

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)	
)	Docket No. \
vs.)	
)	
GABRIEL SOLACHE)	Inmate No. R-01940
)	
)	

SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

—
**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY**

—
HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: ARTHUR F. HILL
MERCEDES LUQUE-ROSALES
SARI LONDON

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I

HISTORY OF THE CASE

On March 28, 1998, Gabriele Solache brutally stabbed Mariano Soto forty-two times, six of which were deep enough to penetrate into Mr. Soto's body cavity in his chest and abdomen. Solache did this while Mr. Soto was asleep in his own bed alongside his three year old son Santiago. While Solache was busy stabbing Mr. Soto, his co-defendants, Arturo DeLeon Reyes and Adriana Mejia, were stabbing Mrs. Jacinta Soto twenty-six times, four of which penetrated her body cavity into her heart, chest, lungs, and abdomen, all the way into the tissues of her left kidney. After murdering Mr. And Mrs. Soto, Solache and his co-defendants kidnapped two month old Maria and three year old Santiago. Solache and Reyes then dropped Mejia and the children off at the University of Illinois Hospital. Mejia pretended that two month old Maria was her very own newborn baby and that she was taking care of Santiago for a patient named Norma Salazar.

Several days later, on April 1, 1998, worried family members called Chicago Police to check on the well being of the Soto family. Mariano and Jacinta had not been seen for several days yet their car was parked in front of their home. After breaking into the Soto's modest apartment,

Officer David Valentin and Casey Bergadon discovered a gruesome scene. The Soto's decaying bodies had been found. Mariano's body was found near the front door outside the bedroom in a pool of blood, while Jacinta's body was found inside the bedroom in a fetal position covered with a blanket. The Officers noticed the stench of the decaying bodies, and saw the blood trail and blood splatters along the wall and ceiling. They frantically searched for the Soto children to no avail. The children had vanished without a trace.

On April 2, 1998, Guadalupe Mejia, a roommate of Gabriel Solache, was watching the late evening news. She saw Santiago's photograph in a special bulletin that Chicago Police had created regarding the missing children. She awoke the household and informed them that Santiago's parents had been murdered. Rosauro Mejia decided that Santiago needed to be taken to the police station and asked Solache and Reyes to accompany him to report Norma Salazar. Solache, Reyes, Rosauro Mejia and Santiago arrived at the 8th District police station on April 3, 1998 at 2:00 a.m. An extensive police investigation focused on Norma Salazar commenced. Unable to find any information on Norma Salazar at the University of Illinois Hospital detectives went to see Adriana Mejia. When they arrived, police officers noticed that Mejia's baby was too big to be a newborn. Remembering the description of little Maria Soto, officers examined the baby and noticed the birthmark on her neck. It was only then that they realized that they had found the second kidnapped victim. Solache, DeLeon and Adriana Mejia were later arrested and admitted their participation in these horrible crimes. Solache made oral confessions to a Chicago Police Detective and to an Assistant State's Attorney. He later signed a handwritten statement.

Solache was tried before a jury with the Honorable Stanley J. Sacks presiding. On June 20, 2000, by a unanimous jury, Solache was convicted for the murders of both Mariano and Jacinta

Soto, home invasion, and for aggravated kidnapping for taking Santiago and Maria Soto from their parents and from their home. His subsequent Motion for New Trial was denied.

On October 24, 2000, Judge Sacks found Solache eligible to receive the death penalty under four separate eligibility factors. After an extensive sentencing hearing and a lengthy decision making process, Judge Sacks sentenced Solache to death on January 17, 2001. Solache filed his Notice of Appeal on January 17, 2001. His appeal is currently pending before the Illinois Supreme Court. The People's Brief is due on October 15, 2002.

For the reasons that follow, the People of the State of Illinois respectfully request that Governor Ryan and the Prisoner Review Board reject Gabriel Solache's Petition for Executive Clemency.

II

FACTS OF THE CASE

On March 28, 1998, Mariano Soto and Jacinta Soto lived in the basement rear apartment of 2071 North Leavitt with their three year old son Santiago and two month old baby girl Maria. (R. 1372, 1391) In the early morning hours, Alfredo Aranda, who lived in the front basement apartment, heard noises coming from the Soto's apartment. (R. 1374) Mr. Aranda heard moaning and a loud noise as if something had fallen to the floor and was dragging. Mr. Aranda heard a man say, "Shut up, nothing is going to happen to you". (R. 1374) He also heard the little boy start to cry. (R. 1375) The moaning and crying lasted approximately five to ten minutes and then there was complete silence. (R. 1375-1377)

Several days later, on April 1, 1998, Chicago Police Officer David Valentin and his partner Corrie Bergadon received an assignment to go to the basement rear apartment located at 2071 North Leavitt to check on the well being of the Soto family who lived in that apartment. (R. 1412) Relatives of the family were concerned for the Soto's well being. (R. 1413) The officers received no response when they arrived at the apartment. (R. 1414) Since the landlord did not have the key to the apartment they had to break a window to gain entry. (R. 1415) Once the window was broken, the officers could smell the pungent smell of decaying bodies. (R. 1415) Upon walking into the apartment, Officer Valentin saw Mariano Soto on the floor near the doorway having suffered multiple stab wounds. (R. 1416) It was later determined that Mr. Soto suffered forty-two stab wounds, five of which were deep enough to penetrate into his body cavity in the chest and one penetrated his abdominal area. (R. 1910) His body was found in the early stages of decomposition (R. 1425) (See Appendix A).

Officer Valentin observed blood all over the apartment. (R. 1416) The officer learned from family members that there were young children who also lived in the apartment. (R. 1392, 1416) While looking for the Soto children, Valentin moved a curtain, which separated the bedroom from the kitchen, (R. 1417) and moved a blanket that was on the floor. It was then that he saw Jacinta Soto laying in a fetal position having also suffered from multiple stab wounds. (R. 1417) An autopsy later established that Mrs. Soto suffered twenty-six stab wounds, four of which penetrated her body cavity. (R. 1903) Mrs. Soto was also found in the early stages of decomposition (R. 1426) (See Appendix B). While Mr. and Mrs. Soto were found murdered in their home, the children were missing (R. 1417) (See Appendix C).

Detectives Halvorsen and Guevara of the Chicago Police department responded to the Soto's apartment. (R. 1424) In addition to finding the victims bodies in a state of decomposition, the detectives observed blood on the twin beds and blood splattered on the wall. (R. 1426) The mobile crime lab technicians photographed the scene and searched for physical evidence. (R. 1826-1833) When Mariano Soto's body was moved, a kitchen knife, was found under his right arm. (R. 1428, 1829) Behind the sofa, a cardboard box labeled Regent Knives was found which contained a wooden block and knives. (R. 1429, 1833) Two knives were in the holder while another knife was found loose in the box. (R. 1429) The loose knife had red stains on the blade. The knife that was found under Mariano's body matched the set of knives, which were found behind the sofa. (R. 1430) The Youth Division of the Chicago Police Department was called because the Soto children were never found. (R. 1431) A special police bulletin was created regarding the missing children. (R. 1463, 1465, 1466, 1478) It was known that the baby girl had a wine stain birthmark on the left

side of her neck. (R. 1406) The next day, during the investigation, a blood stained baby blanket and blood stained baby pants were recovered and inventoried. (R. 1536-1540, 1570-1576)

While the double murder and kidnapping investigation was unfolding, the Mejia family was celebrating the birth of a baby girl who they believed belonged to co-defendant Adriana Mejia and Rosauro Mejia. (R. 1496-1502) The Mejia family lived in Chicago at 6234 South Mozart. (R. 1496) Adriana Mejia lived in a house with her husband Rosauro and defendant Gabriel Solache, co-defendant Arturo DeLeon Reyes, and her brother Carlos Martinez. (R. 1497) Also living in the same house was Rosauro's brother and sister-in-law Jorge and Guadalupe Mejia, their children, and another individual, Martin Vaca. (R. 1497)

Rosauro Mejia, (who testified at trial on defendant's behalf) testified that he believed that his wife Adriana was pregnant in March of 1998. (R. 1964) On March 27, 1998 Guadalupe Mejia saw her brother-in-law Rosauro take his wife Adriana to the hospital but they later returned without a baby. (R. 1499) The next day Guadalupe went with Rosauro to the University of Illinois Hospital where they picked up Adriana. (R. 1501, 1966) Adriana had a baby girl and a little boy who was three years old with her. (R. 1501, 1966) Adriana told Rosauro that a patient named Norma Salazar, also having a baby, had asked her to take care of the boy. (R. 1967)

When they brought the baby home, Guadalupe gave the baby a bath and noticed what she thought was a rash on the baby's neck. (R. 1502) Adriana had covered the baby's umbilical cord and she insisted that it remain covered. (R. 1502) Guadalupe had noticed that Adriana was not walking slowly or in pain as someone would who had just had a baby. (R. 1502)

On April 2, 1998, Guadalupe was watching the late night news on the Spanish speaking station. She saw a story about two people who were murdered and she saw a photograph of their

little boy who was missing. (R. 1503) Guadalupe recognized the photograph of the little boy as being the little boy who they brought home with Adriana from the hospital. (R. 1503) Guadalupe ran upstairs to tell Adriana what she had seen. (R. 1504) She told Adriana to call the police because she feared the woman who had given Adriana the boy might have killed the people. (R. 1504) Adriana was cold when she was told about the murders. (R. 1505)

When Rosauero came home from work, Adriana told him that a photograph of the boy had been seen on television and that the boy's parents had been killed. (R. 1968) Adriana suggested leaving the little boy in an alley. (R. 1969) Rosauero said that he could not do that and he took the little boy to the police station. (R. 1969) Rosauero asked defendant Solache and co-defendant Reyes to come with him. (R. 1969) They went to the police station at approximately 2:00 a.m. on April 3rd (R. 1970) When they arrived at the station they asked to speak to a Spanish speaking police officer. (R. 1971)

On April 3, 1998, at approximately 4:15 a.m., Officer Juan Solis was called to the 8th Police District to translate Spanish. (R. 1450) Officer Solis spoke to Rosauero Mejia who was with Solache, co-defendant Reyes, and three year old Santiago. (R. 1452, 1460, 1461) Officer Solis and Sergeant Edward Hanlon were told that Rosauero and his wife had seen a photo of the little boy on the news and that he was missing. (R. 1454) After speaking with Rosauero, the investigation focused on a woman named Norma Salazar. (R. 1454, 1482) The three men were offered pop and snacks while at the 8th District. (R. 1462) After being thanked by the sergeant for bringing the little boy into the station, Rosauero, Solache, and Reyes were driven to Area Five Detective Division where the investigation continued. (R. 1455, 1472) Jose Aranda, a family member of the murdered parents, came to the police station and identified Santiago. (R. 1455, 1479)

After speaking to Rosauro Mejia, Detective William Kernan obtained two telephone numbers for the woman Norma Salazar. (R. 1482) Unable to contact Norma Salazar, Detective Kernan contacted the University of Illinois Hospital to determine if Norma Salazar had been a patient there. (R. 1483) The detective also checked with the hospital to determine if Adriana Mejia had actually been a patient at the hospital. (R.1483). The hospital informed Kernan that neither woman had ever been a patient at the University of Illinois Hospital. Detective Kernan passed all his information over to Detectives Dickinson and McDonald who were working the second watch. (R. 1484)

As the investigation unfolded, on April 3, 1998, at approximately 9:45 a.m., Detectives Dickinson and Mahan and Officer Lilia Flores (who acted as an interpreter) went to 6234 South Mozart looking to question Mejia as to her contact with Norma Salazar. (R. 1540) Adriana Mejia allowed the officers into the house and told them that she had just had a baby. (R. 1516, 1518, 1542) When the officers asked to see the baby they noticed that the baby was not a newborn, she was too big and her umbilical cord was healed. (R. 1517) They also noticed that the baby had a birthmark on the left side of her neck just like the baby girl had who had been kidnapped. (R. 1506, 1518) A member of the Soto family would later identify the baby as Maria Soto, the baby girl who had been kidnapped from the Soto home. (R. 1522) Thereafter, the baby was taken to the hospital while co-defendant s Adriana Mejia and Guadalupe were taken to Area Five. (R. 1507, 1519, 1520) After finding the second kidnapped victim, the detectives called Area Five, and Solache, co-defendant Reyes, and Rosauro Mejia were placed under arrest. (R. 1485, 1520, 1543)

Once at Area Five at 11:30 a.m., Detective Renaldo Guevara interviewed Adriana Mejia. (1696) He interviewed her in Spanish. (R. 1697) After speaking with her for about twenty to thirty

minutes the investigation continued to focus on Norma Salazar. (R. 1698) At approximately 3:00 p.m. Norma Salazar was located and brought to Area Five where a line-up was conducted. (R. 1699) Adriana Mejia viewed the line-up and failed to identify Norma Salazar. Salazar was thereafter released. (R. 1700, 1701) Adriana Mejia was then questioned at a downtown location at 5:00 p.m. She took a lie detector test which indicated deception regarding Norma Salazar and the two kidnapped children. Mejia was returned to Area Five at 9:00 p.m. (R. 1701, 1702)

In the mean time, Sergeant Berscott Ruiz and his partner went to 6234 South Mozart with Rosauro Mejia, who had signed a consent to search form. (R. 1851) In the bedroom closet the officers located a pair of black shoes belonging to Adriana Mejia. (R. 1853) The shoes were brought to Area Five and given to Detective Guevara. (R. 1855, 1702) Preliminary tests were done on the shoes, and Adriana Mejia was interviewed again at approximately 11:30 p.m. (R. 1702, 1704, 1855)

Thereafter, co-defendant Reyes was interviewed. (R. 1704) Reyes was asked to turn his pockets inside out and two pieces of paper fell out. (R. 1704) One piece of paper had the name Norma Salazar and a phone number, and below it was the name Adriana Martinez and her phone number. (R. 1705) The second piece of paper had the word hospital, Norma Salazar with a phone number, and below that was the name Leonardo and another phone number. (R. 1705, 1706) It was later discovered that Reyes' calendar also contained the name Norma Salazar. (R. 1707)

On April 4, 1998, just past midnight, Assistant State's Attorney Wehrle was contacted. She interviewed and ultimately took a handwritten statement from Guadalupe Mejia. (R. 1709) Detective Guevara checked on the defendant and his co-defendants at 3:00 a.m. (R. 1709) Solache was sleeping in the interview room so the detective did not wake him up. (R. 1710)

At approximately 6:30 a.m., Detective Guevara again obtained Rosauro Mejia's consent to search his home. (R. 1710) Detective Guevara returned to 6234 South Mozart with Guadalupe and Rosauro Mejia. (R. 1507, 1711) He was looking for a pair of black pants that had blood on them. (R. 1710) Guadalupe found the pants, which were located in the closet of Adriana's bedroom. (R. 1508, 1711, 1712) After the pants were found, Guadalupe stayed at home. (R. 1513)

At 10:35 a.m. Detective Dickinson spoke to Adriana Mejia. (R. 1544, 1713) Youth Officer Trevino interpreted for the conversation. (R. 1544) After Mejia was shown her shoes and bloody pants she implicated Arturo DeLeon Reyes in the murders of Mr. and Mrs. Soto. Based on the information that was obtained from Adriana Mejia, Detective Guevara interviewed Reyes. (R. 1714) He informed Arturo DeLeon Reyes that Mejia had implicated him in the Soto murders. Reyes then confessed his participation in the crimes, and implicated Mejia and Gabriel Solache. Det. Guevara then had another conversation with Mejia at 8:00 p.m. (R. 1714). He informed Mejia of the statement that Reyes had given. Adriana Mejia then confessed her participation in the crimes, along with Reyes, and also implicated Gabriel Solache.

At 9:00 p.m., after both co-defendants confessed, the detective had a conversation with Gabriel Solache. (R. 1715) Solache, who had been previously advised of his rights, stated that he understood when he was reminded of his rights before the interview. He then agreed to talk to Detective Guevara. (R. 1715-1718) With the detective speaking in Spanish, Solache was told that his co-defendants had confessed to their participation in the murders of Mariano and Jacinta Soto and the kidnapping of Santiago and Maria. (R. 1718) Gabriel Solache then confessed that he also participated in the double murder and kidnapping. (R. 1718)

Solache admitted that on March 28, 1998 at 3:00 a.m. he came home from work and rested for about five minutes. (R. 1718, 1719) Arturo DeLeon Reyes picked him up in Rosaura Mejia's Toyota and Solache drove to the University of Illinois Hospital to pick up Adriana Mejia. (R. 1719) After picking up Mejia, she then directed them north. (R. 1719) As Solache was driving the car his co-defendants were talking about "getting the baby no matter what had to be done". (R. 1719) "She wanted that baby no matter what had to be done". (R. 1719) Solache did not know where he was when they finally stopped driving. (R. 1720) When they got out of the car they went to the back of the building where Mejia knocked on the door of the basement apartment. (R. 1720) The victim, Jacinta Soto, looked out the window and then opened the door. (R. 1720) Co-defendant Reyes then pushed his way in and was followed by defendant and co-defendant Adriana Mejia. (R. 1720) Reyes stabbed Mrs. Soto in the upper part of her chest. When Mrs. Soto was stabbed she grabbed her chest with her two hands. (R. 1720) As she was "going down", co-defendant Adriana Mejia grabbed Mrs. Soto by the shoulder and with her other hand took the knife and stabbed Mrs. Soto multiple times in the back. (R. 1721)

Solache further admitted that he picked up an eleven-inch knife that was on the kitchen table and ran to the bedroom to see who was there. (R. 1721, 1724) Solache saw a man, who we now know was Mariano Soto, sleeping with his little boy (Santiago) next to him. (R. 1721) Solache ran to Mr. Soto and started stabbing him about the body. (R. 1721) Solache continued stabbing Mr. Soto as he said to, "finish what he started". (R. 1721) After Solache finished stabbing Mr. Soto, he came out of the bedroom, threw the knife on the living room floor, and ran out the door to the car. (R. 1722) Shortly after defendant sat in the drivers seat, he saw Adriana Mejia come out of the

house with the baby. (R. 1722) She sat in the front seat of the car and then Reyes ran out of the house with the little boy and sat in the back seat. (R. 1722)

Solache drove back to the hospital where they first picked up Mejia and dropped her off with the baby and the little boy. (R. 1722) Defendant then drove home with Reyes and went to sleep. (R. 1722) Solache woke up at 11:30 the next morning and saw Adriana with the baby and the little boy. (R. 1723) She was pretending that the baby was her baby. (R. 1723)

Solache stated that he went to work but when he came home on April 3, 1998, Rosauero asked him to go with him to take the little boy to the police station. (R. 1723) Rosauero explained that the boy was the missing boy that had been seen on television. (R. 1723) Solache, Reyes and Rosauero Mejia went to the police station. (R. 1723)

After Solache admitted his involvement in the double murder and kidnappings, Detective Guevara was used to translate for a conversation between Gabriel Solache and Assistant State's Attorney Heather Brualdi. This conversation occurred in a conference room on April 4, 1998 at 11:25 p.m. (R. 1725,1753, 1862) Assistant State's Attorney Brualdi introduced herself to Solache and advised him of his rights. (R. 1863) Solache stated that he understood and was willing to talk to her. (R. 1863-1866) Assistant State's Attorney Brualdi then had an oral conversation with Solache, which lasted forty-five minutes. (R. 1866) At 3:35 a.m. Solache was asked and agreed to give a handwritten statement. (R. 1868) (See Appendix D) Assistant State's Attorney Brualdi wrote out the statement as she and Solache again spoke about what had happened. (R. 1868) Detective Guevara continued to interpret. (R. 1869) The handwritten statement took about an hour to write out. (R. 1869) Then the detective read each line of the statement to Solache in Spanish. (R. 1869) Several corrections were made to the statement and those were initialed. (R. 1869) After the

statement was read it was signed by the Assistant State's Attorney, the Detective, and Solache. (R. 1726,1870) During the handwritten statement Solache identified several photographs of the victims and his co-defendants. (R. 1727,1871) (See Appendix E) The photographs were also signed. (R. 1871) After the nine-page handwritten statement was read, corrected, and signed, two photographs were taken of Gabriel Solache. (R. 1729, 1873, 1875) These photographs were also signed by the Assistant State's Attorney, the detective, and Solache. (R. 1729, 1875)

Solache's oral statements made to the detective and the Assistant State's Attorney, along with the handwritten statement were published to the jury at trial. (R. 1875-1881) Solache stated in his handwritten statement that he was born in Mexico and had lived in the United States for two years. (R. 1876) He stated that he lived with the co-defendants at 6234 South Mozart, and that he had known Adriana Mejia since they were children. (R. 1876) Solache said that he graduated from high school in Mexico and spoke very little English even though he took one hour of English a week in high school. (R. 1876) Defendant stated that he agreed to have Detective Guevara translate from English to Spanish and Spanish to English for purposes of the statement. (R. 1876, 1877) Defendant stated that Adriana and Rosauro had been married for over five years. (R. 1877) He stated that about five months ago he was told that Adriana was pregnant. (R. 1877)

Solache stated that he was treated well by the police and Assistant State's Attorney Brualdi. (R. 1880) He stated that he had been able to use the bathroom when he wanted, that he had been given three sandwiches to eat, pop and water to drink, and cigarettes to smoke. (R. 1880) In fact, Assistant State's Attorney Brualdi testified that she witnessed Solache smoking. (R. 1872) Solache stated that no promises or threats were made to him and that he made the statement freely and voluntarily. (R. 1880) He said he was not under the influence of drugs or alcohol. (R. 1880,

1881) Solache stated that Detective Guevara read the statement to him aloud in Spanish and that he was able to make any changes or corrections that he wanted. (R. 1881)

Thereafter, Solache, along with his co-defendants, Adriana Mejia and Arturo Deleon Reyes, were charged by Indictment No.98 CR 12440 with ten counts of first degree murder, twelve counts of home invasion, eight counts of aggravated kidnapping, four counts of kidnapping, and six counts of residential burglary in connection with the multiple stabbings of Mariano Soto and Jacinta Soto and the kidnapping of their young children Santiago and Maria Soto (R. CL. C23-C62) Prior to trial, defendant filed numerous pre-trial motions. (R. CL. C88-C90, C94-C96) Defendant filed a Motion to Suppress Statements based on a violation of the Vienna Convention and a Motion to Quash Arrest and Suppress Evidence based on lack of probable cause and voluntariness of his statement. (R. CL. C88-C90, C94-C96) (The relevant facts pertaining to each of the pre-trial motions will be included in the corresponding argument section of the People's brief) After several witnesses testified over a span of many court dates, Judge Sacks ruled on all of Solache's motions. On July 28, 1999, Judge Sacks held that there was no probable cause to arrest Solache when he was arrested on April 3, 1998 at 10:30 a.m. (R. 286-288) Nevertheless, his statement was not suppressed because the trial court conducted an attenuation hearing, along with a hearing on the voluntariness of defendant's statement. (R. 299-358, 364-384, 476-484, 680-685, 686-762, 837-912) On April 7, 2000, after hearing all the witnesses testify and hearing argument from all the parties, the trial court denied all of defendant's motions. Specifically, he denied the motion based on the Vienna Convention, he also found that there was sufficient attenuation from defendant's "illegal" arrest and that defendant's statements were made freely and voluntarily. (R. 995-1015)

Solache was tried in a joint but separate trial with co-defendant Reyes, before a jury commencing on June 12, 2000, with the Honorable Stanley J. Sacks presiding. (R. 1062) Many witnesses testified at trial and the evidence, which was established by their testimony has been relayed above.

In addition, Medical Examiner Barry Lifschultz, who performed the autopsies of Jacinta and Mariano Soto, explained to the jury the extent of the victims' injuries. Jacinta Soto suffered from multiple stab wounds. (R. 1902) She suffered a total of twenty-six stab wounds, four of which penetrated her body cavities. (R. 1903) Mrs. Soto had wounds to her head, chest, neck, back, shoulder and buttocks. (R. 1903-1907) One of her stab wounds was deep enough to penetrate her heart, two other ones went into her chest cavity and penetrated her right lung, and one stab wound in her lower back penetrated into her abdominal cavity and penetrated into the tissues into her left kidney. (R. 1904-1905)

Mariano Soto also suffered from multiple stab wounds (wounds from a sharp force that are deeper than long) but he also suffered from incise wounds (wounds from a sharp force that are longer than deep). (R. 1910) Mr. Soto suffered from a total of forty-two wounds, six of which penetrated into the body cavity in the areas of the chest and the abdomen. (R. 1910) Mr. Soto suffered from injuries to his head, chest, abdomen, right arm, left shoulder, and legs. (R. 1911-1014) He also had defensive wounds. (R. 1914) Dr. Lifschultz identified the knife that was found under Mr. Soto's arm, right outside the bedroom, as being the type of knife used to cause the injuries to Mr. Soto. (R. 1916) It was Dr. Lifschultz's opinion that Mrs. Soto died from multiple stab wounds and that Mr. Soto died from a result of multiple stab wounds and incised wounds. (R. 1920) In both cases, the manner of death was homicide. (R. 1922)

Furthermore, Illinois State Police Forensic Biologist Elizabeth Boedeker received physical evidence from this case. (R. 1549-1557) She preserved the biological evidence first. (R. 1562) She found the presence of human blood on the knives, which were found in the apartment, a towel, Adriana Mejia's shoes, her pants, a pair of baby pants and a baby blanket. (R. 1559-1576) The evidence was put in the freezer to be preserved for DNA testing. (R. 1576)

Forensic DNA Analyst Barbara Wilson conducted DNA testing on the samples that Elizabeth Boedeker collected. (R. 1598) Barbara Wilson explained that if DNA is not found on a sample that does not mean that the offender did not participate in the crime. (R. 1594) She had blood standards of the victims as well as the defendant and his co-defendants. The blood found on Adriana Mejia's shoes and pants both had DNA matching the victim, Mr. Soto. (R. 1604, 1605) A bloodstained towel had the presence of Mr. Soto's DNA. (R. 1605) One of the knives found had DNA from co-defendant Mejia. (R. 1606) Some of the blood found on the knife found under Mr. Soto's body had insufficient DNA for analysis, while one of the blood samples matched his DNA. (R. 1606) The blood samples from the baby blanket and the pair of baby pants matched the DNA of Mr. Soto. (R. 1606, 1607) The results of some of the samples were mixed, which meant that there was more than one contributor and it could not be determined who had contributed to them. (R. 1608, 1610, 1626) Gabriel Solache's DNA was not found on any of the samples that were tested. (R. 1611, 1615) Barbara Wilson, the forensic DNA expert, testified that the fact that DNA was not found does not mean that Gabriel Solache was not there. (R. 1625) (Jacinta Soto, who was stabbed twenty-six times, also had none of her DNA found on any of the samples that were tested.) Additionally, Wilson said that some people produce DNA at such a low levels that DNA is undetectable. (R. 1626)

After the People rested in their case-in-chief, Solache had several witness testify on his behalf. Rosauero Mejia testified that Adriana Mejia was his wife and that he never pressured her to have children. (R. 1981) He stated that he is a friend of Gabriel Solache and that co-defendant Reyes lived with him (R. 1978, 1979) Rosauero testified about bringing the little boy to the police station and stated that it took a while for an officer who spoke Spanish to arrive and talk to him. (R. 1970, 1971) After speaking to the officer, Detectives arrived at the police station and then he, Solache, and Reyes were driven to another police station. (R. 1972) Rosauero claimed that the three of them were locked in a room for a few hours until they were separated. (R. 1972, 1973) Rosauero spoke to Detective Guevara who asked about the little girl. (R. 1974) Rosauero claimed that the detective hit him because he did not believe him. (R. 1974) Rosauero testified that he asked his wife, Adriana Mejia, what was going on when she was brought to the police station. (R. 1975)

Rosauero testified that when he came home from work and found out about the little boy that he had a fight with Adriana about what they should do with the boy. (R. 1986-1988) Adriana wanted him to throw the boy in the alley. (R. 1987) Arturo DeLeon Reyes told Rosauero to give him the boy and he would take care of him. (R. 1988) Reyes told Rosauero that he would take the boy to a friend who was going to be a police officer. (R. 1989) Reyes was nervous and kept telling Rosauero to give him the baby that there was still time. (1999)

Rosauero also testified that he cooperated with the police and that when he was driven to the other police station he was not handcuffed. (R. 1993) Rosauero stated that at the station, Solache was trying to sleep on the floor and he said jokingly, "We are not going to get out of here". (R. 2000) After Rosauero was separated from Solache and Reyes he did not see them again. (R. 1994, 1995)

The next witness to testify for Solache was Dr. Ross Romin who was a physician at Cermak Health Services. (R. 2010) He testified that on May 22, 1998 Solache complained that he could not hear out of his left ear. (R. 2013) Dr. Romin testified that Solache said that he could not hear from his left ear since his arrest and that he had been struck near his ear by the police. (R. 2013) Dr. Romin referred Solache to an ear, nose and throat specialist. (R. 2014) On June 19, 1998, Solache told Dr. Romin that he had been at Cook County Hospital in July of 1997 after an automobile accident. (R. 2015) Furthermore, in a medical record dated April 29, 1999, a notation was made that Solache had loss of hearing in his left ear, post m.v.a., (motor vehicle accident) due to blunt trauma to the head. (R. 2020) The record entry mentioned that Solache was in a motor vehicle accident on July 27, 1997. (R. 2020) Due to the accident Solache had a scar on his head by his ear. (R. 2022) Another health record noted that since 1997 Solache had an “ear to ear” scar, which had healed well and was related to a car accident. (R. 2022) The record also indicated that Solache had no hearing in his left ear since a 1997 car accident. (R. 2022)

Cherie Dalbke, an audiologist who provides services for Cermak Health Services, also testified for the defendant. (R. 2025) In July of 1998 Solache was sent to her for a hearing test. (R. 2025) According to the consultation referral from the physician, Solache claimed that he was hit on the left side of his ear and had complaints of loss of hearing in his left ear. (R. 2029) The hearing test revealed that Solache was borderline within the normal range in his right ear, and that he had a severe hearing loss in his left ear. (R. 2030) Solache was tested a second time on August 25, 1998 and his right ear was found to be within the normal range and his left ear showed profound hearing loss. (R. 2031)

Audiologist Dalbke stated that she could not tell when the hearing loss actually occurred. (R. 2032) She never spoke to Solache, so he did not tell her about the car accident that he had been in. (R. 2032) The consultation form did not mention Solache's car accident. (R. 2034, 2035)

Solache then testified on his own behalf. Solache testified that he came to the United States from Mexico illegally in 1996. (R. 2039) When he came to Chicago he lived at 6234 South Mozart with Adriana and Rosauro Mejia and at some point also with Guadalupe Mejia and her husband. (R. 2040)

Solache testified that on July 28, 1997 he was in a car accident and was treated at Cook County Hospital for eight days. (R. 2042) Solache said that he had a hole in his left forehead. (R. 2042) He stated that he was "opened up" from his left ear to his right. (R. 2042) Solache stated that after he came home from the hospital, while he had a "little problem", he could hear in his left ear. (R. 2043) He testified that he could not work for a long time and did not go back until November of 1997. (R. 2043)

Solache testified that on Friday March 27, 1998 he worked at Ready Metal from 4:30 p.m. until 2:00 a.m. (R. 2046) Solache stated that he got home at 4:00 a.m., and he tried to go to sleep but Adriana's brother spoke to him. (R. 2046) Solache claimed that he woke up the next day at noon and saw Adriana's new baby. He then cashed his check and when he came back to the house later everyone was looking at Adriana's new baby. (R. 2047)

Solache testified that on April 3, 1998 he worked until 2:00 a.m. and when he got home he ate some soup and watched television. (R. 2048) Solache stated that Rosauro came out of the bedroom and told him what he had learned about the little boy. (R.2049) Rosauro wanted to take

the boy to the police station and he wanted Solache to go with him. (R. 2049) Solache and Reyes went to the police station. (R. 2049)

Solache stated that at the police station Rosaura asked for an officer who spoke Spanish. Solache said that they were taken to another police station where they were placed in a room together. (R. 2050, 2051) Solache stated that they were later separated and that he did not speak to anyone for a long time until a “white” officer came in and looked at his shoes and then took them. (R. 2051, 2052) He was also moved to a bigger room. (R.2053) Solache claimed that before he was returned to the other room he was asked, by an officer who spoke Spanish, what happened. (R. 2053)

Solache claimed that Detective Guevara came into his room and told him that he had to tell the truth. (R. 2054) Solache stated that he told the detective that he had told the other officer everything that he knew. (R. 2054) Defendant claimed that the detective did not believe him and he hit defendant several times on his face by the left side of his ear. (R. 2054) Defendant claimed that the detective left the room and returned with Adriana Mejia. (R. 2054, 2055) Solache claimed that the detective asked him if he was going to keep denying it in front of the woman and that he told the detective that he did not do anything. (R. 2055) Defendant testified that Adriana said, “yes, defendant had killed the man and that Arturo killed the woman”. (R. 2055) Defendant claimed that when he continued to deny his involvement, the detective hit him in front of Mejia and hit him in the stomach. (R. 2055, 2056) Solache testified that he then told the detective that he killed the man. (R. 2056)

Solache also claimed that he was allowed to use the bathroom one time and that he used the container that was in the room the other times that he had to use the bathroom. (R. 2056) He

claimed that he saw a woman at the police station who said that she was an attorney and that he signed something that was in English because the detective told him to sign it. (R. 2056, 2058) Defendant testified at trial that he never said that he was treated well, and denied all the contents of his statement. (R. 2059-2060)

Furthermore, Gabriel Solache testified that after his car accident he could still hear out of his left ear but that he noticed he could not hear when he used the phone some time after his arrest. (R. 2060) He did not make a complaint at first and only complained after “some Hispanics told him to ask to see the doctor”. (R. 2061) Many months later, he received a hearing test. After the test, he was given an apparatus, which transports the sound from one ear to the other. (R.2061, 2062)

Solache admitted on cross-examination that he took an hour of English class a week in Mexico while he was in school. (R. 2064) He also claimed that he never went to that class. (R. 2083) Solache claimed that the photo, which was taken of him after he signed his handwritten statement, (See Appendix E) was actually taken before his statement and before being hit by the detective. (R. 2068) He testified that he did not remember the picture that was taken of him when he was “booked” at the police station, nor did he remember being asked if he had any physical complaints. (R. 2070) (See Appendix F)

Another photo was taken of Gabriel Solache when he arrived at Cook County Jail. This photo was clearly taken after the incident where Solache claims that he was beat by Det. Guevara (R. 2071) (See Appendix G) All of the photographs which were taken of Gabriel Solache corroborate that he was not abused by Chicago Police. In addition to being photographed upon arrival, Solache was asked about his medical history and whether he had any physical complaints.

(R. 2071) Solache's physical condition upon arrival at the Cook County Jail was documented in the Cermak Hospital medical records. (See Appendix H)

Defendant claimed that when he was questioned by the Assistant State's Attorney, through the Detective who was translating, he did not remember saying anything more than yes and sometimes he said no. (R. 2073) Defendant testified that the detective would say something to the Assistant State's Attorney and then she would write it down. (R. 2074) Defendant claimed that he told the Assistant State's Attorney that he only used the bathroom once and that he had one sandwich. (R. 2073) Defendant nevertheless identified his statement and his signature along with the signature of Detective Guevara and Assistant State's Attorney Brualdi. (R. 2075) Solache identified the photos shown to him during his statement. He admitted signing the photos, but claimed that he did so only because the detective told him to. (R. 2076-2078)

Thereafter, the People presented three witnesses in rebuttal. Dr. Yogesh Gandhi, a doctor from Cook County Hospital, testified that he had been a neurosurgeon since 1990. (R. 2159) On July 27, 1997 he was working at Cook County Hospital as an attending neurosurgeon when Gabriel Solache was admitted as a patient for a skull fracture. (R. 2159) Dr. Gandhi performed surgery on Solache on August 5, 1997 to repair this injury. (R. 2160) Dr. Gandhi stated that the defendant had a hearing loss from July of 1997. (R. 2160) He noted in his report that he wanted Solache to be evaluated by an "ENT" specialist for the hearing loss to his left ear. (R. 2161)

Detective Guevara was recalled to testify and said that he never struck, hit, or slapped Gabriel Solache. (R. 2166) Detective Guevara also stated that he never saw any injury to Solache's face, and that the defendant never complained about being stuck by any officer. (R. 2166, 2167)

Chicago Police Officer Saul Basurto testified that he processed Gabriel Solache when he came into the 25th District lockup on April 5, 1998. Officer Basurto said that he did a physical check on the defendant and that he checked him for injuries. (R. 2169) He also asked Solache if he was sick, had any illnesses, and whether he was taking medication. (R. 2169) Had defendant had any visible injuries Basurto testified that he would have had Solache taken to the hospital to be treated. (R. 2169) Officer Basurto observed defendant's face. He did not observe defendant to be in pain or to have any injuries. (2169) Basurto made a notation of his observations. (See Appendix I) Basurto testified that Solache never complained of any mistreatment, and that as part of the booking procedure, a photograph was taken of the defendant. (See Appendix F) (R. 2170)

After the People rested in rebuttal, the jury heard closing arguments and then they were read the jury instructions by the trial court. (Supp.R. 17- 106) Thereafter, the jury unanimously found defendant guilty of two counts of first degree murder for the stabbing deaths of Mariano and Jacinta Soto, home invasion, and two counts of aggravated kidnapping for taking Santiago and Maria Soto from their parents and from their home. (Supp.R. 112) Defendant filed a Motion for New Trial, which was subsequently denied. (R.CL. C288-290, R.2255, 2277-2287)

After being fully admonished by the trial court, defendant previously tendered his jury waiver for sentencing. (R. 1064, 1067-1078) The first phase of the sentencing hearing was held on October 24, 2000. (R. 2314) The trial court stated that he would consider the evidence from the trial for eligibility. (R. 2319) The People presented the testimony of Detective Guevara in eligibility. (R. 2321-2343)

Detective Guevara testified that defendant told him that he was born in July of 1974. (R. 2324) Detective Guevara was present when defendant's handwritten statement was taken. (R.

2325) He had translated the statement from English to Spanish and then Spanish to English. (R. 2326) The statement was read to defendant in Spanish and then defendant signed the statement. (R. 2327) The handwritten statement and the photographs used during the statement were admitted as exhibits. (R.2328, 2329) Defendant's certified copies of convictions were also admitted into evidence. (R. 2338, 2339)

The trial court found Gabriel Solache eligible for the death penalty under four different eligibility factors. (R. 2348-2352) Specifically, Solache was found eligible under section (b)(3) for murdering two or more people. (R. 2351) He was also found eligible under section (b) (6) for committing the murders during the course of the felony of aggravated kidnapping and the felony of home invasion. (R. 2351, 2352) Defendant was finally found eligible under section (b) (11) for committing the murders in a cold, calculated and premeditated manner. (R. 2349, 2352)

The People presented two witnesses in aggravation. Officer Valentin testified about finding the Sotos dead in their home days after they suffered from multiple stab wounds and were in a state of decomposition. (R. 2354-2359) The first thing Officer Valentin noticed after he broke the window of the Soto's apartment was the smell of decomposing bodies. (R. 2357) Officer Valentin said that the smell, "hit them right in the face". (R. 2357) When Officer Valentin first saw Mr. Soto's body he noticed that he suffered from multiple stab wounds (forty two) and that there was a lot of blood. (R. 2358) In addition to the strong stench emanating from the decomposed body, Officer Valentin also saw insects on Mr. Soto. (R. 2358)

In the mean time, the family was outside screaming, "the children, the children". Officer Valentin began to look for the children. (R. 2358) After moving a pile of blankets that were on the floor, the officer saw Mrs. Soto laying in a fetal position on the floor. (R. 2359) Mrs. Soto also

suffered multiple stab wounds (26). (R. 2329) Officer Valentin was never able to find the children. (R. 2359) The People then tendered the certified copies of the post mortem examination of both Mr. and Mrs. Soto. (R. 2360)

Rosa Aranda also testified in aggravation. Mr. and Mrs. Soto were her uncle and aunt. (R. 2361) Now that they were no longer alive, she and her husband were taking care of the children, Santiago and Maria. (R. 2361) Santiago was five years old at the time of sentencing and Maria was almost three. (R. 2362) Over the defense objection, the People read Rosa Aranda's victim impact statement to the trial judge. (R. 2363-2369) (See Appendix J) She explained that the days when her aunt and uncle were found murdered in their home and the children were missing "were the hardest days of my life". (R. 2365) Rosa explained how Santiago suffers many nightmares and is trying to deal with the trauma of not having parents. (R. 2367, 2368) Santiago remembers his parents and talks about the bad man in the house. (R. 2368) Rosa worries about how to explain to the children what happened to their parents. (R. 2368) Rosa asked, "Should I tell her (Maria) that her parents were killed because someone wanted a child? How do I tell her?" (R. 2368, 2369) Rosa prays that Maria Guadalupe will not blame herself for the murders of her parents. (R. 2369) Thereafter, the People rested in aggravation.

In mitigation, the defendant only wanted to present documents and present no witnesses. (R.2370-2374) Solache made it clear on the record after extensive questioning by the Court that he did not want to present any witnesses in mitigation. (R. 2371, 2374) The trial court accepted defendant's documents, which showed his work record for the month of February of 1998, that he did not have any prior criminal background, and his work history for the year 1998. (R. CL. 309-332, R.2373, 2374) At that time the defendant rested in mitigation. (R. 2376) The trial court

continued to talk to defendant about presenting mitigation witnesses. (R. 2376- 2380) Furthermore, Solache did not want to address the trial court by way of allocution, even after the Judge stated that he would allow Solache to address the court without cross-examination by the State. (R.2381) (Co-defendant Reyes presented eight witnesses and documents in mitigation.) (R. 2381-2440, 2440) Again, Solache was asked by the court if he wished to have any witnesses called on his behalf. (R. 2426, 2427) Defendant again stated on the record that he did not want any witnesses called and rested in mitigation. (R. 2427) The People and Defense then made their arguments to the trial court. (R.2445-2459, 2467)

On October 30, 2000, the trial court again questioned Solache at length about calling witnesses on his behalf in mitigation. (R. 2480-2488) Defendant stated that he understood and that it was his free and voluntary decision not to call witnesses. (R. 2483) He stated that there were no promises given to him regarding the outcome. (R. 2486) Finally, the trial court convinced defendant to talk to his attorney again about contacting family members and presenting mitigation evidence. (R. 2490-2493)

On December 15, 2000 the trial court denied defendant's Motion to Hold Sentencing in Abeyance while the Mexican Government looked into this case. (R. CL. C333-334, R.2497-2501) The trial court acknowledged reviewing a video tape completed on defendant's behalf containing statements from his relatives (defendant's mother and some of his sisters and brothers) and neighbors. (R. 2503, 2504)

After a long decision making process, the trial court sentenced defendant on December 18, 2000. (R. 2507-2536) The trial court stated that his personal opinion played no part in the matter before him (R. 2512) Defendant was found eligible beyond a reasonable doubt based on

four factors. (R. 2514-2523) In mitigation, Solache presented (through a video-tape) the testimony of his mother, three sisters, three brothers, a neighbor, his brother-in-law, sister-in-law, and his sister's mother-in-law. (R. 2525) It showed that he had close family ties. (R. 2525-2527) Nevertheless, the trial court found that the People presented evidence, which showed defendant to be a cold, calculating and ruthless murderer. (R. 2524) The Court stated that the Gabriel Solache that his family loves and knew was not the same Gabriel Solache that sat before the trial court. (R. 2526) The evidence showed that defendant was able to find humor in the savage murder of two people in their own home. (R. 2527, 2528) He joked about the baby not looking like Rosauro and that the baby was too big, knowing of course all along that the baby was not his. (R. 2528) The Court stated that Solache had cold heartedly stabbed Mr. Soto forty (actually forty-two) times while Mr. Soto was sleeping and in front of his son. (R. 2528) The trial court found that the mitigation evidence did very little to explain or excuse defendant's conduct. (R. 2530, 2531) The trial court stated that he searched the entire record many times, he looked into his heart and his conscience many times, hoping to find mitigating factors sufficient to preclude the imposition of the death penalty but he stated that he could not find any. (R. 2534, 2535) Hence, Gabriel Solache was sentenced to death. (R. 2536)

Defendant filed a Motion to Reconsider Sentence, which was argued on January 17, 2001. (R. CL. C338-340, R.2548-2575) Defendant claimed that the trial court "cruelly" had the defendant's family share their remembrances and articulate their feelings for him and then gave it no weight nor value." (R. CL.339, R. 2549) The trial court was extremely upset by defendant's allegations. (R. 2551-2571) The Court explained that it truly wanted things to consider on defendant's behalf and had given him every chance in the world to present evidence in mitigation.

While the Judge considered the evidence finally presented, he nevertheless found that there was insufficient mitigation. (R. 2563-2571) He denied defendant's Motion to Reconsider and stated that he had given Solache all the time he wanted to present evidence. (R. 2571) Judge Sacks stated that he had considered all of the evidence but was required to follow the law. (R. 2573-2575) Defendant was thereby sentenced to death for the murders of Mariano and Jacinto Soto. He was also sentenced to 30 years IDOC for the aggravated kidnapping of Santiago and Maria Soto and 30 years IDOC for home invasion to be served concurrently. (R. CL. C347, R.2575) Defendant filed his notice of appeal on January 17, 2001. (R. CL. C348)

III

REASONS FOR DENYING THE PETITION

A unanimous jury found Gabriel Solache guilty, beyond a reasonable doubt, for the brutal murders of Jacinta and Mariano Soto, home invasion and aggravated kidnapping of the Soto's small children. Judge Sacks, who presided over the long and extensive pre-trial motions and the trial, agreed with the jury's verdict. Solache, who could only have been sentenced to natural life without parole or death, waived a jury for sentencing. In sentencing Solache, Judge Sacks, stated that he took his decision very seriously and that his personal opinion did not play a role in his decision. He found defendant to be a cold, calculating, and ruthless murderer who cold heartedly stabbed Mr. Soto forty two times while he was sleeping next to his son. The trial court stated when sentencing Solache, that "the facts of this case can be argued to be one of society's worst nightmares". (R. Vol. 14, 1515) The court found that the mitigation evidence that was presented did very little to explain or excuse Solache's conduct. The trial court stated that he searched the entire record many times. He looked into his heart and his conscience hoping to find mitigating factors but he unable to find any. It was only then that the trial judge sentenced Solache to death. Even though Gabriel Solache never gave any consideration or mercy to the Sotos and their family, and has left the Soto children orphans without parents, he asks for mercy. The People, for the following reasons strongly oppose Gabriel Solache's Petition for Clemency.

Initially, because petitioner's death sentence has not yet been affirmed by the Illinois Supreme Court on direct appeal, this petition for executive clemency is premature. The Illinois Constitution of 1970 expressly provides that "Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right." Article VI, section

4(b). Pursuant to this provision, the Supreme Court promulgated Supreme Court Rule 606(a) which states that “In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel.” Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant may be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court’s review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecutions. See People v. Mazzone, 74 Ill. 2d 44, 46, 383 N.E.2d 947 (1978) (holding that a defendant’s death while his appeal is pending requires the convictions to be abated *ab initio*); O’Sullivan v. People, 144 Ill. 604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill. 2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the Court’s affirmance is an indispensable component of a “conviction.” Accordingly, because the Governor’s clemency power is expressly limited to situations “after conviction” (Article V, section 12) (and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from petitioner until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.

Introduction

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system, which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor’s Commission on Capital Punishment, which were not available at the time of

his trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim “that every capital trial has been unreliable and that all appellate review has been haphazard” (People v. Hickey, ___ Ill. 2d ___, 2001 Ill. LEXIS 1080 at *57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they “function solely as devices to further protect those rights given to defendants by the federal and state constitutions” and that “[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights.” Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor’s Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner’s case. Instead, a true injustice would only result if it were reflexively determined that petitioner’s trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, there was nothing in petitioner’s trial that was fundamentally unfair, nor was he unduly prejudiced in any manner.

Solache specifically claims that the following protections were absent from his trial,

1) Supreme Court Rules

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. Specifically, he claims that he did not receive pre-trial discovery in the form of depositions. (Prior to trial, Solache received all

appropriate and relevant discovery) However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65.

2) Videotaping

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped, and points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. What petitioner fails to recognize is that neither the Commission nor the Governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds under the totality of the circumstances that it was voluntarily made. Because the trial judge expressly found that Solache's statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

3) Decision to Seek Death

Petitioner claims his sentence should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by

a state-wide review committee. However, it has long been recognized by the Illinois Supreme Court that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State’s Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege, much less argue, that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

4) Electronically Recorded

Solache also seeks clemency because his confession where he inculpated himself was admitted into evidence even though it was not electronically recorded. What petitioner fails to recognize is that neither the Commission nor the Governor himself call for the suppression of a statement simply because it was not electronically recorded. Rather, even under the Governor’s proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the trial judge expressly found that petitioner’s statement was voluntarily made when it denied his motion to suppress statements, it is clear that the failure to electronically record his statement had absolutely no effect on the fairness of his proceedings. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner made the statement and how much weight it should be given, petitioner

cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

5) Solache's Confession Was Voluntary And Not The Product Of Being "Beaten" By The Detective.

Initially, Solache claims that there is a "tremendous risk that the State has convicted and sentenced to death an innocent man". He claims that his conviction rests "solely" on an "unreliable" confession. Solache has never raised actual innocence before. While Solache challenges the trial court's rulings on his Motion to Suppress Statements, he did not raise reasonable doubt in his brief to the Illinois Supreme Court. Prior to trial, the trial court held extensive hearings, and saw numerous photographs surrounding the taking of Gabriel Solache's confession. (See Appendix E, F, and G) Judge Sacks made very specific credibility findings in which he did not believe any of Solache's claims. Thereafter, he found Solache's statement to be voluntarily given.

After hearing all the extensive evidence in this case, including the claim that Solache's confession was coerced, twelve jurors unanimously found Solache guilty of all the charges, beyond a reasonable doubt. The trial judge agreed with the jury's verdict and found that there was no doubt of Solache's guilt. The trial court stated that Solache's statement is not, as the defense suggests, the only evidence against Solache. The court found that the confession was corroborated in significant ways and had information that only the murderer would have known. Some of this information was not the type that the police would choose to add in a statement, or know at the time that the statement was taken. (R. Vol. 14, 1517, 1518, 2521- 2523)

Solache's confession, proven to be reliable and a product of his free will, was given after he was read his rights and voluntarily chose to talk. His confession was more than sufficiently corroborated. He admitted that he got off of work early the morning of March 28, 1998. His work records corroborate that fact. Solache stated as he drove to the murder scene that he did not know where he was but that he parked by a school. An officer at trial testified that the Sotos lived by a school. Solache detailed how they walked to the back of the house. The evidence established that the Sotos lived in the rear basement apartment. These are facts that only the murderer could have known.

Solache identified the picture of Jacinta Soto, as the person who answered the door and who was stabbed by Reyes. He described exactly where Mrs. Soto was stabbed, first by Reyes, and then by Adriana Mejia. Solache, in detail, described where he grabbed the knife that he used to stab Mr. Soto. Only the murderer could know that the knife used was eleven inches long, or where it came from. Only the murderer could know that Mr. Soto was asleep in his bed with his little boy when Solache, as he admitted, started stabbing him until he finished what he started. This is especially true because Mr. Soto's dead body was found, days later by the police, lying by the front door instead of in bed. It would have been easy for someone looking at the crime scene to believe that Mariano Soto had opened the door, not Jacinta. Again, only the murderer could have known who had opened that door.

Solache's confession was also corroborated when he admitted stabbing Mr. Soto in the stomach. The presence of this wound was unknown to the police at the time of Solache's confession. This wound would be discovered later by the medical examiner when he conducted Mariano's autopsy. Perhaps the most telling fact that corroborates his statement is when Solache

states that he used the knife from the Soto kitchen. After he stabbed Mr. Soto, Solache admitted throwing the knife just outside the bedroom door. That is exactly where the police found the knife after they moved Mr. Soto's collapsed, dead, and decomposed body. Solache knew the knife was there because he was there to throw it after he murdered Mariano Soto.

Furthermore, while the co-defendants' confessions were not admissible against Solache at his severed trial, nevertheless, it must be noted that both co-defendants implicated Gabriel Solache in their handwritten confessions. Their statements also corroborate petitioner's confession and were interpreted by people other than Det. Guevara. (See Appendix K and L) Neither co-defendant Reyes nor co-defendant Mejia has recanted their statements. In fact, Adriana Mejia pled guilty and accepted a natural life sentence for her participation in these brutal crimes.

Solache seems to think that just because he was lucky enough not to leave DNA evidence or fingerprints at the scene that this establishes that he was not involved in these horrendous crimes. However, the forensic biologist and the DNA analyst both testified at trial that just because there was no DNA evidence from Solache does not mean that he did not commit this crime. Co-defendant Reyes did not leave DNA evidence behind. He firmly admitted his involvement in these crimes and was convicted. While the evidence established DNA matches for co-defendant Mejia, she also did not leave behind any fingerprints. Adriana, like Reyes, was convicted of these crimes. The People are only left with whatever physical evidence Solache managed to leave behind when he committed this crime. A jury clearly felt that defendant's confession, along with all of the corroborating evidence, was sufficient to prove Gabriel Solache guilty beyond a reasonable doubt.

Moreover, Solache has the nerve to state in his petition that no eyewitnesses testified

that he committed this crime. The only reason why there was no eyewitnesses to this crime was because Solache and his co-defendants stabbed them so many times that they could not have possibly lived to testify against him. Moreover, Santiago, who witnessed Solache stab his father forty-two times, was too young to testify to the horror he witnessed. Yet, Santiago will never forget it as long as he lives. Rosa Aranda, the victims' niece, who takes care of the Soto children, testified at the sentencing hearing that Santiago has had many nightmares and still remembers "the bad man in the house".

Solache also claims that his confession was taken by means violating police practices. Petitioner's basis for this claim is by his paid "expert" Thomas Streed. Mr. Streed was not in court for any of the hearings or for petitioner's trial. He did not see or hear one live witness. Yet he makes extreme findings based solely on transcripts and documents that he read. Certainly the credibility determinations made by the trial court and the jury is what actually matters and counts. Neither the trial judge nor the twelve jurors believed Solache's claims that he was beaten and that he never made the statement that he signed. The photographs taken of Solache and the medical evidence prove that he was not beaten, and that his hearing loss was from a motor vehicle accident in 1997.

Solache claims that his testimony and his claim that he was beaten was corroborated by the testimony of Rosauro Mejia. Rosauro claimed, for the first time at trial, that Detective Guevara hit him when he was questioned. However, Rosauro was not an unbiased witness. Rosauro was originally a suspect and had to remain at the police station for two days while the long, and extensive, police investigation was sidetracked by police looking for Norma Salazar. In the end, the police arrested Rosauro's wife, Adriana Mejia, his house mate Arturo Reyes, and his friend

Gabriel Solache. Clearly, Rosauero was a biased witness. The jury heard Rosauero's claims but chose to disregard them.

Solache complains that the detective who investigated this case also served as a Spanish interpreter for him. Solache was at the police station and a suspect in an extensive police investigation. The Police Department provided interpreters to all the defendants and initial suspects in this case. The credible evidence established that Solache agreed to have the detective interpret for him, that the detective interpreted from English to Spanish and Spanish to English accurately, and that Solache had no problem understanding the translation. Again, just as important is that Solache's co-defendants, who gave their statements using different interpreters, both implicated Gabriel Solache. These statements, which were taken at approximately the same time, were taken by different people. (See Appendix D, K, and L)

Solache's claim is completely incredible. Solache testified at trial that he merely answered yes or no and that the detective told the Assistant State's Attorney what happened. Certainly if that had been true the Assistant State's Attorney would have known that the detective was not correctly translating what Solache had said.

Furthermore, Solache's claim that he did not complain to the Assistant State's Attorney about any mistreatment by the detective, because the detective was present and interpreting their conversation, is not credible. Had Solache been beaten like he claimed, the Assistant State's Attorney would have certainly noticed marks, swelling, or redness, on his face. In addition, Solache could have motioned to the Assistant State's Attorney indicating that something was wrong. Moreover, Solache had many other opportunities to complain of mistreatment by the detective when the detective was not present. Solache never complained to the booking officer at

the district, or later to the intake officer at the jail. Those officers testified that Solache did not state any complaints and that they did not observe any injuries on him. In fact the photographs which were taken of Solache after his statement show that Solache was not suffering, nor in any pain or discomfort.

Solache's claims of mistreatment and abuse were all rebutted by credible evidence presented in court. Detective Guevara denied all allegations of mistreatment. Numerous photographs of the defendant, and the testimony of witnesses who observed him during and after his statement were presented at his pre-trial motion and at trial. Solache claimed that he lost hearing due to the alleged "beating". However, this claim was completely rebutted by the testimony of Dr. Gandhi. Dr. Gandhi explained that Solache was a patient at Cook County Hospital on July 27, 1997, after sustaining a skull fracture as a result of a car accident. The doctor had to perform surgery on Solache in order to repair the damage. Solache's hearing loss was not from the hand of the detective but was from the car accident he had in 1997.

After reviewing all the evidence, the trial court properly held that Solache's confession was made of his own free will and that it was voluntarily given. The jury chose not to believe Solache's claims and found Solache's confession to be reliable. The trial court and the jury's decision must be given great deference.

6) It Is Irrelevant That Mexico Does Not Impose The Death Penalty.

Solache came to the United States as an illegal alien in 1996 and settled in Chicago, Illinois where he committed this brutal crime on March 28, 1998. In the State of Illinois the death penalty was reinstated in 1977. Since that time, the Illinois Supreme Court has upheld the

constitutionality of the death penalty statute on many occasions and for many different reasons. Since the crime was unfortunately committed here in Illinois and not Mexico, it is completely irrelevant that Mexico does not impose the death penalty and must not influence this case.

7) Vienna Convention

Petitioner asserts that he is entitled to clemency because he is a foreign national and he was not properly notified of his rights to contact his consulate pursuant to the Vienna Convention. Solache's only support for his claim are from the dissenting opinions in People v. Madej, 193 Ill2d 395, 406-411(2000)(the majority opinion held that a violation of the Vienna Convention can be procedurally barred based on timeliness)

Prior to trial, defendant filed a Motion to Suppress Statements based in part on a violation of the Vienna Convention. (R. CL. C88-C90) Several witnesses testified in a hearing before Judge Sacks. (R. Vols. 1 and 2, 104-290) After many witnesses testified and extensive arguments were made, the trial judge made specific findings, which must be given great deference. Judge Sacks found one of defendant's witnesses, Law Professor John Quigley, to be a very bias witness. (R. Vol. 5, 1007) The judge also found that Salvador Cicero, chief of legal affairs for the Mexican consulate in Chicago, would have only been able to suggest to defendant not to make a statement to the police had he spoken to defendant, or gone to the police station. (R. Vol. 5, 1007) Judge Sacks quoted from Mr. Cicero's testimony that he would not have prevented Solache from making a statement if Solache wanted to talk to the police. Mr. Cicero would have only been an advisor. (R. Vol. 5, 1009) Additionally, Judge Sacks did not feel "unnecessary delay" meant the consulate had to be notified as soon as a person was in custody. (R. Vol. 5, 1008) He further stated,

“I don’t believe it is a right that is enforceable, even if it is violated, by the suppression of statements otherwise completely and totally voluntary”. (R. Vol. 5, 1008) Judge Sacks mentioned many cases which have held that the Vienna Convention does not create a fundamental right and that courts have explicitly refused to equate the violation of Article 36 with Miranda rights violations. (R. Vol. 5, 1010) Thereafter, the trial court denied defendant’s motion. (R. Vol. 5, 1015) This ruling was correct under the law and facts of this case.

Initially, Solache has no standing to make this claim. There is a presumption against private individuals attempting to enforce the Vienna Convention’s provisions in a host nation’s criminal courts. This presumption is found under international treaties, the Vienna Convention’s Preamble, and various non-textual sources.

Moreover, even if Solache had a private cause of action in criminal court, every court, which has examined this issue, has determined that a violation of the treaty does not warrant suppression of evidence or dismissal of the indictment as a remedy. People v. Kim, 318 Ill. App. 3d 1078, 1080, 743 N.E.2d 656 (1st Dist. 2001); People v. Villagomez, 313 Ill. App. 3d 799, 812, 730 N.E.2d 1173 (2000); United States v. Li, 206 F.3d 56, 63 (1st Cir. 2000) (noting that the State Department believed that the only remedies for failure of consulate notification under the Vienna Convention are diplomatic, political or those that exist between states under international law and that the Vienna Convention does not create individual rights).

Finally, a party seeking relief under the Convention must show actual prejudice in order to be entitled to relief. Villagomez, 313 Ill. App. 3d at 811. To establish prejudice, a defendant must show that: (1) he did not know of his right to contact the consulate for assistance; (2) he

would have availed himself of the right; and. (3) there was a likelihood that the consulate would have assisted defendant. Id.

Specifically, Solache, who was advised of his Miranda warnings in Spanish, stated that he understood and wished to talk, was not prejudiced. The Mexican Consulate became aware of defendant's case on April 6, 1998 just a few days after defendant had been arrested. (R. Vol. 2, 165) Defendant was also advised in open court of his rights under the Vienna Convention on November 5, 1998. (R. Vol. 1, 38) Mr. Cicero stated that he believed that someone from the consulate office visited defendant about a month after he had been incarcerated. (R. 166) Solache admitted that the visits with the consulate were very short and that he did not ask them for any help. (R. Vol. 4, 730-734) Mr. Cicero also stated that he was satisfied with defendant's attorney. (R. 184) Mr. Cicero also admitted that Mexico is not a signatory nation listed on the treaty and that Mexico is not on the list of mandatory notification countries. (R. 145, 226, 227) Because petitioner does not even allege that he was prejudiced, and is unable to establish prejudice where his rights under the U.S. and Illinois constitutions were satisfied, it is clear that he is not entitled to have his sentence commuted.

CONCLUSION

Gabriel Solache savagely stabbed Mariano Soto forty-two times while he was asleep in his bed lying next to his three year old son Santiago. Solache admitted that he continued stabbing Mr. Soto “to finish what he started”. In the meantime, his co-defendants stabbed Mrs. Jacinta Soto twenty-six times. Solache and his co-defendants left the Sotos to die while they kidnapped two-month old Maria and three year old Santiago. Solache showed no mercy to the Sotos and left their children orphaned, without parents to love and take care of them. He has never displayed any remorse or guilt for his brutal actions. In fact, Solache admitted going to sleep after this incident.

Rather than take responsibility for his actions, Solache claims that a detective beat him and made him confess and sign a handwritten statement. He chooses to ignore all the corroborative evidence, in addition to his confession, which proves his guilt. Neither the trial judge nor the jury believed Solache’s claims of being beaten. Whether this was Solache’s first arrest or not, Gabriel Solache is the one responsible for the position he finds himself in now. Gabriel Solache is not an innocent man. The evidence and trial testimony proved him guilty beyond a reasonable doubt.

For all these reasons, the People of the State of Illinois respectfully request that Governor Ryan and the Prisoner Review Board deny executive clemency to Gabriel Solache.

Respectfully submitted,

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