



RICK SCOTT  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

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850-717-9418

December 4, 2017

The Honorable Aramis Ayala  
State Attorney – Ninth Circuit  
415 North Orange Avenue  
Orlando, Florida 32801

Re: Emerita Mapp Prosecution

Dear State Attorney Ayala:

On August 31, 2017, the Florida Supreme Court issued an opinion rejecting your arguments against Governor Scott and concluding that your blanket refusal to seek the death penalty in any eligible case embodied “at best, a misunderstanding of Florida law.” On the following day, you conceded that you had a “responsibility to follow the law” and would pursue the death penalty in future cases when it was unanimously recommended by a review panel of prosecutors from your office. You also stated to the media, regarding the role of the death penalty review panel, that “[t]he buck will stop with me, but I don’t have any intention of usurping that authority that I’ve given to them.”

I write today in response to reports that, following a unanimous recommendation by your death penalty review panel, your office failed to file a timely notice of intent to seek the death penalty against Emerita Mapp, who has been charged with first-degree murder in the stabbing death of Zackery Ganoë at a Kissimmee hotel. According to the Osceola County Sheriff’s Office, this was “a violent and horrific crime. Two young men were attacked viciously, one losing his life.”

Although your office had originally charged Emerita Mapp with second-degree murder on May 8, 2017, you subsequently sought and obtained her indictment for capital murder on August 15, and she was arraigned eight days later on August 23. As you should have been aware, Florida law required a notice of intent to seek the death penalty to be filed within 45 days from the date of Mapp’s arraignment. Inexplicably, the notice was not filed until October 31, 2017—well beyond the 45-day deadline and more than 35 days after you acknowledged your “responsibility to follow the law” on September 1. Most troublingly, your more recent public comments indicate that you were well-aware of the deadline, but knowingly filed the notice long after it had elapsed. At best, this suggests negligence—and, at worst, willful disregard—in the faithful performance of the duties of your constitutional office. In any event, it is a clear disservice to the hardworking men and women of the law enforcement agencies in your circuit and to the crime victims and their families impacted by the offenses you are charged to prosecute. They deserve better.

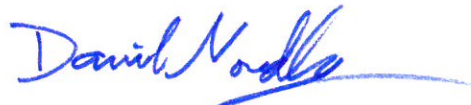
Please respond in writing to the questions below no later than December 11, 2017. Your response will inform the Governor's decisions regarding the exercise of his own authority under the Florida Constitution and applicable statutes.

1. Please explain your decision to establish a death penalty review panel, including how you selected its members and established its procedures, and provide the names of every person who advised you or your office regarding any aspect of this decision.
2. Please describe the procedures used by the death penalty review panel and provide a copy of any written procedures used by the panel.
3. Please identify the dates on which the death penalty review panel has met since it was established on September 1, 2017, how many total cases it has reviewed, and how many cases have received a unanimous recommendation to seek the penalty of death.
4. Please identify the date on which the death penalty review panel unanimously recommended that your office seek the penalty of death in the case of Emerita Mapp and the date on which you accepted that recommendation.
5. In April and May 2017, State Attorney Brad King requested your assistance in developing a procedure to review cases for death penalty consideration to protect the State's position during the pendency of your Supreme Court litigation. Copies of your email exchange with State Attorney King are attached. Please explain your decision to reject State Attorney King's request and to refuse his offer of assistance to protect the State's position.
6. Please confirm that your "responsibility to follow the law" continues to include the pursuit of the death penalty as appropriate under Florida law, that your prior position that your office would not seek the death penalty "in any case" is no longer the policy of the Ninth Judicial Circuit; and that your office has not adopted any other "blanket refusal" to prosecute a particular category of case in a manner inconsistent with Florida law.
7. Please provide copies of all public records maintained by you, your office, or by others acting on your behalf regarding:
  - a. the death penalty review panel;
  - b. Kivvit, the Washington DC public relations firm your office retained at taxpayer expense in connection with your unsuccessful state and federal lawsuits against Governor Scott; and
  - c. unredacted billing records for both Kivvit and all other outside attorneys or contractors retained by your office at taxpayer expense in connection with your unsuccessful state and federal lawsuits against Governor Scott.

The time frame for these public record requests is March 1, 2017, to the present. These public record requests include all documents, regardless of form or location, including emails, text messages, or other forms of communication, and including public records stored on personal devices. If you claim that any responsive records are exempt from disclosure, please identify the applicable exemption.

As you know, Governor Scott stands with the victims of crime and is committed to doing everything within his power to ensure they receive the justice they deserve. In light of your office's delinquent filing—and your ongoing attempts to blame others for your office's failures—Floridians deserve to better understand what happened, what you intend to do to remedy the situation, and what steps you intend to take to ensure that a similar failure will never occur again.

Sincerely,

A handwritten signature in blue ink that reads "Daniel Nordby". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel Nordby  
General Counsel

## Nordby, Daniel

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**From:** Brad King <bking@sao5.org>  
**Sent:** Friday, April 14, 2017 9:57 AM  
**To:** Aramis Ayala; Deborah Barra  
**Subject:** An Update and Request

I expect your staff is keeping you informed, but I wanted to make sure you knew what cases were proceeding.

Juan Rosario is set to start the guilt phase of his trial on Monday. I will be there but Ryan, Deborah and to some extent Ken will be doing the actual trial work. The penalty phase was set off until mid to late May due to defense discovery violations that did not allow us to prepare for their case. I asked the Judge for a continuance of the entire trial, but she was concerned about the interpretation of speedy trial and would not grant a continuance as to guilt.

Larry Perry is scheduled for trial on May 1st with a penalty phase to immediately follow. Nick Cox the Statewide Prosecutor will be second chair to Mark Interlicchio. Nick is preparing to do the penalty phase and argument in that case.

Markeith Loyd was appointed Roger Weeden as trial counsel and his case was continued with a waiver of speedy trial. Since Weeden is in Rosario there will be no action on that case until Rosario is over. I would expect a status in June.

Sanel Saint Simon is set for October, but I expect it to be continued. At the status this week the Judge told the PD that he would do status conferences each month leading to the trial date.

On a different topic, I would like to come to some agreement on the review and evaluation of 1st Degree murder cases as they come into the system to determine if they are potential capital cases. That would allow me to determine if a case should be prosecuted as a capital case and inform the Governor so that he could do an executive order. I expect that you see this type of procedure as a further encroachment on your office, but until the matter of the Executive Orders are decided by the courts, I would like to be able to timely and efficiently deal with cases that may come to me as Executive Assignments. Without a process in place we will be reacting to law enforcement or victim requests to the Governor's office to assign cases to me. I would prefer to be involved at the front end to avoid speedy trial, notification filing issues and the like.

I would be available before trial starts at 9, during lunch or after trial ends for the day all of next week to discuss the matter. I will be checking my emails and I will also have my cell phone (on silent) so you can contact me either way.

## Nordby, Daniel

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**From:** Brad King <bking@sao5.org>  
**Sent:** Thursday, April 20, 2017 2:50 PM  
**To:** Aramis Ayala  
**Subject:** Follow up on Requests

I wanted to follow up with you on two of the requests that I made earlier. The first was on 4/14 regarding the development of a procedure to review arrested or presented cases for death penalty consideration. By arrested cases I mean any case where there is an arrest for 1st degree murder, or some lesser murder or serious felony charge, with the understanding that a first degree charge will be considered. By presented I mean any case that has been investigated by law enforcement and brought to the 9th SAO for the purpose of considering an arrest warrant or Grand Jury presentment without an arrest having been made.

Such a process would allow for a determination to be made as to an Executive Assignment in a timely and efficient manner. Without such an orderly process, we will be reacting to law enforcement or victim family requests made to the Governor. This would create the potential for speedy trial and DP filing time issues in cases which could be avoided by a systematic approach to evaluating the cases.

I would also still like to have access to the 9th circuit case management system. This will allow for me to review notes and documents that are not available in CCIS and would also allow for issuing subpoenas if it becomes necessary.

I also need direction as to how to submit bills for travel, tolls, and parking and also for expert and other case related costs. In my circuit there are particular forms that are used and then submitted electronically for payment. Perhaps Sam and my secretary Debbie can work that out or our Executive Directors.

## Nordby, Daniel

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**From:** Brad King <bking@sao5.org>  
**Sent:** Thursday, April 27, 2017 11:34 AM  
**To:** Aramis Ayala  
**Subject:** Re: Follow up on Requests

As to the potential death penalty cases, you had stated in one of your briefs that you would file death notices to avoid any potential problems in the cases. I am not sure how you intend to do that if you don't consider the individual facts of the cases based on aggravating and mitigating factors, unless you will be filing intent to seek death on all first degree murder cases that are indicted up until the time that the Florida Supreme Court rules. I know there are indicted cases where that action has not been taken and will need to be addressed, it seems like a systematic approach to the issue would be best.

As to access to the case management system, there appear to be cases other than Rosario or Perry that have work product notes in the system that are not in the paper files. We obviously don't know the extent of the notes in the electronic file. In conversations with 9th Circuit prosecutors, they reference notes in the electronic system that we do not have. It would certainly be easier to just have access to the system than to try to cross match the paper file and the electronic file to determine what has not been provided on paper and then print those notes.

I don't know what confusion you are experiencing with your staff and duties, if you would like to discuss it so that we could develop a plan to deal with those matters, I am happy to meet with you. I will be there on Monday and Tuesday afternoons of next week anyway so I could be available to talk.

>>> "Ayala, Aramis" 4/20/2017 4:49 PM >>>  
Good Afternoon Mr. King

As it relates to our 4/14 conversation, my position remains unchanged. There is pending litigation regarding existing Executive Orders. Therefore I will await the ruling of the Supreme Court and any corresponding processes that follow.

Regarding access to case management, both Debra Barra and Ryan Williams, who are prosecuting the current case, have access to case management. I also believe you have all the other files that should include case notes.

Your request concerns me because it appears you may not have complete files ready to prosecute. I believe we have done that expeditiously, but I want to be sure that we have postured you to competently handle the cases that have been transferred to you. I will continue to cooperate while limiting ongoing confusion with personnel and duties within my office. I would appreciate your assistance in that.

Finally your financial requests can be submitted to my fiscal director, Delana Williams.

Look forward to hearing back from you

Aramis Ayala

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From: Brad King <bking@sao5.org>  
Sent: Thursday, April 20, 2017 2:49 PM  
Subject: Follow up on Requests  
To: Ayala, Aramis <aayala@sao9.org>

I wanted to follow up with you on two of the requests that I made earlier. The first was on 4/14 regarding the development of a procedure to review arrested or presented cases for death penalty consideration. By arrested cases I mean any case where there is an arrest for 1st degree murder, or some lesser murder or serious felony charge, with the understanding that a first degree charge will be considered. By presented I mean any case that has been investigated by law enforcement and brought to the 9th SAO for the purpose of considering an arrest warrant or Grand Jury presentment without an arrest having been made.

Such a process would allow for a determination to be made as to an Executive Assignment in a timely and efficient manner. Without such an orderly process, we will be reacting to law enforcement or victim family requests made to the Governor. This would create the potential for speedy trial and DP filing time issues in cases which could be avoided by a systematic approach to evaluating the cases.

I would also still like to have access to the 9th circuit case management system. This will allow for me to review notes and documents that are not available in CCIS and would also allow for issuing subpoenas if it becomes necessary.

I also need direction as to how to submit bills for travel, tolls, and parking and also for expert and other case related costs. In my circuit there are particular forms that are used and then submitted electronically for payment. Perhaps Sam and my secretary Debbie can work that out or our Executive Directors.

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.



## Nordby, Daniel

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**From:** "Ayala, Aramis" <AAyala@sao9.org> <AAyala@sao9.org>  
**Sent:** Friday, May 12, 2017 4:31 PM  
**To:** Brad King  
**Subject:** Re: My Response to yours of May 11

We will discuss further on Monday.

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**From:** Brad King  
**Sent:** Friday, May 12, 2017 1:53:16 PM  
**To:** Ayala, Aramis  
**Subject:** My Response to yours of May 11

I responded earlier to your email in regard to designating Ryan Williams, as I indicated therein, below are my observations to the other matters in that correspondence. Since the Rodriguez - Mercado trial was continued I fully expect to be able to make the meeting on Monday at 12:30.

You are right that I have always spoken positively of your office's cooperation in handling these cases. However, given the circumstances as they currently exist, I would not be able to characterize your recent responses in that same light.

Regarding access to the case management system, I chose the term "denial of access" specifically because it accurately describes your response. I have been all over the State of Florida doing executive assignments, and except when I investigated another State Attorney, we were typically given access and assistance as requested. I have done the same in the rare occasions that I have asked for an executive assignment. Depending on the unique case facts, I and State Attorneys who have done assignments in my circuit, have used each other's support staff and investigators for the service of subpoenas, provided office space within the courthouse complex, provided access to case management or electronic document information, and done whatever is necessary to accomplish the prosecution of those cases.

Given the number of cases that I have been assigned and their different procedural postures, it would be particularly advantageous to see the notes that other prosecutors made relating to the case, discussions with witnesses, or procedural matters. One case in particular, *State v. Hunter*, has been pending in the 9<sup>th</sup> circuit for years. Your prosecutor specifically told my assistant that being able to read all the notes of the attorneys who had handled the case would be helpful in preparing for a motion to dismiss the indictment which is set for Monday. As I have pointed out earlier, cases such as Rosario, Perry, Avant, Saint Simon, and Payne, which have been handled in the 9<sup>th</sup> Circuit since their inception, have all of the witness information, victim family contact information, document filing and related notes to all of those things, contained already within the case management system. It makes no sense to print all of that data onto paper in order to reinput it into my system. Your requirement that I do so is a waste of resources, time, and effort. The resentencing cases, while not as time sensitive, will also contain much more information especially about the location of witnesses and the case history that will be very useful in preparing for those penalty proceedings.

I expect that your case management system allows programmers the ability to restrict access to both the cases that can be viewed and the permissions to make changes or perform operations regarding those cases. That is why I asked only for access to the cases that were assigned to me. Since Ryan will be working on most of them with help from either my ASA's or Statewide staff, it makes for efficient use of resources to allow him, and others working on specific cases, access to those cases. Please review paragraph 2 in my email of May 10<sup>th</sup>.



2. Allow 9<sup>th</sup> Circuit case management system **restricted access** to my designees **for the cases to which I am assigned.**

Regarding office space and Ryan Williams particularly, I read your message as indicating that the reason for reassigning him to the Vision Rd site is because you believe that he in some way is undermining the working environment of your office. I can say that in all of my interaction with him, he has maintained a professional attitude in regard to you and the 9<sup>th</sup> Circuit. I accept that his professional opinion concerning the death penalty is different than yours and that is why he chose to work with me on the assigned cases. Having been on the 1<sup>st</sup> floor from time to time for two months now and two weeks in a row, I doubt that more than five of your staff members even knew that I was there. If he is likewise on the first floor, where I assume we can do depositions in the conference room, I do not see how that will be any "distraction or confusion" to your staff.

As to the Rosario case, from having worked with Deborah, Ryan and Ken on the case, it was clear to me that Ryan bore a significant responsibility for the case preparation and trial. Having met with them about the penalty phase, I know that he also has a significant role in it as well. I know from exchanging emails with him that he works early in the morning and late in the evening. From my own work on capital cases, I know that attorneys work best when they have uninterrupted time to focus on the case. That time is usually not during office hours. To say that Deborah has access to case management and is part of the trial team, does not at all speak to Ryan's ability to be prepared without access to the case in the system. There are always things that we review, or need to look at, and it is completely unreasonable to say that he can get access through her. That added burden to the process of case preparation is what can cause problems. Putting that additional and unreasonable constraint on his ability to prepare two weeks before the trial resumes, in addition to making him move to a much less efficient office space, could easily be taken as intentionally jeopardizing the prosecution of the death penalty in the Rosario case.

In addition to the above, I would point out that it has been nearly thirty days since the Grand Jury met to return indictments as to first degree murder cases. I have not seen any indication that any notice to seek the death penalty had been filed as you had indicated would occur in your petition for extraordinary relief to the Florida Supreme Court. If there are cases for which aggravating circumstances appear to exist, I would appreciate your protecting the State of Florida's position, as you had indicated, by filing the appropriate pleadings or allowing me to review the case(s) to determine if a notice should be filed pending the Supreme Court's decision on your petition.

Brad

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

## Nordby, Daniel

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**From:** "Ayala, Aramis" <AAyala@sao9.org> <AAyala@sao9.org>  
**Sent:** Monday, May 15, 2017 1:41 PM  
**To:** Brad King  
**Cc:** Deborah Barra  
**Subject:** Our Meeting Today

Good Afternoon Mr. King

Thank you for meeting with my Chief Assistant and me today. I want to be sure that I summarize our discussion accurately. Please let me know if there are any aspects of our conversation that are inaccurate or incomplete.

As a compromise, I offered the following:

- \* Access to our Case Management System. I will discuss with our IT Director if there is a way to give you access to the 23 cases you were assigned, otherwise you will have general access to the system.
- \* Use of support staff and personal. For open cases with hearing and trial dates scheduled, feel free to use the staff that has already been assigned as the case was being handled prior to your reassignment. For new cases (specifically Loyd) you indicated your office will fully staff those prosecutions. Finally, for cases still awaiting mandate from the Supreme Court, since those cases have no assigned support staff in my office, you will provide them from your office.
- \* Access to the Downtown Office. There will be no restrictions on your use of the downtown facilities on days where meetings with need to occur, or Court hearings are scheduled, or during trial. You have been given access cards and can use the 1st floor conference room as necessary.

The only consideration I ask is that you accept the office space at the jail for day to day office functioning. You did make it clear that you still have not visited the facility but will continue to explore other more convenient options.

You also requested a proposal or agreement regarding the handling of incoming murder cases while the litigation is pending. It remains my position that any cases within the 9th Circuit, without an Executive Order, remain the sole duty and responsibility of me to prosecute. As of today, none of the Executive Orders create the obligation or even suggest the responsibility you recommend I undertake. While you made it clear that you have been in contact with the Governor's General Counsel regarding this issue and the possible ways to manage it, I think it is only proper to act when the Supreme Court has ruled in our case or there is a lawful Executive Order issued.

Your inclination to approach the Sheriff and Police Chief(s) in the 9th Circuit and encourage them to call the Governor if they believe a case requires death penalty analysis is something which I completely disagree. It is inappropriate and without legal authority. I would kindly ask that you refrain from interfering with affairs in the 9th Circuit, without a written Order that has been made public.

Please let me know if there are any parts of our discussion that were left out. I also copied Deb Barra who can add as well.

Thanks,  
Aramis Ayala  
State Attorney, 9th Circuit