct that it can
3 use its discretion to pursue whatever mitigation it can.
4 And if it cannot get certain mitigation information then
5 that is the circumstance. But it did not in and of
6 itself -- I cannot make a decision, I don't believe, not
7 in this case, place it in the hands solely of counsel to
8 say this is difficult or it can't be done at the moment;
9 and therefore, everything has to change.

10 I simply think that there is the opportunity,
11 although it is going to be exceedingly difficult to do so
12 to conduct and complete the mitigation investigation to
13 the best your ability, whatever you can obtain you can
14 obtain and there is nothing that the State has asked for
15 or the Court is doing that would preclude the defense
16 from presenting as much mitigation evidence as they
17 possibly can under the circumstances. And I think that
18 is not a deprivation of rights for Mr. Gonzales to give
19 additional time for the mitigation to be completed.

20 But, again, I don't have anything in the
21 evidence in this record that would tell me that it would
22 be appropriate in the circumstances for me to go the
23 extra length of withdrawing the death penalty from the
24 table and I am just not going to, again, exercise my
25 discretion in that regard at this time.
21

1 I also don't believe a stay of the proceedings
2 pending some change in the political structure, or
3 however the right way to phrase it is, for folks going
4 down to Mexico to be warranted, but I think a continuance
5 is appropriate both in the circumstances of Mr. Gonzales
6 to allow as much completion as possible for mitigation
7 investigation as well as Ms. Cabrera's circumstances.

8 As counsel has pointed out although they do have
9 responsibility to some degree of the investigator that
10 they had hired to do the work, at the end of the day the
11 investigator not performing the job function and leaving
12 the employment does present a circumstance that warrants
13 additional time to allow Ms. Cabrera's counsel to
14 complete their investigation on their guilt phase as
15 well.

16 I am going to continue this matter with
17 understood objections noted by counsel. But otherwise
18 the case remains status quo in terms of the charges. And
19 we will proceed -- my intention is to proceed on whatever
20 next calendar date we give for the trial.

21 MR. PATRICK: Your Honor, and I understand that
22 Ms. Cabrera may be ready in September. Since we are
23 severed it does not matter when they go to trial. We --
24 Mr. Gonzales, Ms. Jackson and I have no strong preference
25 as to who goes first as far as the two trials.
22

1 With everything that the Court has just said,
2 which is all true, we would be asking for a trial date in
3 your February stack, figuring that we will either get to
4 Mexico or not by that time and we'll do everything we can
5 to make that a firm date.

6 THE COURT: Well, I think that you all know I
7 was juggling this case as well as one other case that was
8 a capital case that was going to be in this May stack and
9 I had them all coupled up in this May stack and then the
10 other case already continued over and it is in that
11 February stack. It does not mean that we cannot replace
12 something again in that February stack as well.

13 Right now the November/December stack is
14 available. We have a little bit of flexibility there.
15 Now I appreciate there are difficulties in obtaining
16 juries in circumstances that are as difficult as these
17 that that time frame is not a ideal. But I do have a
18 little bit of concern in terms of the time frames needed
19 for the case and the fact that I already have another
20 capital case in this trial time frame.

21 MR. PATRICK: That's fine, Your Honor. I
22 believe the Court said it had an April stack. That is
23 fine with us also. November/December is just going to be
24 too soon, Your Honor. And especially as the Court just
25 pointed out both Ms. Jackson and I have attempted to seek

23

1 capital juries in a December trial and it is not --

2 THE COURT: Mr. Staudaher, do you have any input
3 that you would like to give from the State's perspective
4 in terms of time frame?

5 MR. STAUDAHER: It sounds like the Court was
6 leaning towards at least the November/December stack. I
7 am open or can make myself open during those two months.
8 I will defer to this court for its schedule.

9 THE COURT: It looks like we would be looking at
10 moving at least one of the cases over to the beginning of
11 next year.

12 Now the, not irony by any means, but sort of the
13 interesting aspect of this is that there was quite a bit
14 of struggle early to invoke and make this case move, but
15 I think we are all in the position now to understand that
16 we need to have a time certain given now to complete
17 things and then we're going to go.

18 MR. PATRICK: And that's what I am saying, Your
19 Honor. If you can give us the beginning of February or
20 April stack, I can tell you right now Ms. Jackson and I
21 will do everything we can to make that a time certain and
22 a firm date.

23 For the November/December stack I cannot make
24 that same assurance to the Court just because of the
25 quickness of it and all the other problems that I will

24

1 represent to the Court that February/April Ms. Jackson
2 and I will be ready.

3 THE COURT: Mr. Whipple, Ms. Erickson, you
4 mentioned earlier and we had talked essentially about the
5 September stack and you admitted that your investigator
6 is now on board and moving along. If we put these folks
7 out to April, do you want the February stack rather than
8 to go in September or do you want to go in September?

9 MR. WHIPPLE: I think we would prefer September.
10 We're both open.

11 THE COURT: It is open for us as well. Later
12 part of September just out an abundance of caution?

13 MS. ERICKSON: I would agree, Judge.

14 THE COURT: All right. Let's do the latter part
15 of September stack for Ms. Cabrera.

16 THE CLERK: Calendar call will be September 21st
17 at 9:30 --

18 MR. STAUDAHER: Actually, Your Honor, I have a
19 murder case that is the following week so would it be
20 possible to go the week of the 21st with the trial?

21 THE COURT: So the calendar call the 14th?

22 MR. STAUDAHER: Yes.

23 THE CLERK: Calendar Call September 14th at
24 9:30. Jury trial September 21st at 10:30.

25 THE COURT: That is as to Ms. Cabrera.

25

1 As to Mr. Gonzales out of an abundance of
2 caution why don't we take the April stack.

3 MR. PATRICK: Very good. Thank you, Your Honor.

4 MS. JACKSON: Your Honor --

5 THE COURT: Well, just to be clear, it begins in
6 the latter part of April and it runs into the middle to
7 latter part of May.

8 MS. JACKSON: I just set Barlow, which is
9 capital which is going to go in Department 4, Judge
10 Early.

11 MR. STAUDAHER: That's my case as well.

12 MS. JACKSON: Oh, okay.

13 MR. STAUDAHER: So we'll have to coordinate
14 that.

15 MS. JACKSON: Would you say that would go?

16 MR. STAUDAHER: I would say yes.

17 THE COURT: When is that set for?

18 MS. JACKSON: April 4th, I believe.

19 MR. STAUDAHER: Yes, April 4th.

20 THE COURT: So we would have to go in the
21 February stack for you. April 4th did you say?

22 MS. JACKSON: April 4th. It's a double homicide
23 and it is a very intense capital case.

24 THE COURT: All right. Our stack doesn't begin
25 until the 18th, and then runs through the third week of

26

1 May. But, again, whatever time frame you need. Do you
2 want to go after that or do you want to go into
3 September?

4 MR. PATRICK: Your Honor, while they are
5 conferring, if I may, I have an order denying the motion,
6 if I may approach, for the judge's signature.

7 THE COURT: Of course.

8 MR. WHIPPLE: Your Honor, may I be excused?

9 THE COURT: You may, Mr. Whipple. Thank you.

10 MR. STAUDAHER: Your Honor, I believe that we
11 just conferred and it sounds like with your criminal
12 stack, which begins on the 18th, if we went on April 25th
13 for the trial that that would work for both counsel and
14 the Court.

15 MS. JACKSON: That's correct, Your Honor.

16 THE COURT: Okay.

17 THE CLERK: Calendar call April 18th at 9:30.

18 Jury trial April 25th at 10:30.

19 THE COURT: I would like to do a status check in
20 90 days just to make sure and see where we are, how
21 things are going along. I know we let Mr. Whipple go and
22 I think we lost Ms. Erickson too. I didn't realize that,
23 but they'll catch up with the information. It's a little
24 more imperative in their matter because they are a little
25 closer to their trial date.

27

1 REPORTER'S CERTIFICATE

2
3 STATE OF NEVADA)
4 COUNTY OF CLARK) ss.

5
6 I, BRENDA SCHROEDER, a certified court reporter
7 in and for the State of Nevada, do hereby certify that
8 the foregoing and attached pages 1-29, inclusive,
9 comprise a true and accurate transcript of the
10 proceedings reported by me in the matter of THE STATE OF
11 NEVADA, Plaintiff, versus IVONNE CABRERA, JOSE GONZALES,
12 Defendants, Case No. C283700 on April 6, 2015.
13
14
15

16 Dated this 12th day of April, 2015.
17

18 /s/ Brenda Schroeder
19 BRENDA SCHROEDER, CCR No. 847
20
21
22
23
24
25

29

1 THE CLERK: July 8th at 9:00 a.m.

2 MR. PATRICK: Thank you, Your Honor.

3 THE COURT: All right. Thank you so much.

4 MS. JACKSON: Thank you, Your Honor.

5 MR. STAUDAHER: Thank you, Your Honor.

6 (Proceedings were concluded.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

28

1 ORDD
2 DAVID M. SCHIECK
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #0824
5 CLARK W. PATRICK
6 Deputy Special Public Defender
7 Nevada Bar #9451
8 ALZORA B. JACKSON
9 Deputy Special Public Defender
10 Nevada Bar #2255
11 330 So. Third Street, Suite #800
12 Las Vegas, Nevada 89155
13 (702) 455-6265
14 FAX: (702) 455-6273
15 E-MAIL: cpatrick@clarkcountynv.gov
16 E-MAIL: ajackson@clarkcountynv.gov

17 Attorneys for GONZALES

18 DISTRICT COURT
19 CLARK COUNTY, NEVADA

20 THE STATE OF NEVADA,
21
22 Plaintiff,

23 vs.

24 JOSE A. GONZALES, ID 2636822,
25
26 Defendant.

27 CASE NO. C-12-283700-2
28 DEPT. NO. 25

Date: 4-6-2015
Time: 9:00 a.m.

**ORDER DENYING MOTION TO PRECLUDE THE STATE
FROM SEEKING THE DEATH PENALTY DUE TO
DEFENSE COUNSEL'S INABILITY TO CONDUCT
A THOROUGH AND COMPLETE MITIGATION
INVESTIGATION OR, IN THE ALTERNATIVE
TO STAY PROCEEDINGS UNTIL THE DEFENSE
TEAM CAN SAFELY CONDUCT ITS
MITIGATION INVESTIGATION IN MEXICO**

Defendant Jose Gonzales' Motion having come before the Court, the Court being fully advised in the premises, and good cause appearing

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Jose Gonzales' Motion to Preclude the State from Seeking the Death Penalty due to Defense Counsel's Inability to Conduct a Thorough and Complete Mitigation Investigation or, in the

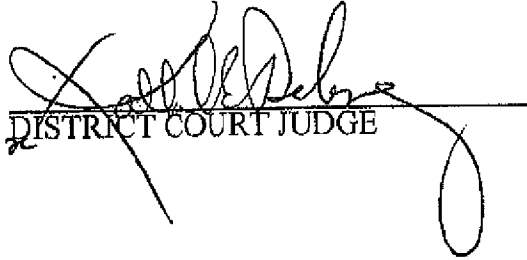
Electronically Filed
04/08/2015 10:54:28 AM



CLERK OF THE COURT

1 Alternative to Stay Proceedings Until the Defense Team can Safely Conduct its Mitigation
2 Investigation in Mexico is DENIED.

3 DATED and DONE: April 7, 2015

4
5 
6 DISTRICT COURT JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28