

**DECLARATION OF DANIEL B. VASQUEZ IN SUPPORT OF RAY  
ALLEN'S PETITION FOR CLEMENCY  
AND PETITION FOR WRIT OF HABEAS CORPUS**

I, Daniel B. Vasquez, declare under the penalty of perjury under the laws of the state of California as follows:

1. I own and currently operate a corrections consulting firm, Corrections Consulting & Investigative Services.
2. I have devoted my entire thirty-six year professional career to the field of correctional science. I began that career in 1965 as a correctional officer with the then California Department of Corrections (CDC), now the California Department of Corrections and Rehabilitation, while I attended college. After working my way up through the ranks for thirty years with the CDC, including positions as acting superintendent and warden of two state prisons, I became Warden of San Quentin State Prison. I served as Warden there for ten years, from December 1983 until the end of 1993. As Warden at San Quentin State Prison, I was responsible for the administration and operation of a prison with a yearly operating budget of over \$110,000,000 that employed over 1500 staff.
3. I was also responsible as the Warden of San Quentin State Prison for all aspects of the confinement and execution of condemned prisoners. I supervised the reactivation of the lethal gas chamber and was responsible for and carried out the execution of Robert Harris on April 21, 1992, and David Edwin Mason on August 24, 1993. Following Mr. Harris's execution, I was called upon by then-Attorney General Daniel Lungren to study the procedures for execution by lethal injection to determine its feasibility as an alternative method of execution in California. To that end, I reviewed the lethal injection procedures in Texas and witnessed the execution of Justin Lee May in May of 1992.

4. Since leaving my position as Warden of San Quentin, I have continued to work in the field, including as Warden of Soledad, as Director of the Santa Clara County Department of Corrections, and as a consultant to and the Warden of California City Correctional Center, a privately operated prison administered by Corrections Corporation of America, based in Nashville, Tennessee. A copy of my curriculum vitae is attached to this declaration.

5. I was asked by the attorneys for Clarence Ray Allen, an inmate on San Quentin's Condemned Row scheduled for execution on January 17, 2005, to render an opinion on the appropriateness of clemency for Mr. Allen and whether his execution would serve the legitimate penological interests of the State. To that end, I met with Mr. Allen on December 20, 2005, and reviewed a copy of what counsel represented to me was a complete copy of Mr. Allen's CDC Central File made available to counsel, and which appeared to be such to me. I also reviewed a copy of Mr. Allen's clemency application and pertinent exhibits supporting it.

6. I vividly recall during my ten years as Warden of San Quentin personally serving Mr. Allen with one of his death warrants. In our mutual naiveté about the process at the time, we each invested that ceremony with much more significance and gravity than – in now looking back on it—it had in reality, and Mr. Allen was visibly shaken by the experience. I presided over pre-execution procedures for him until his execution dates were stayed by the courts.

7. I believe that the death penalty is an appropriate punishment and that the State of California has the right to enforce its criminal laws to serve its legitimate interests. I also believe that along with that right the State of California has a duty to administer the death penalty in a fair and humane way in accordance with civilized notions of decency. I believe that clemency is an integral part of ensuring the fair and humane administration of the death penalty, and that

clemency ought to be granted in the extraordinary case where an execution is shown to be unfair or inhumane rather than in the furtherance of justice. In my opinion, Mr. Allen's case is an extraordinary one for which commutation of his death sentence is warranted.

8. Mr. Allen's case qualifies as extraordinary because he now presents absolutely no risk to institutional safety or to public safety. I hold that opinion without reservation. First, he has physically declined so dramatically since his reception on Death Row that he is physically incapacitated from promoting any violence. According to CDC records and my own observation, he is verifiably blind and disabled. He is also significantly hard of hearing and of frail voice. He cannot even stand up by himself. He needs a walker to move around even within the confines of his cell, and a wheelchair for any movement out of his cell. Even daily activities such as showering require assistance and are fraught with risk of injury for him. He is an old man who has fallen apart in almost every respect. When I observed him on December 20, 2005, upon my approach to the glassed visiting cubicle he was a pathetic sight: aged, downcast, dejected, isolated, oblivious to his surroundings, cuffed to his wheelchair, and utterly defeated. From the viewpoint of a dutiful prison administrator, he required care and comforting rather than the extinguishment of his life.

9. In addition, Mr. Allen's long record while on Death Row shows that he has been virtually a model prisoner during his confinement there for nearly a quarter-century. He has suffered a single disciplinary report in that time, for a nonviolent offense that was minor if not innocuous in context, and insignificant when assessing his dangerousness. His record of longstanding and consistent conduct in conformance with institutional goals of safety and order is an exceptional one for a Death Row inmate. Mr. Allen unquestionably has been a

constructive force during his time on Death Row, as the testimonials contained in his clemency papers indicate. Those testimonials show that whatever persuasive power among other inmates that he retained at the time (approximately a decade ago) he used to promote harmony and peace for the general welfare of all. This is consistent with my experience of Mr. Allen.

10. Mr. Allen's record on the Row is in marked contrast to that of the majority of other condemned inmates, many of whom violate prison rules repeatedly, seek opportunities to create havoc, and engage in a range of violence. I am aware that such problems on the Row remain serious and intractable. Mr. Allen's institutional record stands out against that backdrop. The longevity of his conforming conduct is especially impressive, for no inmate can fake such good behavior for so many years.

11. I understand that Mr. Allen's capital crimes occurred while he was serving a term at Folsom Prison for murder. I find, however, that those crimes bear little on the assessment of the threat that he currently poses, for his conduct then occurred long ago under very different circumstances that bear no reasonable likelihood of recurring. Most obviously, there has been the change that time and age typically have on the attitudes of even a hardened offender. These factors have wrought unusual change in Mr. Allen, for reasons that no doubt relate to Mr. Allen himself but also are due to the length of that time and his advanced years. Ray Allen is now 75 years old, and in a weak and deteriorated condition that has left him but a shadow of his former self. In my experience, prisoners his age pose virtually no threat to institutional security or public safety. The absence of threat is confirmed in Mr. Allen's case by his record since his reception into Death Row more than twenty years ago. It is doubly confirmed by the fact that his afflictions make him an old and infirm 75. Moreover, as often happens as a prisoner grows

old and approaches his last years, particularly after the kinds of brushes with death that Mr. Allen has experienced both due to his failing health and his condemned status, he has tended toward passive acceptance and reconciliation rather than active rebellion and conflict. The risk that Mr. Allen would engage in dangerous or violent behavior in the future is nil. Everything that I have seen in Mr. Allen's record at San Quentin and witnessed in his attitude during our visit this week reflects a very different person than the prisoner at Folsom who plotted murder for revenge or freedom. It is unthinkable to me that Mr. Allen would engage in conduct remotely resembling the conduct reflected in his convictions. I say this as a former law enforcement officer with considerable knowledge of inmates and their behavior. Mr. Allen understands very well that he will die in prison and is accepting of that fate. He is looking to make peace at the end of his life, whether he is executed or spared execution, and the last thing on his mind is harming others.

12. Mr. Allen has obviously been a positive and constructive role model not only in his relations with other inmates, but also in his relations with prison staff. During my time at San Quentin he had a reputation as a compliant and trouble-free inmate on the Row, and his record supports that reputation. It was obvious from my observations of staff interactions with him this week that there was mutual courtesy and respect, and that custodial staff recognize that he is an old man who presents no danger and treat him gingerly.

13. I can attest to the systemic problems in the delivery of medical and psychiatric care at San Quentin that are described in the clemency petition. They are widely conceded and have been the subject of considerable concern by the courts over the years. I can attest as well to the substandard conditions of Death Row described in the petition, which have also been widely conceded and

continue to be the subject of considerable court concern. I was similarly concerned about the inadequacies of those conditions while I was Warden, and I secured a grant at that time to inspect the three largest and most active death rows then in the nation – those of Georgia, Texas, and Florida. Those inspections convinced me that in order to meet contemporary standards of decency for the confinement of condemned prisoners, San Quentin would need to build a bigger and better Death Row, and I at the time recommended new construction for that purpose. That recommendation was not acted upon while I was Warden, however, so eventually we needed to dedicate the East Block at San Quentin to Death Row despite its obvious deficiencies. East Block is a large, outmoded, antiquated five-tiered cellblock that is unsafe for staff and inmates alike and totally inappropriate for the housing of condemned prisoners. I am heartened by the fact that the State has finally taken up the recommendation of so many years back and is now embarked on plans to abandon the current facilities for housing of condemned prisoners in favor of building a new Death Row. There is no question in my mind that the long term confinement of Mr. Allen under the outmoded and substandard conditions of San Quentin's existing Death Row has hastened the decline of his health.

14. Mr. Allen is obviously worn out and tired. I have observed that the weight and pressure of living as a condemned man on Death Row is extremely debilitating and wears a prisoner out both physically and emotionally. Every court petition brings a ray of hope and rescue to the condemned prisoner, every court reprieve promises more and every court denial dashes that hope and engenders despair. The condemned prisoner must constantly adjust to these extremities of emotion, which grinds at his spirit. The process can be especially debilitating for prisoners who must contend with death warrants. No doubt these weights and

pressures during Mr. Allen's long tenure on the Row also have contributed to his decline. It is a testament to him, however, that he has overall maintained his conforming conduct and positive behavior, and I have every confidence he will continue his positive conduct as long as he lives. Moreover, I would have that same confidence if he were relieved of his death sentence and taken off the Row for placement in regular prison housing. Pursuant to established prison policy, he would be required to spend at least the following five years – considerably longer than he is likely to live – in close custody in a Level IV maximum security prison, which would not only provide more than enough security to house him safely, but which also has the modern resources for attending to his needs as an ailing and disabled prisoner of advanced age.

15. Knowing the intensity of the anxiety and stress that build up in a prisoner as the date for his execution approaches and special pre-execution procedures are instituted, I fully join in the expressed concern of doctors that Mr. Allen may not be strong enough to cope with his impending execution, and that the execution process itself may bring on a heart attack. Therefore, I recommend, at the very least, that Mr. Allen be closely monitored by medical personnel during this process, and that a cardiologist or other appropriate medical personnel be available on the date scheduled for his execution.

16. Needless to say, modern sensitivities to the disabled were lacking when the execution chamber was built. Consequently, it will be particularly difficult for the execution of Mr. Allen to be accomplished in a dignified way. There is a significant lip to the chamber itself that will make it impossible to wheel Mr. Allen into the chamber in a wheelchair, his usual mode of transportation outside his cell. Even entry with a walker would be problematic and risky, but the prescribed use of restraints to escort Mr. Allen to the chamber make even that aid

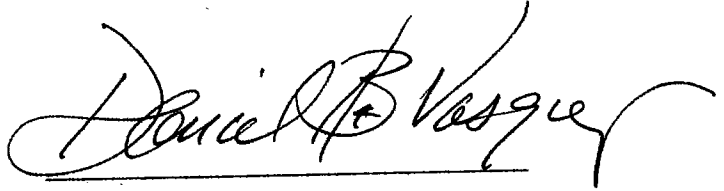
impossible. It appears that Mr. Allen will have to be carried into the chamber for his execution. That mode of execution will demean not only Mr. Allen but the prison staff, who will be required to aid in the execution of a man too old and feeble to enter the chamber under his own power.

17. A determination of the appropriateness of the execution of any individual must take into account the current attributes of that individual. Mr. Allen's current attributes establish that the State's execution of him would be shameful. Given Mr. Allen's age, given his infirmities, given the unusual punishment already imposed by the many years he has spent on Death Row, given his good behavior in all that time and given the little natural life he has remaining, sparing Mr. Allen from execution would be both an act of compassion and an act of justice. Mr. Allen's execution is not necessarily to deter Mr. Allen from engaging in similar behavior in the future, for the punishment he has already suffered from his judgment of death has fully accomplished that purpose. That punishment has also served the purpose of general deterrence, which would not be measurably enhanced by the execution of Mr. Allen at this late date and this late in his life. Similarly, Mr. Allen's execution would not measurably add to the State's retributive purpose, which also has been substantially fulfilled by the punishment the death judgment has already imposed upon him. Moreover, public confidence in the integrity of our State's administration of capital punishment would be furthered by its example of compassion and humanity were Mr. Allen's sentence of death commuted.



18. I respectfully recommend that the Governor of California grant Mr. Allen that measure of clemency.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this Declaration was executed on December 21, 2005, in Contra Costa County, California.

A handwritten signature in black ink, reading "Daniel B. Vasquez". The signature is written in a cursive style with a large, stylized initial "D" and a long, sweeping flourish at the end.

Daniel B. Vasquez