

JON M. SANDS
Federal Public Defender, District of Arizona
DALE A. BAICH (OH Bar No. 0025070)
dale_baich@fd.org
ROBIN C. KONRAD (AL Bar No. N76K2194)
robin_konrad@fd.org
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
602.382.2816 | 602.889.3960 facsimile

Counsel for Condemned Plaintiffs

MARK E. HADDAD (*admitted pro hac vice*)
mhaddad@sidley.com
ALYCIA A. DEGEN (*admitted pro hac vice*)
adegen@sidley.com
JOSHUA E. ANDERSON (*admitted pro hac vice*)
janderson@sidley.com
AIMEE G. MACKAY (*admitted pro hac vice*)
amackay@sidley.com
COLLIN P. WEDEL (*admitted pro hac vice*)
cwedel@sidley.com
LAUREN A. MCCRAY (*admitted pro hac vice*)
lmccray@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
213.896.6000 | 213.896.6600 facsimile

Counsel for the Coalition and Condemned Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

First Amendment Coalition of Arizona, Inc.;
Charles Michael Hedlund; Graham S. Henry;
David Gulbrandson; Todd Smith; and Eldon
Schurz,

Plaintiffs,

v.

Jan M. Brewer, Governor; Charles L. Ryan,
Director of ADC; Ron Credio, Warden,
ASPC–Eyman; Greg Fizer, Warden, ASPC–
Florence; and Does 1-10, Unknown ADC
Personnel, in their official capacities as
Agents of ADC,

Defendants.

Case No. 2:14-cv-01447-NVW-JFM

FIRST AMENDED COMPLAINT
FOR VIOLATIONS OF
42 U.S.C. § 1983 AND
EQUITABLE, INJUNCTIVE, AND
DECLARATORY RELIEF

Table of Contents

INTRODUCTION.....	1
JURISDICTION AND VENUE.....	7
PARTIES TO THE ACTION.....	8
RELEVANT FACTS.....	10
A. The Public’s and Press’s Constitutional Right of Access to Execution Proceedings.....	10
B. The Constitutional Rights to Which Condemned Prisoners Are Entitled.	12
C. Obstacles to the Constitutional Use of Lethal Injection.	13
D. Arizona’s Struggles With Implementing Constitutional Procedures for Carrying out Executions.	18
E. Defendants’ Pre-Wood Botched Executions.....	24
F. Wood’s Botched Execution.....	30
G. Arizona’s Unconstitutional Procedures Made Wood’s Failed Execution Inevitable.....	35
EXHAUSTION OF ADMINISTRATIVE REMEDIES.....	39
CLAIMS FOR RELIEF.....	40
PRAYER FOR RELIEF	49
CERTIFICATE OF SERVICE.....	54

1 discretion and violate the Constitution, with a substantial risk of imposing more
2 experiments in human execution with similarly ghastly results, and of doing so without
3 outside public knowledge or meaningful media scrutiny.

4 3. The initial Complaint in this case alleged that Defendants' ever-shifting
5 execution procedures, along with their efforts to hide how they planned to execute the
6 condemned, impaired the ability of then-Plaintiff Joseph Wood and the other
7 Condemned Plaintiffs to challenge the method by which they would be killed, and thus
8 violated their First Amendment rights to petition the government for redress of
9 grievances and to obtain access to government proceedings and information.³

10 4. While this civil suit was pending, the date for Wood's execution drew
11 near, and he sought a stay of his execution. Reversing this Court's decision, the United
12 States Court of Appeals for the Ninth Circuit granted a stay until such time as
13 Defendants provided sufficient information regarding the execution procedure they
14 intended to follow.

15 5. Defendants successfully petitioned the United States Supreme Court to lift
16 the stay, arguing that Wood's pleas for greater transparency in Arizona's execution
17 process were unfounded because, in the Defendants' words, Wood "*blithely ignores* that
18 nearly every detail about his execution is provided to him and to the general public,
19 *including exactly what and how much lethal drugs will be used*, how they will be
20 administered, and the qualifications of those placing the IV lines to administer them."⁴

21 ³ Defendant Governor Jan Brewer was not a Defendant in the initial Complaint, but has
22 been added as a Defendant in this First Amended Complaint.

23 ⁴ Reply Brief of State of Arizona in support of Application for Stay at 2, *Ryan v. Wood*,
24 No. 14A82 (U.S. July 22, 2014) (emphasis added). Similarly, Judge Bybee, dissenting
25 from the Ninth Circuit Court of Appeals' grant of stay, asserted that both Wood and
26 "[t]he public know[] precisely how the State intends to end Wood's life and can
27 investigate [based on already available information] whether the drugs are suited to that
28 purpose," and, indeed, "[a]nyone who reads the Protocol will know exactly how Arizona
plans to carry out [his] execution." *Wood v. Ryan*, --- F.3d ---, No. 14-16310, 2014 WL
3563348, at *22 (9th Cir. July 19, 2014) (Bybee, J. dissenting), *vacated*, 14A82, 2014
WL 3600362 (U.S. July 22, 2014).

1 Defendants' March 26, 2014, Department Order 710 Execution Procedures
2 ("Procedures") provided for one dose of 50 milligrams each of midazolam and
3 hydromorphone, with a second dose of each to be administered at the discretion of the
4 Director of the Arizona Department of Corrections ("ADC"), currently Defendant Ryan
5 ("Director"). Arizona had *never* executed any prisoner with these drugs. Moreover, only
6 one other state previously had used these two drugs in an execution, and the result was
7 Ohio's botched, January 16, 2014, execution of Dennis McGuire.

8 6. As demonstrated by Wood's execution on July 23, 2014, Defendants'
9 representations to the Supreme Court were false. Neither Wood, nor the Condemned
10 Plaintiffs, nor the public, nor the press, nor (it would appear) even Defendants knew how
11 Wood's execution would actually be carried out. Free from the requisite public and
12 media scrutiny of their preparation for and conduct of an execution, scrutiny that is
13 necessary to ensure that a state executes its prisoners humanely, Defendants were free
14 to—and did—abandon the published Procedures and Defendants' representations to this
15 Court, the Court of Appeals, and the Supreme Court.

16 7. During their nearly two-hour medical experiment with new doses and
17 chemicals, Defendants departed radically from their written Procedures and promises to
18 the courts. When Wood did not expire within twenty minutes after receiving the first
19 dose, but instead (after about twelve minutes) lurched forward against his restraints and
20 began breathing deeply, Defendants began injecting Wood with additional doses of both
21 drugs. As Wood continued to gulp for air, Defendants continued to inject Wood with
22 additional doses of the drugs, ultimately administering 14 additional doses for a total of
23 750 milligrams *each* of midazolam and hydromorphone, literally hundreds of times
24 greater than the amounts that would be administered in a clinical setting.⁵

25
26
27 ⁵ Fernanda Santos, *Executed Arizona Inmate Got 15 Times Standard Dose*, N.Y. TIMES,
28 Aug. 1, 2014, <http://nyti.ms/1ohRODF>.

8. The result of Defendants’ improvisational execution was that Wood lingered alive for almost two hours after being first injected with what Defendants represented were lethal doses of the two drugs. During his last living hours, he gasped for air more than 640 times. Journalist witnesses who were present at the execution reported Wood’s final 117 minutes in graphic terms that place his suffering far beyond what the Constitution permits:

- “like a fish on shore gulping for air”;⁶
- “gulp[ing] like a fish on land”;⁷
- “death by apnea”;⁸
- “a snoring, sucking, similar to when a swimming pool filter starts taking in air, a louder noise than I can imitate”;⁹ and
- “I saw a man who was supposed to be dead, coughing—or choking, possibly even gasping for air.”¹⁰

//

//

//

⁶ Laurie Roberts, *Arizona Needs a Timeout After Botched Execution*, ARIZ. REPUBLIC, July 23, 2014, <http://www.azcentral.com/story/laurieroberts/2014/07/23/woods-execution-botched/13073777>.

⁷ Michael Kiefer, *Reporter Describes Arizona Execution: 2 Hours, 640 Gasps*, ARIZ. REPUBLIC, July 26, 2014, <http://www.azcentral.com/story/news/arizona/politics/2014/07/24/arizona-execution-joseph-wood-eyewitness/13083637>.

⁸ *Id.*

⁹ *Id.*

¹⁰ Mauricio Martin, *Witness to a 2-hour Arizona Execution: Joseph Wood’s Final 117 Minutes*, GUARDIAN, July 24, 2014, <http://www.theguardian.com/commentisfree/2014/jul/24/witness-arizona-execution-joseph-wood-died>.

9. Wood’s execution was also extensively reported by news outlets around the country and around the world, and was again described in terms underscoring the brutality of Defendants’ improvisation:

- “snoring, gasping and gurgling”;¹¹
- “gasping and struggling to breathe”;¹²
- “in grotesque agony, choking his way to death”;¹³
- “[a]nother unexpectedly prolonged execution using disputed lethal injection drugs”;¹⁴ and
- “[like] catch[ing] a fish and throw[ing] it on the shore, the way the fish opens and closes its mouth.”¹⁵

10. These reactions were echoed by two of Arizona’s most prominent elected officials. Senator John McCain, a survivor of barbaric treatment during the Vietnam War, initially described Wood’s execution as “torture.”¹⁶ Defendant Governor Jan Brewer issued a statement noting her “concern” about “the length of time it took for the administered drug protocol” to kill Wood.¹⁷ Although she expressed her confidence in

¹¹ Editorial, *Problems with Execution Drugs Must Be Solved*, KNOXVILLE (TN) NEWS SENTINEL, July 28, 2014, http://www.knoxnews.com/opinion/editorials/editorial-problems-with-execution-drugs-must-be-solved_43109448

¹² Charles P. Pierce, *It’s Time to End Our State-Sponsored Barbarism*, ESQUIRE, July 24, 2014, http://www.esquire.com/blogs/politics/Another_Execution_Horror_Story.

¹³ James Poulos, *Dysfunction and the Death Penalty*, ORANGE CNTY. (CA) REGISTER, Aug. 8, 2014, <http://www.ocregister.com/articles/death-631022-penalty-punishment.html>.

¹⁴ Erik Eckholm, *Arizona Takes Nearly 2 Hours to Execute Inmate*, N.Y. TIMES, July 23, 2014, at A1.

¹⁵ Megan McCracken & Jennifer Moreno, *Botched Executions Can’t Be New Norm*, CNN, July 27, 2014, *updated* Sept. 8, 2014, <http://www.cnn.com/2014/07/26/opinion/mccracken-moreno-botched-executions>.

¹⁶ Burgess Everett, *John McCain: Arizona Execution ‘Torture,’* POLITICO, July 24, 2014, <http://www.politico.com/story/2014/07/john-mccain-arizona-execution-109350.html>.

¹⁷ Press Release, Office of the Governor of Arizona (July 23, 2014), *available at* http://www.azgovernor.gov/dms/upload/PR_072314_WoodExecution.pdf.

1 ADC, Defendant Brewer directed the ADC immediately to begin an investigation in
2 light of her concerns.¹⁸

3 11. As described in more detail below, ADC is conducting an investigation
4 internally. That investigation is not yet complete and its results have not yet been made
5 available to Plaintiffs or the public.

6 12. During the course of Wood's prolonged execution, Wood's counsel sought
7 this Court's intervention to stop Defendants from proceeding any further. While engaged
8 in a telephonic hearing with the Court, Defendants falsely represented the dosages they
9 had administered to Wood. Specifically, at 3:35 p.m. on the day of the execution (103
10 minutes after the drugs began flowing), Defendants told the Court that Wood had
11 received a "[a] second dose of drugs." However, as was later revealed, by 3:33 p.m.
12 Wood had received not just his second but also his *third through twelfth* injections of the
13 drugs; he would receive three more injections during the hearing. At 3:47 p.m.,
14 Defendants told the Court that they would "push chemicals" to try to hasten Wood's
15 death; by that time, however, Wood had already received his fifteenth and final dose.
16 Because of the secrecy with which Defendants cloak their execution process, no witness
17 present at the execution was able to observe Defendants' repeated injections of the drugs
18 nor knew how many injections he had received; no one thus could contradict
19 Defendants' representations to this Court at that time.

20 13. Defendants also represented to this Court that Wood was "brain dead," and
21 thus beyond resuscitation or experiencing pain. Defendants did not employ, however,
22 instruments that medical professionals use to assess brain death.

23 ¹⁸ *Id.*; see also Arizona Dep't of Corr., Press Release, *Independent Review Process for*
24 *Wood Execution Underway*, Aug. 1, 2014, [https://corrections.az.gov/article/independent-](https://corrections.az.gov/article/independent-review-process-wood-execution-underway)
25 [review-process-wood-execution-underway](https://corrections.az.gov/article/independent-review-process-wood-execution-underway); Arizona Dep't of Corr., Press Release,
26 *Department of Corrections Statement on Review of July 23 Execution*, July 24, 2012,
27 [https://corrections.az.gov/article/departments-corrections-statement-review-july-23-](https://corrections.az.gov/article/departments-corrections-statement-review-july-23-execution)
28 [execution](https://corrections.az.gov/article/departments-corrections-statement-review-july-23-execution); Arizona Dep't of Corr., Press Release, *Convicted Murderer Joseph Wood*
Executed, July 23, 2014, [https://corrections.az.gov/article/convicted-murderer-joseph-](https://corrections.az.gov/article/convicted-murderer-joseph-wood-executed)
[wood-executed](https://corrections.az.gov/article/convicted-murderer-joseph-wood-executed).

14. Moreover, Defendants did not have immediate access to drugs that could reverse the effects of the drugs administered, effectively tying this Court's hands. Wood's ongoing labored breathing indicated that he was not, in fact, brain dead.

15. Neither Arizona nor any other state has ever attempted to execute an individual using these dosages of these drugs. Defendants' ever-changing execution procedures, and their pattern of deviating from those procedures before and during an execution, made it foreseeable (if not certain) that Defendants would subject Wood to a death by unusual and cruel means.

16. The events during Joseph Wood's execution were not isolated events. Rather, Wood's execution followed directly from the excessive discretion Arizona vests in its prison officials for carrying out executions. Defendants have now botched a series of executions due to the flawed written procedures and Defendants' refusal to even adhere to those flawed procedures. *See generally Lopez v. Brewer*, 680 F.3d 1084, 1093-94 (9th Cir. 2012) (Pregerson, J., dissental) (discussing series of mishaps and mistakes in Arizona's attempts to carry out death sentences).

17. Defendants blocked from public and judicial scrutiny their acts and decision-making before and during the course of Wood's execution. Defendants also have blocked attempts by journalists, including some employed by members of the Coalition, to obtain information about what went wrong with Wood's execution.

18. Defendants were aware of the substantial risk of error, pain, prolonged suffering, and indignity that faced Wood, but refused to mitigate that risk. Defendants' insistence upon a right to experiment with human execution free from meaningful public and judicial scrutiny highlights the urgent need for transparency in Arizona's execution process and procedures.

Jurisdiction and Venue

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1343 (civil-rights violations), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief). Plaintiffs invoke this Court's

1 jurisdiction pursuant to the First, Eighth, and Fourteenth Amendments to the United
2 States Constitution, and 42 U.S.C. § 1983.

3 20. Venue is proper pursuant to 28 U.S.C. § 1391(b). Condemned Plaintiffs
4 are currently incarcerated at the Arizona State Prison Complex (“ASPC”)–Eyman,
5 Browning Unit, 4374 East Butte Avenue, Florence, Arizona, located in this District.
6 Additionally, the Coalition resides in this District.

7 21. Moreover, all executions conducted by Defendants occur at the Central
8 Unit at ASPC–Florence, which is in this District. Thus, the events giving rise to this
9 Complaint have occurred and/or will occur in this District.

10 **Parties to the Action**

11 22. Plaintiff First Amendment Coalition of Arizona, Inc., is a non-profit
12 corporation made up of organizations dedicated to advancing free speech, accountable
13 government, and public participation in civic affairs. Founded in 1981, the Coalition is
14 located in Phoenix, Arizona. Members of the Coalition include the Arizona Broadcasters
15 Association; the Arizona Newspapers Association; the Arizona-New Mexico Cable
16 Telecommunication Association; the Arizona Press Club; the Society of Professional
17 Journalists; Valley of the Sun Chapter; and individual news media companies and
18 reporters. The Coalition asserts a claim under only the First Amendment to vindicate the
19 rights of access of the press and the public to government proceedings and information;
20 the Coalition does not join the separate First, Eighth, and Fourteenth Amendment claims
21 advanced by the Condemned Plaintiffs.

22 23. Plaintiff Charles Michael Hedlund is a United States citizen and a resident
23 of the State of Arizona. He is currently subject to a sentence of death imposed by the
24 Superior Court of Maricopa County. Hedlund is incarcerated at ASPC–Eyman,
25 Browning Unit, in Florence, Arizona.

26 24. Plaintiff Graham S. Henry is a United States citizen and a resident of the
27 State of Arizona. He is currently subject to a sentence of death imposed by the Superior
28

1 Court of Mohave County. Henry is incarcerated at ASPC–Eyman, Browning Unit, in
2 Florence, Arizona.

3 25. Plaintiff David Gulbrandson is a United States citizen and a resident of the
4 State of Arizona. He is currently subject to a sentence of death imposed by the Superior
5 Court of Maricopa County. Gulbrandson is incarcerated at ASPC–Eyman, Browning
6 Unit, in Florence, Arizona.

7 26. Plaintiff Todd Smith is a United States citizen and a resident of the State of
8 Arizona. He is currently subject to a sentence of death imposed by the Superior Court of
9 Coconino County. Smith is incarcerated at ASPC–Eyman, Browning Unit, in Florence,
10 Arizona.

11 27. Plaintiff Eldon Schurz is a United States citizen and a resident of the State
12 of Arizona. He is currently subject to a sentence of death imposed by the Superior Court
13 of Maricopa County. Schurz is incarcerated at ASPC–Eyman, Browning Unit, in
14 Florence, Arizona.

15 28. Defendant Jan M. Brewer is the governor of the State of Arizona and is
16 being sued in her official capacity for equitable, injunctive, and declaratory relief.

17 29. Defendant Charles L. Ryan is the Director of ADC and is being sued in his
18 official capacity for equitable, injunctive, and declaratory relief.

19 30. Defendant Ron Credio is the Warden of ASPC–Eyman, where Condemned
20 Plaintiffs are incarcerated, and is being sued in his official capacity for equitable,
21 injunctive, and declaratory relief.

22 31. Defendant Greg Fizer is the Warden of ASPC–Florence, where
23 Condemned Plaintiffs will be executed, and is being sued in his official capacity for
24 equitable, injunctive, and declaratory relief.

25 32. Defendants John and Jane Does are unknown employees, staff,
26 contractors, or agents of ADC or the State of Arizona who are ADC’s officers,
27 successors in office, agents, contractors, staff, and employees, along with those acting in
28 concert with them, who have participated or will participate in Condemned Plaintiffs’

1 executions in capacities involving, *inter alia*, setting IV lines, handling drugs that are
 2 classified as controlled substances, and developing and implementing ADC's execution
 3 procedures—including the protocols governing the preparation and administration of
 4 drugs designed to execute people. Plaintiffs are not aware of the true identities of the
 5 John and Jane Does, but allege that when Plaintiffs discover their identities, Plaintiffs
 6 will amend this Complaint accordingly.¹⁹

7 33. At all times herein mentioned, each of the Defendants was the agent,
 8 servant, representative, officer, director, partner or employee of the other Defendants
 9 and, in doing the things herein alleged, was acting within the scope and course of
 10 his/her/its authority as such agent, servant, representative, officer, director, partner or
 11 employee, and with the permission and consent of each Defendant.

12 Relevant Facts

13 A. The Public's and Press's Constitutional Right of Access to Execution 14 Proceedings.

15 34. Because executions reflect public outrage, carry out a public verdict, and
 16 exact retribution on behalf of the public, it is imperative—and mandated by the First
 17 Amendment—that members of society have information about executions, and that the
 18 press have access to and be able to provide the public that information through the
 19 media's reports on the planning for and conduct of the executions.

20 35. The press—and the transparency it necessarily brings to the issues it
 21 covers—plays a crucial role in ensuring that members of the public have the information
 22 they need to evaluate whether and how their elected officials are adhering to the
 23 Constitution as they carry out “a horrendous brutality on our behalf.” *Wood v. Ryan*, 14-
 24 16310, 2014 WL 3563348, at *23 (9th Cir. July 19, 2014) (Kozinski, C.J., dissent),

25 ¹⁹ For ease of reference, and to distinguish between past actions taken by persons who are
 26 also Defendants here, Plaintiffs refer to Defendants variably as “Defendants,” “the State,”
 27 and/or “ADC” where appropriate. Plaintiffs note, however, that their use of any of these
 28 phrases should not be interpreted as limiting the scope of their claims, which are brought
 against each and all of the Defendants.

1 *vacated*, 14A82, 2014 WL 3600362 (U.S. July 22, 2014); *Cal. First Amendment Coal. v.*
2 *Woodford*, 299 F.3d 868, 876 (9th Cir. 2002) (“To determine whether lethal injection
3 executions are fairly and humanely administered, or whether they ever can be, citizens
4 must have reliable information about the . . . [‘]procedures,’ which are invasive, possibly
5 painful and may give rise to serious complications. This information is best gathered
6 first-hand or from the media, which serves as the public’s surrogate.”). Media access to
7 the details of executions is particularly important because journalists assigned to witness
8 an execution must often report to other media organizations what they observe, as the
9 number of reporters present is often limited.

10 36. Moreover, members of the media have historically had access not just to
11 the event of an execution itself, but also to the state’s pre-execution planning, methods
12 the state intends to use, the qualifications of the persons involved, and potential
13 contingency procedures. Gaining familiarity with the particulars of how the state plans
14 to carry out its “precise execution-day routine” is crucial because, “by knowing what
15 happens in a ‘textbook’ execution . . . reporters are not as likely to be surprised or
16 traumatized, and will know if something goes wrong.”²⁰

17 37. The transparency the media brings is needed, especially in Arizona, both
18 because Arizona has experienced a series of widely publicized problems in carrying out
19 its executions, and also because Arizona has repeatedly blocked attempts by the press to
20 obtain information about its death-penalty regime. As Judge Berzon has noted, “Arizona
21 has recently increased the secrecy with which it conducts executions . . . to make it more
22 difficult for condemned prisoners to litigate the nature of the risk created by the
23 procedures used in the past.” *Lopez v. Brewer*, 680 F.3d 1084, 1090 (9th Cir. 2012)
24 (Berzon, J., concurring in part and dissenting in part). For example, Judge Berzon has
25
26

27 ²⁰ Cynthia Barnett, *Covering Executions*, AM. JOURNALISM. REV., May 1995, available at
28 <http://ajrarchive.org/article.asp?id=1265>.

1 suggested that Arizona should “permit[] exposure through media and witnesses of any
2 indications of serious pain during those executions.” *Id.*

3 **B. The Constitutional Rights to Which Condemned Prisoners Are**
4 **Entitled.**

5 38. Condemned prisoners, including Condemned Plaintiffs, share the same
6 right of access to governmental information that the press and the public enjoy. But they
7 also have unique rights tied to their impending executions. The Eighth Amendment of
8 the Constitution, applicable to the States through the Fourteenth Amendment, prohibits
9 the infliction of “cruel and unusual punishments.” Punishments are “cruel when they
10 involve torture or a lingering death.” *Baze v. Rees*, 553 U.S. 35, 46 (2008) (quoting *In re*
11 *Kemmler*, 136 U.S. 436, 447 (1890)). For more than a century, the States and the
12 American public have sought to ensure the “most humane and practical method” for
13 carrying into effect the sentence of death. *See, e.g., Malloy v. South Carolina*, 237 U.S.
14 180 (1915); S. BANNER, *THE DEATH PENALTY: AN AMERICAN HISTORY* 192-193, 296-
15 297 (2002) (describing the evolution of executions from hanging, to firing squad, to
16 electrocution, to lethal gas to lethal injection). *See generally* AUSTIN SARAT, *GRUESOME*
17 *SPECTACLES: BOTCHED EXECUTIONS AND AMERICA’S DEATH PENALTY* (2014). A
18 condemned prisoner is entitled to a humane death that does not cause “needless
19 suffering,” prolonged lingering, or deliberate infliction of pain. *See Farmer v. Brennan*,
20 511 U.S. 825, 846 & n.9 (1994). A condemned person cannot be subjected to a method
21 of execution that creates a “substantial risk of serious harm.” *Baze*, 553 U.S. at 50.

22 39. In addition to (and subsumed within) a condemned prisoner’s Eighth
23 Amendment right to be from the risk of harm or a lingering death, dozens of treaties,
24 laws, and the interests in life and liberty protected by the Fourteenth Amendment protect
25 a prisoner’s right to dignity and to be free from non-consensual medical experiments.²¹

26 ²¹ *See, e.g.,* 45 U.S.C. § 3515b; 45 C.F.R. Part 46; 40 C.F.R. Part 26; Universal
27 Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Docs. A/RES/217(III), A/810
28 (Dec. 10, 1948); International Covenant on Civil and Political Rights, G.A. Res. 2220
(XXI) A, 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966);

1 *See Beardslee v. Woodford*, 395 F.3d 1064, 1070 (9th Cir. 2005) (“[T]he Eighth
2 Amendment prohibits punishments that . . . do not accord with ‘the dignity of man’”
3 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976))).

4 **C. Obstacles to the Constitutional Use of Lethal Injection.**

5 40. Whether lethal injection adequately ensures these rights is in doubt. This
6 stems in part from the basic premise of lethal injection, which, as Chief Judge Kozinski
7 has recently noted, involves “[s]ubverting medicines meant to heal the human body to
8 the opposite purpose . . . [resulting in] an enterprise doomed to failure.”²²

9 41. The American Medical Association and the American Board of
10 Anesthesiology also have concluded that a physician’s participation in capital
11 punishment violates the ethical tenets of medical practice.²³

12 42. Likewise, many States have recently encountered difficulty obtaining
13 drugs for lethal injection, in part because several pharmaceutical companies responsible
14

17 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or
18 Punishment, G.A. res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc.
19 A/39/51 (1984) (ratified 10/28/98); Declaration on the Protection of All Persons From
20 Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or
21 Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc.
22 A/10034 (1976); Vienna Declaration and Programme of Action (World Conference on
23 Human Rights, 1993); Article 3 of the Geneva Conventions; The Nuremburg Code.

22 ²² *Wood v. Ryan*, --- F.3d. ---, 14-16310, 2014 WL 3563348, at *23 (9th Cir. July 19,
2014) (Kozinski, C.J. dissent), *vacated*, 14A82, 2014 WL 3600362 (U.S. July 22,
2014).

23 ²³ *See* AMERICAN MEDICAL ASSOCIATION CODE OF MEDICAL ETHICS, Opinion E-2.06 –
24 Capital Punishment (June 2000) (accessed September 8, 2014, at [http://www.ama-
25 assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/
26 opinion206.page](http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion206.page)); *see also* COMMENTARY, AMERICAN BOARD OF ANESTHESIOLOGY,
27 ANESTHESIOLOGISTS AND CAPITAL PUNISHMENT (May 2014); “Statement from Drug
28 Manufacturers and other Medical Professionals,” Death Penalty Information Center,
[http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-
supreme-court-decision#statements](http://www.deathpenaltyinfo.org/lethal-injection-moratorium-executions-ends-after-supreme-court-decision#statements) (listing medical opposition).

1 for making these drugs have refused to make their products available for killing
2 people.²⁴

3 43. In the years since the Supreme Court decided *Baze*, at which time the
4 majority of States used the same combination of three drugs in their lethal injection
5 protocols—sodium thiopental, pancuronium bromide, and potassium chloride—states
6 have begun experimenting with different untested drug combinations to execute
7 prisoners, and are increasingly turning to untoward (and, in some cases, illegal) methods
8 to obtain the needed drugs required for these experimental combinations.²⁵

9 44. The resort to compounding and/or clandestine means of obtaining drugs
10 for execution, along with other failures of states to protect the condemned from a painful
11 and undignified death, has resulted in a series of lethal-injection mishaps occurring with
12 disturbing frequency.

13 45. Though each states' mishaps vary, a common thread connecting three
14 recent botched executions is the use of the drugs midazolam and/or hydromorphone.

15 46. Midazolam (also sold under the trade name Hypnovel™ and Versed™) is
16 a short-acting, water-soluble benzodiazepine used most commonly as a premedication
17 for sedation, and less commonly as a general anesthetic. The FDA-approved intravenous
18

19 ²⁴ See Deborah W. Denno, *Lethal Injection Chaos Post-Baze*, 102 GEO. L.J.1331, 1360-
20 66 (2014); see David Jolly, *Danish Company Blocks Sale of Drug for U.S. Executions*,
21 N.Y. TIMES, July 1, 2011, [http:// nytimes.com/2011/07/02/world/europe/02execute.html](http://nytimes.com/2011/07/02/world/europe/02execute.html).
22 (reporting announcement by Danish pentobarbital manufacturer H. Lundbeck A/S that it
23 “would require customers to buy [pentobarbital] through a single wholesaler and to sign
24 a form confirming they won’t resell it, aren’t a prison, and know Lundbeck opposes
25 executions.”); *id.* at 1361 (“The shortage of sodium thiopental led prison officials to seek
26 out questionable alternative sources of the drug throughout the world, ranging from
27 England to Pakistan.”).

28 ²⁵ Missouri and Texas, for instance, have turned to compounding pharmacies to create
analogues of branded drugs. Reliance on compounding pharmacies is risky, however,
because regulations governing such pharmacies are lax and vary from state to state, and
instances of contamination abound; American Medical Association guidelines even warn
doctors that prescribing compounded medications can lead to malpractice liability. See
Denno, 102 GEO. L.J. at 1366-68.

1 dose for an adult patient is 1 milligram to 2.5 milligrams to induce sedation. Labeling
2 instructions caution that high (*e.g.*, more than 1 milligram) doses must be titrated slowly
3 in order to be effective. Specifically, the FDA-approved label counsels that doses of 1-
4 to-2 milligrams be administered over the course of three minutes. To be effective,
5 midazolam must be stored at temperatures between 68 and 77 degrees Fahrenheit.

6 47. Hydromorphone (also sold under the trade name Dilaudid™) is a potent
7 opioid drug, derived from morphine. The FDA-approved starting intravenous dosage for
8 medicinal use is 0.2 to 1 milligram. To be effective, hydromorphone must also be stored
9 at temperatures between 68 and 77 degrees Fahrenheit.

10 48. To Condemned Plaintiffs' knowledge and belief, these drugs have never
11 been tested on humans or non-human animals at anywhere near the levels used by
12 Arizona to execute Joseph Wood.²⁶

13 49. On January 16, 2014, the State of Ohio executed Dennis McGuire using a
14 combination of 10 milligrams of midazolam and 40 milligrams of hydromorphone—the
15 same drugs used by Defendants in Wood's execution, albeit in much smaller amounts.
16 This experiment was the first time in the United States that a two-drug formula of
17 midazolam and hydromorphone had been used to execute a prisoner.

18 50. Information shows that, in advance of McGuire's execution, Ohio officials
19 exchanged emails with various medical professionals about how the combination of
20 midazolam and hydromorphone would work. These emails and other documents
21 revealed that Ohio was warned that these drugs could cause a prisoner to "gasp" and
22 "hyperventilate" as he died, and that using these drugs to execute a person could end in
23

24 ²⁶ See Ashby Jones, *Lethal-Injection Drug Is Scrutinized*, WALL ST. J., June 1, 2014,
25 <http://online.wsj.com/articles/lethal-injection-drug-is-scrutinized-1401668717>
26 ("Anesthesiologists say they typically administer midazolam to a patient only a few
27 milligrams at a time and therefore know little about the effects of much larger doses
28 'It's uncharted territory' said David Waisel, an anesthesiologist at Boston Children's
Hospital who has testified on behalf of death-row inmates. 'States literally have no idea
what they're doing to these people.'").

1 “disaster,” “a terrible, arduous, tormenting execution that is also an ugly visual and
 2 shameful spectacle,” in part because, before losing consciousness, the patient likely
 3 would be “subjected to the intoxicating effects of these drugs, which include
 4 hallucinations.”²⁷ Ohio officials expressed their concern about going forward with
 5 something that might become “a distasteful and disgusting spectacle” that “would create
 6 the appearance, at least, of suffering, which would upset witnesses and inspire
 7 litigation.”²⁸

8 51. Those concerns materialized at McGuire’s execution. Those who
 9 witnessed the 26-minute execution reported that McGuire struggled and gasped loudly
 10 for air “like a fish lying along the shore puffing for that one gasp of air that would allow
 11 it to breathe.”²⁹ After reviewing how McGuire’s execution could have gone so badly, the
 12 State of Ohio announced that it would increase the dosages of hydromorphone and
 13 midazolam to 50 milligrams each in its next execution.³⁰ Subsequently, a federal court
 14 ordered all executions in the State of Ohio stayed until at least January 15, 2015,
 15 pending review of the State’s lethal-injection protocol.³¹

16 52. On April 29, 2014, the State of Oklahoma executed Clayton Lockett.
 17 Officials took 51 minutes to place an IV line, eventually believing they had properly
 18 inserted the IV in a vein in Lockett’s groin, after unsuccessfully attempting to place the
 19 IV in his jugular vein and other locations.³² Oklahoma used an untested three-drug
 20

21 ²⁷ Josh Sweigart, *Ohio Increases Drug Dosage for Executions* NEW REPUBLIC, Apr. 28,
 22 2014, <http://www.newrepublic.com/article/119068/exclusive-emails-reveal-states-worries-about-problematic-execution>.

23 ²⁸ *Id.*

24 ²⁹ Lawrence Hummer, *I Witnessed Ohio’s Execution of Dennis McGuire. What I Saw*
 25 *Was Inhumane*, GUARDIAN, Jan. 22, 2014, <http://www.theguardian.com/commentisfree/2014/jan/22/ohio-mcguire-execution-untested-lethal-injection-inhumane>.

26 ³⁰ Sweigart, *supra* note 27.

27 ³¹ *See Order, In re: Ohio Execution Protocol Litig.*, No. 2:11-cv-1016 (D. Ohio Aug. 8,
 2014), ECF No. 494.

28 ³² Erik Eckholm & John Schwartz, *Timeline Describes Frantic Scene at Oklahoma*

1 formula that relied on an initial injection of 100 milligrams of midazolam intended to
2 render the prisoner unconscious, after which time the state planned to administer
3 vecuronium bromide (a paralytic) and then potassium chloride (to induce cardiac
4 arrest).³³

5 53. The 43-minute execution did not go as planned. More than 20 minutes
6 after the drugs had been administered, Lockett was still conscious, and he struggled to
7 speak. He was reported as saying “Man,” “I’m not,” and “something’s wrong.”
8 Witnesses also reported that Lockett, at points, was seen “twitching” and “convulsing”
9 so violently that “it looked like his whole upper body was trying to lift off the gurney.”³⁴
10 Officials then drew the blinds and discovered that the state’s technicians had missed
11 Lockett’s vein.³⁵ Instead of going into Lockett’s bloodstream, the drugs had massed in
12 Lockett’s muscle tissue, creating a swelling under his skin “smaller than a tennis ball,
13 but larger than a golf ball.”³⁶ Because the insertion point had been obscured from the
14 view of both the witnesses and the physicians, no one had previously noticed the
15 swelling. The curtains were then closed. Technicians then tried to insert the IV into
16 Lockett’s left femoral vein, but accidentally penetrated Lockett’s femoral *artery* instead,
17 before giving up. After all of this, doctors reported that Lockett’s heart was still beating.

18
19
20

Execution, N.Y. TIMES, May 2, 2014, <http://nyti.ms/1ktZUJa>.

21 ³³ Ashby Jones, *Lethal-Injection Drug Is Scrutinized*, WALL ST. J., June 1, 2014,
22 <http://online.wsj.com/articles/lethal-injection-drug-is-scrutinized-1401668717>.

23 ³⁴ Josh Levs, Ed Payne & Greg Botelho, *Oklahoma Botched Lethal Injection Marks New*
24 *Front in Battle over Executions*, CNN.COM, Apr. 30, 2014, <http://www.cnn.com/2014/04/30/us/oklahoma-botched-execution>.

25 ³⁵ One of those officials was Robert Patton. Though he is now the Director of the
26 Oklahoma Department of Corrections, Patton was formerly the Division Director of
Offender Operations at the ADC, and was a defendant in previous litigation before this
Court challenging the Arizona lethal injection protocol.

27 ³⁶ OKLAHOMA DEPT. OF PUBLIC SAFETY, *THE EXECUTION OF CLAYTON D. LOCKETT* 18
28 (2014).

At that point, the governor of Oklahoma called off the execution, 43 minutes after it had begun.³⁷ Ten minutes later, Lockett died.

54. On July 23, 2014, Arizona executed Joseph Wood after reportedly injecting him with 75 times the amount of midazolam used in McGuire's botched execution, and 7.5 times the amount of midazolam used in Lockett's botched execution. This was only the second execution carried out in the United States using a combination of midazolam and hydromorphone. The results were graphic, disturbing, and unconstitutional.

D. Arizona's Struggles With Implementing Constitutional Procedures for Carrying out Executions.

55. Long before Joseph Wood was taken to the execution chamber, Arizona had failed humanely to execute other condemned prisoners, using a variety of methods.

56. On February 21, 1930, Arizona executed Eva Dugan, the first (and last) woman to be executed in the State. At her execution by hanging, the snap of the rope decapitated her, sending her severed head into the crowd of witnesses, five of whom fainted as a result. In part because of Dugan's horrifically botched execution, Arizona abandoned hanging as its preferred method of execution.³⁸

57. Arizona switched its execution method from hanging to the gas chamber, a method that remained in place through April 6, 1992, when it botched the execution of Donald Harding—the first execution to be carried out by Arizona in nearly 30 years. Harding's death by asphyxiation in the gas chamber took 11 minutes, much of which time he spent cursing and screaming epithets at the state attorney general.³⁹ One reporter

³⁷ *Id.* at 18-19.

³⁸ See *Wood v. Ryan*, 14-16310, 2014 WL 3563348, at *6 (9th Cir. July 19, 2014) ("Public outcry over a reportedly botched hanging in Arizona led to debate over methods of execution and the eventual adoption in that state of the gas chamber."), *vacated*, 14A82, 2014 WL 3600362 (U.S. July 22, 2014); AUSTIN SARAT, GRUESOME SPECTACLES: BOTCHED EXECUTIONS AND AMERICA'S DEATH PENALTY 54-60 (2014).

³⁹ *Gruesome Death in Gas Chamber Pushes Arizona Toward Injections*, N.Y. TIMES,

1 who witnessed the “ugly event,” during which Harding turned red and purple while
2 writhing in pain, remarked that “animals [are put to] sleep more humanely.”⁴⁰
3 Conflicting press accounts reported that the scene was so disturbing that the attorney
4 general became physically ill from watching it.⁴¹

5 58. In response to Donald Harding’s horrific execution, Arizona voters, by a
6 margin of 77% to 23%, passed a law adopting lethal injection as Arizona’s method of
7 execution. At first, Arizona adopted the three-drug protocol used in other states and later
8 approved by the Supreme Court in *Baze*: sodium thiopental, a fast-acting barbiturate that
9 is intended to induce anesthesia; pancuronium bromide, a paralytic agent that paralyzes
10 voluntary muscles, thus preventing breathing; and potassium chloride, a toxin that at
11 lethal levels causes cardiac arrest.

12 59. Arizona used these drugs to execute 21 prisoners between 1993 and 2000.
13 Then, from 2000 to 2007, it executed no prisoners. This was due primarily to the
14 pending federal litigation involving the constitutionality of Arizona death sentences. *See*
15 *generally Ring v. Arizona*, 536 U.S. 584 (2002) (finding unconstitutional Arizona’s law
16 that aggravating factors are determined by a judge rather than a jury); *Schriro v.*
17 *Summerlin*, 542 U.S. 348 (2004) (reversing Ninth Circuit decision and holding that *Ring*
18 was not retroactive). After this moratorium, on May 22, 2007, Arizona executed Robert
19 Comer, a prisoner who waived his appeals.

20 60. On July 13, 2007, Arizona then sought a warrant of execution for Jeffrey
21 Landrigan. While the State’s motion for a warrant was pending, several prisoners filed a
22 civil complaint against Defendants challenging Arizona’s lethal-injection procedures

23
24 April 25, 1992, <http://www.nytimes.com/1992/04/25/us/gruesome-death-in-gas-chamber-pushes-arizona-toward-injections.html>.

25 ⁴⁰ AUSTIN SARAT, GRUESOME SPECTACLES: BOTCHED EXECUTIONS AND AMERICA’S
26 DEATH PENALTY 112 n.168 (2014).

27 ⁴¹ *See* Elizabeth Weil, *It’s Not Whether to Kill, but How*, N.Y. TIMES, Nov. 4, 2007, § 4
28 (“One 1992 lethal gas execution in Arizona caused an attorney general to throw up and a
warden to threaten to quit if he had to execute by that method again.”).

1 under the Eighth Amendment. *See Dickens v. Brewer*, No. 07-cv-1770-NVW (D. Ariz.
2 Sept. 14, 2007), ECF No. 1.

3 61. On September 25, 2007, the Arizona Supreme Court issued a warrant of
4 execution for Landrigan, *see State v. Landrigan*, No. CR-90-0323-AP (Ariz. Sept. 25,
5 2007); that same day, the United States Supreme Court granted certiorari in *Baze*. On
6 October 11, the Arizona Supreme Court stayed Landrigan's execution in light of the
7 grant of certiorari in *Baze*. *Landrigan*, No. CR-90-0323-AP (Ariz. Oct. 11, 2007).
8 Arizona then amended its execution procedures twice in the next month, while the civil
9 litigation in *Dickens* was ongoing. After discovery, Defendants agreed to "fix" all of the
10 concerns raised by the plaintiffs (except for plaintiffs' request that the State switch from
11 a three-drug to a one-drug protocol) by amending its written protocol. Based on
12 Defendants' promises in their briefing and at oral argument, this Court granted summary
13 judgment on July 1, 2009. *Dickens v. Brewer*, No. 07-cv-1770-NVW (D. Ariz. July 1,
14 2009). In so doing, this Court warned that "to the extent [Defendants] deviate from [their
15 promises], they're taking great risks." *See* Tr. of Oral Argument at 22:19-20, *Dickens v.*
16 *Brewer*, No. 07-cv-1770-NVW (D. Ariz. Sept. 14, 2007), ECF No. 134.

17 62. Arizona again sought a warrant to execute Landrigan. At the time of its
18 renewed request for a death warrant, in April 2010, Defendants' written procedures still
19 prescribed a three-drug lethal-injection combination, using sodium thiopental as the first
20 chemical. While Arizona's efforts to obtain this warrant were under way, Landrigan
21 learned of a nationwide shortage of sodium thiopental. In response to an order from the
22 Arizona Supreme Court, Defendants promised that they had sufficient quantity of the
23 drugs needed to execute Landrigan.

24 63. They refused, however, to disclose how they had obtained their sodium
25 thiopental. At oral argument before the Arizona Supreme Court, all Arizona's counsel
26 would admit was that it was *not* manufactured by Hospira—which, at the time, was the
27 only FDA-approved domestic manufacturer of sodium thiopental.

28

64. This led to a federal lawsuit seeking information about the source of Arizona's execution drugs. *See Landrigan v. Brewer*, No. 2:10-cv-2246-ROS (D. Ariz.). The district court granted Landrigan a temporary stay of execution to proceed with his challenge to the use of non-FDA approved sodium thiopental from an unidentified source, and the Court of Appeals for the Ninth Circuit affirmed. The Supreme Court, however, vacated the stay, and Landrigan was executed on October 26, 2010. *Brewer v. Landrigan*, 131 S. Ct. 445 (2010) (mem.). He was pronounced dead approximately 11 minutes after the first drug began to flow.

65. The press later discovered and reported that Arizona obtained the sodium thiopental used to execute Landrigan from "a pharmaceutical company operating out of a west London driving school."⁴²

66. Shortly after Landrigan's execution, on December 10, 2010, the Court of Appeals for the Ninth Circuit heard oral argument in *Dickens v. Brewer*, 631 F.3d 1139 (9th Cir. 2011). Among other things, the *Dickens* litigation concerned Defendants' repeated errors in carrying out executions, and the refusal actually to follow Arizona's written protocol for executions. Chief among these errors was Arizona's decision to hire and give responsibility for carrying out the execution to a medical team member who later testified that he knowingly "improvised" the doses of lethal-injection drugs and never adhered to any protocol. *Dickens*, 631 F.3d at 1147. Another of Arizona's medical team members had had his nursing license suspended and had a lengthy arrest record.

67. During oral argument, Defendants argued that the problems identified by plaintiffs had been fixed, and contended that it was "purely speculative" to say Defendants would not follow their procedures. Defendants assured the Court of Appeals that they had "every incentive" to follow their protocol as written.⁴³

⁴² Owen Bowcott, *London Firm Supplied Drugs for US Executions*, GUARDIAN, Jan. 6, 2011, <http://www.theguardian.com/world/2011/jan/06/london-firm-supplied-drugs-us-executions>.

⁴³ During oral argument, the Court ordered Defendants to submit the final written protocol that was at issue; Defendants subsequently filed a notice stating that the

1 68. On February 9, 2011, based on Arizona's promises to adhere its new
2 procedures, the Ninth Circuit Court of Appeals in *Dickens* affirmed this Court's
3 rejection of plaintiffs' claims. The Court noted that Arizona's past problems with its
4 execution regime apparently had been fixed and that, based on Defendants' promises to
5 adhere to their new, *Baze*-compliant protocol, "[t]he notion that Arizona might adopt and
6 use a new, unconstitutional protocol can only be dismissed as rank speculation."
7 *Dickens*, 631 F.3d at 1150.

8 69. On March 29, 2011, Arizona executed Eric King. He was pronounced dead
9 approximately 17 minutes after the first drug began to flow.

10 70. Donald Beaty's execution was then scheduled for May 25, 2011. On May
11 24, 2011—eighteen hours before Beaty's execution was to begin, Defendants provided
12 notice that, in accordance with federal concerns regarding the legality of the State's
13 acquisition of its drugs, Defendants would not be using sodium thiopental, which they
14 had illegally acquired and used in two prior executions (Landrigan and King). Instead,
15 Defendants advised Beaty that they would replace sodium thiopental with pentobarbital.
16 That evening, Beaty filed a motion with the Arizona Supreme Court asking it to vacate
17 the warrant or stay the execution. On May 25, 2011, the Arizona Supreme Court allowed
18 his execution to go forward based on "the State's avowal that the only change in the
19 execution protocol is to substitute pentobarbital for sodium thiopental." Order, *State v.*
20 *Beaty*, No. CR-85-0211-AP/PC (Ariz. May 25, 2011). Beaty was pronounced dead
21 approximately 11 minutes after the first drug began to flow.

22 71. On June 30, 2011, Defendants executed Richard Bible using the same
23 pentobarbital-based three-drug combination used in Beaty's execution. He was
24 pronounced dead approximately 6 minutes after the first drug began to flow.

25
26
27 protocol they intended to follow consisted of the challenged protocol along with all of
28 the unwritten amendments to it to which Defendants had agreed during the course of
litigation.

1 72. On July 16, 2011, three days before Thomas West was scheduled to be
2 executed, West and other plaintiffs filed a complaint alleging that Defendants'
3 unwillingness to follow their written protocol, as well as Defendants' application of their
4 protocol, violated the Eighth Amendment. *West v. Brewer*, No. 2:11-cv-01409-NVW (D.
5 Ariz.), ECF No. 1. The plaintiffs alleged that Defendants failed to conduct required
6 trainings, failed to obtain drugs legally from a safe and reputable source, and failed to
7 administer drugs through peripheral instead of femoral lines—all in violation of the
8 written protocol. Also on July 16, West filed a motion for a TRO or preliminary
9 injunction.

10 73. This Court denied West's motion for an injunction, and the Court of
11 Appeals for the Ninth Circuit affirmed. *West v. Brewer*, 652 F.3d 1060 (9th Cir. 2011).
12 In its order, the panel specifically relied upon representations made by Defendants
13 through counsel. Of note, ADC's counsel represented that the written lethal-injection
14 protocol adopted in *Dickens* "had been followed in the past and, more importantly will
15 be followed in West's execution." *Id.* at 1060. The court also relied upon counsel's
16 representations that the drugs as specified in the protocol were available and in ADC's
17 possession and that ADC would follow the IV insertion locations as outlined in the
18 protocol. *Id.* at 1060-61. After his further appeals failed, West was executed on July 19,
19 2011. He was pronounced dead approximately 8 minutes after the first drug began to
20 flow. West was last of five prisoners executed using three-drug combination.

21 74. Despite West's execution, the civil case he had spearheaded proceeded.
22 After discovery, eighteen depositions, and a three-day bench trial—which demonstrated
23 that ADC had repeatedly deviated from its protocol in past executions and had imported
24 sodium thiopental in violation of federal law—this Court denied plaintiffs the relief they
25 sought, see *West v. Brewer*, 2011 WL 6724628 (D. Ariz. Dec. 21, 2011), and ADC then
26 changed its protocol again, on January 25, 2012.

E. Defendants' Pre-Wood Botched Executions.

75. Like the prior protocols, the January 2012 protocol provided the ADC Director with unfettered discretion in determining the manner in which a prisoner will be executed, and indeed, expanded that discretion by allowing the Director to choose any one of four different drug protocols. The Director had to inform the prisoner only seven days before the execution which drug protocol would be used. The January 2012 protocol also removed safeguards related to screening and training of individuals placing IV lines, and removed the requirement that the peripheral veins be the default method of access. It further removed the requirement of a backup line and removed the ability for a prisoner to have a legal visit on the morning of an execution.

76. The abrupt and substantial January 2012 change in lethal-injection procedures prompted another lawsuit by prisoners scheduled for execution. *See Towsery v. Brewer*, No. 12-cv-00245 (D. Ariz.), ECF No. 1. The plaintiffs identified three main problems with the January 2012 procedures: (1) the procedures removed safeguards critical to a constitutionally acceptable means of execution under *Baze*; (2) they treated similarly situated condemned prisoners differently with no rational or compelling basis; and (3) they interfered with condemned prisoners' right of access to the court by denying in-person legal visits on the day of a scheduled execution.

77. On February 23, 2012, this Court denied plaintiffs' motion for a preliminary injunction. The plaintiffs appealed, and the Court of Appeals for the Ninth Circuit set argument for 4:00 p.m. on February 27.

78. At 10:35 a.m. on February 27—five hours before oral argument was set to begin—ADC notified plaintiffs of its intent to administer a one-drug protocol. ADC, incredibly, apparently discovered only *that morning* that its pancuronium bromide had been expired for *six weeks*, despite having sought execution warrants for two upcoming executions more than a month earlier. In response to this discovery, Defendants switched to a method using one injection of a five-gram dose of pentobarbital.

79. During argument, the Court of Appeals asked questions about how ADC would carry out the impending executions, because the procedures were unclear. Defendants made several promises about how the protocol would be changed to ensure that team members were duly qualified, that IV lines would be properly placed, and that prisoners would have access to counsel on the morning of their executions.

80. On February 28, 2012, the Court of Appeals issued an opinion affirming the denial of relief, but it was based *not* on ADC's written procedures, but rather on the avowals made by Defendants' counsel during oral argument. *Towery v. Brewer*, 672 F.3d 650 (9th Cir. 2012) (per curiam). In its decision, the court expressed its exasperation with Defendants. With respect to Defendants' eleventh-hour "discovery" of the expired pancuronium bromide, the Court complained that, "[h]ow such a discovery escaped the State for the past six weeks is beyond us, and gives us pause as to the regularity and reliability of Arizona's protocols." *Id.* at 653. The court also took issue with Arizona's repeated deviations from its procedures and string of broken promises:

Over time, the State of Arizona, however, has insisted on amending its execution protocol on an ad hoc basis—through add-on practices, trial court representations and acknowledgments, and last minute written amendments—leaving the courts with a rolling protocol that forces us to engage with serious constitutional questions and complicated factual issues in the waning hours before executions. **This approach cannot continue.**

. . . . We are mindful of the admonition requiring us to refrain from micro-managing each individual execution, but the admonition has a breaking point. . . . Unless permanent changes are made in the manner in which Arizona amends its protocols, Arizona's ongoing conduct may require us to monitor every execution on an ad hoc basis, **because the State cannot be trusted to fulfill its otherwise lawful duty to execute inmates sentenced to death.**

Id. (emphasis added)

1 81. On February 29, 2012, Robert Moorman was executed with five grams of
2 pentobarbital. He was pronounced dead approximately 10 minutes after the first drug
3 began to flow.

4 82. On March 8, 2012, Towery's execution went forward. It took 59 minutes
5 to set the IV lines, one minute shy of *Baze*'s upper limit on an unconstitutionally lengthy
6 attempt to place an IV line. At that time, ADC did not allow witnesses to view the
7 insertion of the lines. ADC also told prisoners that it would shut off the microphone
8 during a prisoner's last statement if he said anything disparaging about ADC. Therefore,
9 prior to his execution, Towery and his attorney devised a code so that Towery could
10 communicate any problems during the insertion of the IV lines. While Towery was
11 speaking his last words, he indicated—through code—that he was hurt repeatedly during
12 the insertion of the lines and that the team made many attempts to set the IV lines, and
13 also that he had been prevented from speaking with his counsel. Towery was
14 pronounced dead 9 minutes after the first drug began to flow. *See Lopez v. Brewer*, 680
15 F.3d 1084, 1091 (9th Cir. 2012) (Berzon, J., concurring in part and dissenting in part)
16 (“[Arizona’s] secrecy restrictions and refusals of public and attorney access, taken
17 together, leave condemned prisoners, their attorneys, the district court, and this court
18 with precious little indication of whether past executions have actually been conducted
19 in a constitutional manner. The condemned clients, without access to their attorneys, are
20 left to communicate with them in elaborate codes during their last statements, while we
21 are left to parse cryptic execution logs and autopsy reports in an effort to determine
22 whether an inmate suffered pain, and if so, how much.”); *id.* at 1095-96 (Reinhardt, J.,
23 dissent) (explaining the “chilling” details of ADC’s treatment of Towery and
24 concluding that, “if a skilled lawyer were instructing the state on how best to avoid *any*
25 meaningful review of the constitutionality of its execution procedures, he would be hard
26 pressed to improve on the unconscionable regime that the state has adopted”).

27 83. A private autopsy was performed on Towery on March 16. The autopsy
28 revealed that Towery was punctured at least eleven times—at least three on each arm (at

1 the antecubital fossa), at least one on the right hand, and at least four in the femoral
2 region.

3 84. On April 25, 2012, Thomas Kemp was executed as scheduled, but not as
4 planned. As Judge Pregerson later recounted, “[s]oon after receiving the lethal injection
5 in his central femoral line, Kemp’s right arm and torso began shaking ‘violently.’ . . . [In
6 addition, a]n autopsy report revealed that despite Kemp’s good veins that were quite
7 prominent, Kemp had ‘at least three or more’ punctures, including ‘at least one puncture
8 in the right femoral area and at least two punctures over the left upper extremity.’” *Lopez*
9 *v. Brewer*, 680 F.3d 1084, 1093-94 (9th Cir. 2012) (Pregerson, J., dissental). Kemp was
10 pronounced dead 7 minutes after the first drug began to flow.

11 85. The next prisoner scheduled for death, Samuel Lopez, filed a motion for a
12 preliminary injunction to stay his execution on May 1, 2012. The district court denied
13 the motion. On appeal, the Court of Appeals affirmed, but warned Arizona yet again that
14 its constant deviations from its procedures could not continue. “Although we uphold the
15 district court’s decision, we caution, yet again, that Arizona’s ad hoc approach risks
16 going beyond *Baze*’s safe harbor.” *Lopez*, 680 F.3d at 1075.

17 86. In her partial concurrence and dissent, Judge Berzon described some of the
18 ways in which ADC had deviated from the promises it had made just months earlier
19 regarding the qualifications of the IV Team and the prisoners’ access to counsel. *Id.* at
20 1080 (Berzon, J., concurring in part and dissenting in part). In her view, ADC’s
21 “approach to devising, announcing, and recording the execution procedures it uses
22 effectively denied Lopez of his procedural due process right to have his Eighth
23 Amendment challenge heard at a meaningful time in a meaningful manner.” *Id.* at 1079.

24 87. Lopez petitioned for rehearing en banc, which the Court of Appeals
25 denied. In a dissent from rehearing en banc, Judge Reinhardt, joined by six other judges,
26 expressed the judges’ frustration with Arizona, noting that, after Kemp’s and Towery’s
27 botched executions, it was apparent that “the State of Arizona has subjected prisoners
28 whose lives it takes—and has subjected this court—to a mockery of the constitutional

1 requirement of due process.” *Lopez*, 680 F.3d at 1094 (Reinhardt, J., dissental); *see also*
2 *id.* at 1093-94 (Pregerson, J., dissental).

3 88. On June 27, 2012, Arizona executed Lopez. For the first time, witnesses
4 were able to observe the insertion of the IV lines through a closed-circuit monitor. He
5 was pronounced dead approximately 29 minutes after the pentobarbital began to flow.

6 89. On August 8, 2012, Arizona executed Daniel Cook. Again, witnesses were
7 able to observe the insertion of the IV lines through a closed-circuit monitor. He was
8 pronounced dead approximately 37 minutes after the pentobarbital began to flow.

9 90. On September 21, 2012, Arizona published new lethal-injection
10 procedures.

11 91. On December 5, 2012, Arizona executed Richard Stokley. Again,
12 witnesses were able to observe the insertion of the IV lines through a closed-circuit
13 monitor. It took 50 minutes to set the IV. He was pronounced dead approximately 19
14 minutes after the pentobarbital began to flow.

15 92. The next prisoners scheduled to be executed were Edward Schad and
16 Robert Jones. They filed a motion for a temporary restraining order aimed at obtaining
17 the identity and sourcing of the pentobarbital Arizona planned to use for their
18 executions. Lundbeck, the only legally authorized manufacturer of pentobarbital, had
19 announced in July 2011 that it would no longer sell or make available to prisons any
20 pentobarbital.⁴⁴ Akorn, another drug company, took over Lundbeck’s distribution of
21 pentobarbital, but it, too, continued Lundbeck’s restrictions. Thus, Schad and Jones
22 asserted that they had a First Amendment right to know how and where Arizona had
23 obtained sufficient quantities of non-expired pentobarbital for their executions,
24 scheduled for more than a year after all sales to prisons had stopped.

25 ⁴⁴ David Jolly, *Danish Company Blocks Sale of Drug for U.S. Executions*, N.Y. TIMES,
26 July 1, 2011, [http:// nytimes.com/2011/07/02/world/europe/02execute.html](http://nytimes.com/2011/07/02/world/europe/02execute.html) (reporting
27 announcement by pentobarbital manufacturer Lundbeck that it “would require customers
28 to buy [pentobarbital] through a single wholesaler and to sign a form confirming they
won’t resell it, aren’t a prison, and know Lundbeck opposes executions.”).

1 93. The district court agreed with Schad and Jones, and held that the plaintiffs
2 established a “First Amendment right to access information regarding the manufacturer
3 of the lethal-injection drugs, the National Drug Code of the drugs, the lot numbers of the
4 drugs, and the expiration date of the drugs.” Order at 1, *Schad v. Brewer*, No. 2:13-cv-
5 2001-ROS (D. Ariz.), ECF No. 23. The court ordered ADC to provide such information
6 no later than 12:00 p.m., on October 5. ADC did not appeal the decision. Instead, it
7 complied with the court’s order and disclosed that the pentobarbital to be used in
8 Schad’s and Jones’s executions was manufactured by Lundbeck.

9 94. On October 9, 2013, Schad was executed as scheduled. Witnesses were
10 able to observe the insertion of the IV lines through a closed-circuit monitor. He was
11 pronounced dead approximately 9 minutes after the pentobarbital began to flow.

12 95. On October 23, 2013, Arizona executed Robert Jones. It took nearly 50
13 minutes for the IV lines to be set. He was pronounced dead approximately 17 minutes
14 after the pentobarbital began to flow. Jones’s execution was the last of eight executions
15 in which ADC used a one-drug protocol of pentobarbital.

16 96. On March 26, 2014, Defendants adopted the Procedures applicable to this
17 matter, which provided for one dose of 50 milligrams each of midazolam and
18 hydromorphone.

19 97. The next prisoner scheduled for execution was Joseph Wood. After
20 seeking a warrant to execute him, Defendant Ryan informed Wood that Defendants
21 planned to use the never-before-used two-drug formula of midazolam and
22 hydromorphone and at dosages of 50 milligrams each.

23 //

24 //

25 //

26

27

28

98. Since the *West* litigation, Arizona's last nine executions have gone as follows:

Prisoner Name	Date	Drug	Time to Die After Injecting Drug(s)	Difficulty setting IV	Strong Physical Reaction
Robert Moorman	Feb. 29, 2012	5 grams pentobarbital	10 min.		
Robert Towery	Mar. 8, 2012	5 grams pentobarbital	9 min.	Nearly hour-long attempt to place IV successfully; punctured artery; at least 11 punctures	
Thomas Kemp	Apr. 25, 2012	5 grams pentobarbital	7 min.	Multiple punctures from botched IV attempts	Violent seizures
Samuel Lopez	June 27, 2012	5 grams pentobarbital	29 min.		
Daniel Cook	Aug. 8, 2012	5 grams pentobarbital	37 min.		
Richard Stokely	Dec. 5, 2012	5 grams pentobarbital	19 min.	Set right arm on first attempt; three unsuccessful attempts on left arm; 50 total minutes to set IVs	
Edward Schad	Oct. 9, 2013	5 grams pentobarbital	9 min.		
Robert Jones	Oct. 23, 2013	5 grams pentobarbital	17 min.	Nearly 50 minutes for IV lines to be set	
Joseph Wood	July 23, 2014	750 mg midazolam; 750 mg hydromorphone	117 min.		Loud, prolonged gasping

F. Wood's Botched Execution.

98. Given Defendants' record of changing their procedure, obtaining dubiously sourced drugs, and botching recent executions, Wood and the other Condemned Plaintiffs sought to confirm exactly what drugs Defendants would use, how Defendants would use them, and how the persons charged with administering them were

1 qualified to do so. Various individual members of the Coalition also sought to bring
2 greater transparency to Defendants' planned execution.

3 99. On behalf of the public, on May 12, 2014, a reporter from the Arizona
4 Republic requested information from Defendants regarding communications between
5 Defendant Ryan and Robert Patton. Though he is now the Director of the Oklahoma
6 Department of Corrections, Patton was formerly the Division Director of Offender
7 Operations at the ADC, and was a defendant in previous litigation before this Court
8 challenging the Arizona lethal injection protocol. Defendants did not respond to this
9 request until August 15, 2014, several weeks after Wood's execution had been carried
10 out.

11 100. To vindicate his own rights, Wood filed a motion for a preliminary
12 injunction to stay his execution. This Court denied his motion, but, on July 19, 2014, the
13 Court of Appeals for the Ninth Circuit reversed, and granted a "conditional preliminary
14 injunction, staying Wood's execution until the State of Arizona has provided him with
15 (a) the name and provenance of the drugs to be used in the execution and (b) the
16 qualifications of the medical personnel, subject to the restriction that the information
17 provided will not give the means by which the specific individuals can be identified."
18 *Wood v. Ryan*, ---F.3d---, No. 14-16310, 2014 WL 3563348, at *10 (9th Cir. July 19,
19 2014), *vacated*, 14A82, 2014 WL 3600362 (U.S. July 22, 2014).

20 101. Whereas in the case litigated by Schad and Jones, ADC did not appeal the
21 district court's decision ordering ADC to disclose facts about the pentobarbital at issue
22 in their executions and, in fact, complied with that order, Defendants were so opposed to
23 revealing similar information about the midazolam and hydromorphone to be used in
24 Wood's execution that they petitioned the United States Supreme Court to lift the stay.

25 102. In their petition, Defendants argued that Wood's pleas for greater
26 transparency in Arizona's execution process were unfounded because, in Defendants'
27 words, Wood "*blithely ignores* that nearly every detail about his execution is provided to
28 him and to the general public, *including exactly what and how much lethal drugs will be*

1 used, how they will be administered, and the qualifications of those placing the IV lines
2 to administer them.”⁴⁵

3 103. The Supreme Court lifted the stay, but Defendants did not keep their
4 promise. Wood’s execution went wrong in many ways, among them that he received
5 thirteen doses more than Defendants’ Procedures provided would be the maximum
6 administered. Defendants never disclosed to Wood ahead of his execution that they
7 contemplated this radical departure from their procedures, and affirmatively represented
8 to the courts that Wood had no reason to be concerned about the dosages he would
9 receive.

10 104. At the outset, witnesses were able to watch and listen via closed-circuit
11 television as Wood’s IVs were administered. After the IVs were set, the closed-circuit
12 television was turned off, the curtains to the chamber were opened, and the audio
13 allowing witnesses to hear was shut off. For the remainder of the execution, witnesses’
14 views were restricted to line-of-sight observation of Wood from a distance (but not of
15 the room in which the drugs were being mixed and injected). Moreover, because the
16 microphone was turned off, the only audio that witnesses were able to hear came when
17 members of Defendants’ execution team briefly reported certain updates to the witnesses
18 via a microphone in the same chamber as Wood. It was only during these brief updates
19 that witnesses and the media—and, by extension, the Arizona public—could hear the
20 sounds that accompanied the movements they had been observing.

21
22
23 ⁴⁵ Reply Brief of State of Arizona in support of Application for Stay, *Ryan v. Wood*, No.
24 14A82, at 2 (U.S. July 22, 2014) (emphasis added). Similarly, Judge Bybee, dissenting
25 from the Ninth Circuit’s grant of stay, asserted that both Wood and “[t]he public know[]
26 precisely how the State intends to end Wood’s life and can investigate [based on already
27 available information] whether the drugs are suited to that purpose,” and, indeed,
28 “[a]nyone who reads the Protocol will know exactly how Arizona plans to carry out [his]
execution.” *Wood v. Ryan*, --- F.3d ---, No. 14-16310, 2014 WL 3563348, at *22 (9th
Cir. July 19, 2014) (Bybee, J. dissenting), *vacated*, 14A82, 2014 WL 3600362 (U.S. July
22, 2014).

1 105. As told above, Wood remained alive for 117 minutes after the drugs were
2 first administered. Defendants knew early on, however, that Wood's execution was not
3 going as planned.

4 106. Twelve minutes into his execution, after having appeared to be sedated,
5 Wood rose upward against his restraints and gulped for air. He would eventually gasp
6 for air more than 640 times.⁴⁶

7 107. Shortly after that, Defendants apparently determined that Wood should
8 have already succumbed to the first dose of the drugs, and should not have responded by
9 struggling to breathe. Thus, at the 18- and 24-minute marks, but without giving notice to
10 any observers, Defendants administered second *and third* doses of the midazolam-
11 hydromorphone combination. Neither these three administrations nor the subsequent
12 twelve administrations were visible to witnesses.

13 108. Moreover, Defendants administered these secondary and tertiary doses to
14 Wood without first performing a consciousness check.

15 109. Although witnesses did not know that Defendants secretly were
16 improvising with the amounts of drugs they were giving to Wood, it became clear to
17 everyone that something was wrong. Roughly an hour after the drugs began to be
18 administered, Wood's counsel sought to stop Defendants from proceeding any further.
19 Because Defendants barred Wood's counsel (though not everyone present) from
20 bringing cell phones to the execution or having cell phones near the execution chamber,
21 it took nine minutes before Wood's counsel, accompanied by ADC personnel, was
22 provided with a phone to call co-counsel to begin the process of contacting this Court.
23 During this time, at least one additional dose of the drug combination was administered
24 to Wood.

25
26
27 ⁴⁶ Patrick McNamara, *Tucson Killer's Execution Takes Two Hours*, ARIZ. DAILY STAR,
28 July 23, 2014, <http://tucson.com/news/state-and-regional/3ac6d417-866e-5884-a09b-7244a9c18b46.html>.

1 110. Once this Court was contacted and a hearing commenced, Defendants
2 falsely represented the dosages they had administered to Wood. At one point, just over
3 100 minutes into Wood's ordeal, Defendants told this Court that only two injections of
4 the drugs had been administered when, by that time, *twelve injections* of 50 milligrams
5 of midazolam and 50 milligrams of hydromorphone had been administered. The labeling
6 instructions for midazolam state that doses of 1 to 2 milligrams should be administered
7 over the course of three minutes; Defendants ultimately administered 750 milligrams of
8 midazolam over 117 minutes—an average of more than 6 milligrams *per minute*.

9 111. Defendants also represented that Wood was "brain dead," and thus beyond
10 resuscitation or experiencing pain. Not only were Defendants not equipped to make such
11 a claim, but the claim was inaccurate. Defendants did not use the medical equipment and
12 diagnostic techniques needed to diagnose brain death. The fact that Wood was visibly
13 gasping established the opposite, because if a person is drawing breaths without
14 assistance, that person is not brain dead.

15 112. Defendants also did not have readily available the drugs that could reverse
16 the effects of the drugs they had administered, in case the execution did not proceed as
17 anticipated.

18 113. In the aftermath of Wood's execution, on July 31, 2014, reporters from the
19 Arizona Republic again asked Defendants for information about Wood's execution and
20 Defendants' lethal-injection procedures. Defendants, at the time of this filing, have still
21 not responded.

22 114. Defendant Brewer called for an immediate investigation into Wood's
23 botched execution. That the Governor determined that an investigation is needed is
24 telling; it confirms that Defendants did not provide the public, courts, or counsel, either
25 before or during the execution, with the relevant facts concerning the planning for and
26 conduct of the execution. Defendants prevented the witnesses of Wood's execution from
27 seeing and/or hearing much of what transpired during the execution, and further
28 prevented the public and press from learning facts leading up to and after the execution

1 about how the Defendants planned to and did carry out the execution. In response,
2 however, all that Defendants have committed to doing is to conduct an internal
3 investigation to which the public currently has no access, and to submit the results of
4 their investigation to an outside consulting company retained by Defendants to prepare a
5 report.

6 115. Wood's botched execution and the continuing secrecy surrounding it
7 should, like the botched executions of Eva Dugan and Donald Harding, mark a turning
8 point in Arizona's executions and the information Defendants disclose before, during,
9 and after Arizona carries out their death sentences. Change is required and such change
10 should be ordered and supervised by this Court.

11 **G. Arizona's Unconstitutional Procedures Made Wood's Failed Execution**
12 **Inevitable.**

13 116. Arizona's death-penalty statute and ADC's regulations implementing that
14 statute created a substantial risk that Wood's execution would cause him to suffer harm
15 and a lingering death. Without changes, there is a substantial likelihood that Condemned
16 Plaintiffs will immediately face the same irreparable risk of harm.

17 117. Arizona Revised Statutes § 13-757(A) provides that "[t]he penalty of death
18 shall be inflicted by an intravenous injection of a substance or substances in a lethal
19 quantity sufficient to cause death, under the supervision of the state department of
20 corrections."

21 118. ADC has adopted Procedures (a copy of which is attached as Exhibit A),
22 that purport to implement that statute.

23 119. Under the Procedures, the ADC Director is vested with virtually unlimited
24 discretion. In the preamble, the Procedures state that they "shall be followed as written
25 **unless deviation or adjustment is required**, as determined by the Director of the
26 Arizona Department of Corrections." The Procedures also state that they "do not create
27 any legally enforceable rights or obligations."
28

1 120. The Procedures thus purport to vest the Director with absolute and
2 unreviewable discretion in whether or not the Procedures are followed, and as the
3 execution of Wood and prior executions reveal, the Director takes full advantage of this
4 discretion to alter critical aspects of the Procedures at the last minute or even during
5 executions. Such discretion is, on its own, not consistent with the Constitution's
6 protections for prisoner or the public or the press. Notwithstanding the 33-page
7 document that Defendants, in litigation, hold out as identifying "exactly" how they will
8 execute their prisoners, Defendants, in practice, do not hesitate to rely upon this
9 prefatory language to free the Director to exercise unfettered discretion to deviate from
10 any portion of the Procedures, at any time, and in any way, without giving notice to
11 counsel and the courts while doing so, and thus defeating any meaningful effort by the
12 public, the prisoners, or the courts to subject the State's executions to meaningful
13 oversight. In Joseph Wood's execution, the Director used this discretion to administer 13
14 injections more than the Procedures had prescribed. Without fundamental change, there
15 will be, in future executions, no way to know how or whether or when the Director will
16 "deviat[e from] or adjust[]" the Procedures again.

17 121. When it comes to administering untested doses and combinations of drugs
18 to prisoners, this degree of discretion effectively grants Defendants a license to
19 experiment on condemned prisoners.

20 122. Even without vesting excessive discretion in the Director, Defendants'
21 Procedures are plagued by flaws that render them unconstitutional. The Procedures
22 themselves, because they are rules made by the ADC, are exempt from Arizona's
23 Administrative Procedures Act. ARIZ. REV. STAT. ANN. § 41-1005(A)(23). As a result,
24 they were not required to undergo the notice and comment protections that are required
25 for other State regulations and that ensure that State regulations afford due process to
26 those affected by them. Moreover, as the above history has demonstrated, Defendants'
27 discretionary changes to their Procedures have so far been shielded from meaningful
28 judicial scrutiny.

1 123. The Procedures provide that the “source of the execution chemicals” is
2 confidential, despite Schad and Jones’s success in establishing that the source of the
3 drugs is not and need not be confidential, and despite the lack of any detrimental impact
4 from such disclosure.

5 124. The Procedures do not allow observers to witness the entire execution
6 visually or aurally. The observers do not see the prisoner being escorted into the
7 execution chamber. Observers do not witness the prisoner being strapped to the
8 execution gurney. While the IVs are being inserted behind closed curtains, witnesses can
9 hear the proceedings but must watch them only on a closed-circuit television screen.
10 After the IVs are inserted, the curtains open, but the television screens and audio feed
11 are turned off. Moreover, witnesses cannot observe Defendants’ conduct with regard to
12 administering the drugs, which takes place in a separate room—witnesses cannot see
13 Defendants handle the vials of drugs, nor observe when or how the drugs are injected
14 into the IV tubes.

15 125. The Procedures do not provide a mechanism for notifying the prisoner of
16 the qualifications and selection of the Special Operations and IV Team members to
17 administer the drugs selected for the execution, let alone within a meaningful time-frame
18 to allow for judicial review.

19 126. The Procedures do not provide for disclosure of the chain of custody and
20 storage conditions of the drugs procured for and to be used in the execution, thus
21 defeating any ability of the public to learn and prisoners to evaluate whether the drugs
22 have been continuously stored within, e.g., the temperature limits indicated on the drugs’
23 FDA-approved labeling, or whether the drugs will have passed their expiration date by
24 the time of the scheduled execution.

25 127. The Procedures currently give prisoners 20-days’ notice of the drugs
26 Defendants plan to use in prisoners’ executions, despite the fact that the State seeks a
27 warrant for prisoners’ executions weeks or months earlier. Twenty days is not enough
28

1 time to allow for meaningful challenge and review, especially given the multiple
2 problems Defendants have encountered in obtaining efficacious drugs for executions.

3 128. Although the Procedures discuss requirements for the use of compounded
4 pentobarbital, they have no similar provisions regarding the use of compounded sodium
5 thiopental, midazolam, hydromorphone, or other drugs.

6 129. The Procedures allow viewing curtains to be drawn if the prisoner is still
7 conscious after the first dose, thus preventing public evaluation of the State's actions,
8 and whether the prisoner is or has become aware of the procedure and is substantially
9 likely to be experiencing pain.

10 130. The Procedures provide that: "If deemed appropriate, the Director may
11 instruct the Special Operations Team to administer **an** additional dose of the lethal
12 chemical(s) followed by the Heparin/Saline flush." (Emphasis added). Defendants
13 violated this provision thirteen times during Wood's execution. Moreover, the
14 Procedures do not adequately provide for situations when, as with Wood, two doses is
15 insufficient to bring about a prompt death.

16 131. The Procedures are insufficient because they do not require ADC to
17 maintain, possess, and know how to use the equipment, drugs, and procedures that
18 would be needed to reverse or ameliorate the effect of the administered drugs in the
19 event the patient is suffering from air hunger or other pain. Such methods are necessary,
20 particularly under ADC's new midazolam-hydromorphone combination, because the use
21 of these drugs in untested, and high amounts have caused prisoners to suffer lingering
22 and gasping deaths, in Arizona and elsewhere. Because it is still unclear whether a state
23 can accurately determine how to administer the drugs lethally, reliably, and without a
24 risk of harm, contingency measures are necessary in case the Procedures' predictions
25 fail. Currently, the only such contingency provision in the Procedures concerns the use
26 of a defibrillator in the event of a prisoner's cardiac arrest.

27 132. The Procedures are inadequate because they do not allow real-time
28 evaluation of Defendants' administration of the drugs. Because much of the execution

1 takes place out of sight or is obscured, witnesses do not have the ability to confirm that
2 Defendants have administered the correct and unexpired drugs in the execution;
3 witnesses cannot observe whether and when Defendants are administering a drug called
4 for in the Procedures; witnesses cannot observe which drug (or saline) Defendants have
5 selected for any given injection; and witnesses cannot observe how many dosages of
6 drugs Defendants have administered. Absent such real-time tracking, the press has no
7 way effectively to report to the public how Arizona is carrying out its executions, and
8 counsel for Condemned Plaintiffs has no way effectively to challenge Defendants'
9 representations about what it is doing to a prisoner during an execution, and whether an
10 execution should be abandoned because the departure from the Procedures and risk of
11 harm or indignity are sufficiently substantial to warrant such relief.

12 133. Given all of these past failures and departures from the Procedures, there is
13 a substantial likelihood of immediate irreparable injury resulting from Defendants'
14 violations of the Constitution.

15 **Exhaustion of Administrative Remedies**

16 134. Condemned Plaintiffs do not believe that exhaustion is necessary under the
17 Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e, because this suit does not
18 challenge prison conditions, and because there are no available administrative remedies
19 that could address the challenged constitutional violations. Despite the inapplicability of
20 the PLRA, Condemned Plaintiffs have exhausted all the remedies available to them in an
21 effort to resolve these issues.

22 //

23 //

24 //

Claims for Relief

Claim One (by Coalition only): By deliberately concealing necessary information from the public and the media, Defendants have violated the Coalition's First Amendment right of access to governmental proceedings.

135. The Coalition incorporates by reference each and every statement and allegation set forth throughout this Complaint as if fully rewritten here. The Coalition does not, however, assert claims based on alleged violations of the Eighth or Fourteenth Amendments.

136. The First Amendment, made applicable to the states by the Fourteenth Amendment, guarantees designated members of the public and the press a qualified right of access to government proceedings, including executions.

137. Defendants deprived the Coalition of its First Amendment rights by preventing it from aurally and visually observing the full execution proceeding without interruption, including observing the prisoner being escorted into the execution chamber, witnessing the prisoner being strapped to the execution gurney, the amounts of drugs actually used, the timing and method of their administration, and their effect upon the prisoner—from the time the prisoner is escorted to the execution chamber until the prisoner dies—and by failing to disclose, in advance of the execution, details about the drugs used, the rationale for the selection of these drugs and their dosages, the chain of custody in how the drugs were obtained and stored, the qualifications and training of the persons administering them, Defendants' expectation of the length of time the process will take to render the prisoner unconscious and to die and the rationale for that expectation, and Defendants' ability to respond and preparation for responding to complications. This obstruction, by extension, deprived the Arizona public of informed and accurate media coverage of that critical event.

138. Defendants will continue to deprive the Coalition, and others similarly situated, of their First Amendment rights in future executions if Defendants are not required to disclose the information described above and to allow witnesses

1 meaningfully to observe the entire execution procedure, including the details listed
2 above, both in preparation for the execution and from the moment the condemned enters
3 the execution chamber until the time the condemned is declared dead.

4 **Claim Two (by Condemned Plaintiffs only): By deliberately concealing necessary**
5 **information from Condemned Plaintiffs, Defendants have violated Condemned**
6 **Plaintiffs' First Amendment right to be informed about the manner in which**
7 **Defendants implement the most serious penalty available in the criminal justice**
8 **system.**

9 139. Condemned Plaintiffs incorporate by reference each and every statement
10 and allegation set forth throughout this Complaint as if fully rewritten here.

11 140. Prisoners also have a First Amendment interest, no less powerful than that
12 of the public and the press, in being informed of the means by which the state intends to
13 carry out executions, especially where the prisoner has been condemned to death.

14 141. Defendants' deliberate concealment of information that would enable
15 Condemned Plaintiffs to determine how Defendants intend to carry out their death
16 sentences, including by failing to disclose in advance of the execution details about the
17 drugs used, the rationale for the selection of these drugs and their dosages, the chain of
18 custody in how the drugs were obtained and stored, the qualifications and training of the
19 persons administering them, Defendants' expectation of the length of time the process
20 will take to render the prisoner unconscious and to die and the rationale for that
21 expectation, and Defendants' ability to respond and preparation for responding to
22 complications, deprives Condemned Plaintiffs of their First Amendment right of access
23 to governmental proceedings. Defendants' further decision to prevent Condemned
24 Plaintiffs' counsel and other witnesses from aurally and visually observing the full
25 execution proceeding without interruption, including the amounts of drugs actually used,
26 the timing and method of their administration, and their effect upon the prisoner, as well
27 as Defendants' limitations on Condemned Plaintiffs' counsel's access to the courts
28

1 during the execution, deprives Condemned Plaintiffs of their First Amendment right of
2 access to governmental proceedings.

3 142. Defendants will continue to deprive Condemned Plaintiffs of their First
4 Amendment rights if Defendants are not required to provide timely access and disclosure
5 to prisoners scheduled for execution as described above.

6 **Claim Three (by Condemned Plaintiffs only): By deliberately concealing necessary**
7 **information from Condemned Plaintiffs, Defendants have violated Condemned**
8 **Plaintiffs' First Amendment right to petition the government for redress of**
grievances.

9 143. Condemned Plaintiffs incorporate by reference each and every statement
10 and allegation set forth throughout this Complaint as if fully rewritten here.

11 144. Defendants' refusal to provide Condemned Plaintiffs with information
12 sufficient to enable them to determine how Defendants intend to execute them violates
13 Condemned Plaintiffs' First Amendment right to petition the government for redress of
14 grievances.

15 145. The First Amendment right to petition the government for redress of
16 grievances includes the right of access to the courts.

17 146. The right of access to the courts is especially critical for prisoners, because
18 their access to other remedies is limited.

19 147. State action that denies a plaintiff the opportunity to litigate gives rise to a
20 claim that the state is violating the plaintiff's right of access to the courts.

21 148. The right of access to the courts is an ancillary claim, which is necessary
22 for the vindication of underlying rights.

23 149. By deliberately concealing information about the specific drugs, expiration
24 dates, provenance, storage, dosages, administration technique, and other details about
25 how Defendants intend to execute Condemned Plaintiffs, Defendants have erected a
26 condition that frustrates Condemned Plaintiffs' ability to litigate their claims relating to
27 the constitutionality of their executions. This frustrating condition deprives Condemned
28

1 Plaintiffs of their First Amendment right to petition the government for redress of
2 grievances. This frustrating condition also deprives Condemned Plaintiffs of their due-
3 process right of access to the courts, as well as their ability to challenge the
4 constitutionality of their executions under the Eighth Amendment.

5 150. Indeed, Defendants' repeated mistakes in past executions establish that a
6 condemned prisoner needs much more detailed information, and much sooner, than
7 Defendants currently provide, in order effectively to assess whether there is a substantial
8 risk that the prisoner will suffer physical harm, a lingering death, or some other cruel
9 and unusual means of execution.

10 151. Defendants' deliberate concealment of information that would enable
11 Condemned Plaintiffs to determine how Defendants intend to carry out their death
12 sentences, including information relating to lethal-injection drugs, the competence,
13 training, and authority of Defendants to handle controlled substances, and the
14 qualifications of the execution personnel, deprives Condemned Plaintiffs of their right
15 not to be deprived of their lives without due process of law.

16 152. Defendants' deliberate concealment of information that would enable
17 Condemned Plaintiffs to determine how Defendants intend to carry out their death
18 sentences, including information relating to lethal-injection drugs, Defendants' plans and
19 reasons for the dosages it intends to administer, the authority of Defendants to handle
20 controlled substances, and the qualifications of the execution personnel, deprives
21 Condemned Plaintiffs of their ability to determine whether Defendants are capable of
22 carrying out Condemned Plaintiffs' executions in a lawful, constitutional manner.

23 **Claim Four (by Condemned Plaintiffs only): Defendants' execution Procedures as**
24 **written create a substantial and intolerable risk of harm, indignity, and/or a**
25 **lingering death, in violation of the Eighth Amendment's Cruel and Unusual**
Punishments Clause.

26 153. Condemned Plaintiffs incorporate by reference each and every statement
27 and allegation set forth throughout this Complaint as if fully rewritten here.

28

154. Defendants have created, maintained, and implemented lethal-injection protocols, procedures, practices, customs, and training and execution methods that they intend to use to execute Condemned Plaintiffs. As designed and applied, Defendants' lethal-injection execution Procedures are constitutionally flawed. Defendants have no legitimate penological justification for adopting Procedures that create a substantial risk of needlessly and gratuitously inflicting severe pain, indignity, and a lingering death on Condemned Plaintiffs.

155. The excessive discretion vested in ADC to determine the means and method of a prisoner's death creates a substantial risk that Condemned Plaintiffs will suffer severe pain, indignity, or a lingering death.

156. If Defendants execute Condemned Plaintiffs pursuant to the Procedures, Defendants will violate Condemned Plaintiffs' constitutional rights under the Eighth Amendment of the United States Constitution.

Claim Five (by Condemned Plaintiffs only): Defendants' use of midazolam and hydromorphone creates a substantial of harm, indignity, and/or a lingering death, in violation of the Eighth Amendment's Cruel and Unusual Punishments Clause.

157. Condemned Plaintiffs incorporate by reference each and every statement and allegation set forth throughout this Complaint as if fully rewritten here.

158. Defendants have created, maintained, and implemented lethal-injection protocols, procedures, practices, customs, and training and execution methods that they intend to use to execute Condemned Plaintiffs. As designed and applied, Defendants' lethal-injection execution protocol is constitutionally flawed. Defendants have no legitimate penological justification for adopting a lethal-injection protocol that creates a substantial risk of needlessly and gratuitously inflicting severe pain, indignity, and a lingering death on Condemned Plaintiffs.

159. Defendants' use of midazolam and hydromorphone—the combination of which has resulted in a botched execution *both times* a state has attempted to use it—creates a substantial risk that Condemned Plaintiffs will suffer severe pain, indignity, or

1 a lingering death, as evidenced by a series of prolonged executions that have used one or
2 both of these drugs.

3 160. If Defendants execute Condemned Plaintiffs pursuant to the Procedures,
4 Defendants will violate Condemned Plaintiffs' constitutional rights under the Eighth
5 Amendment of the United States Constitution.

6 **Claim Six (by Condemned Plaintiffs only): Defendants' past experimentation and**
7 **improvisation with unprecedented methods and dosages of drugs amounts to a**
8 **cruel and unusual punishment, in violation of the Eighth Amendment's Cruel and**
9 **Unusual Punishments Clause and the Fourteenth Amendment's Due Process**
Clause.

10 161. Condemned Plaintiffs incorporate by reference each and every statement
11 and allegation set forth throughout this Complaint as if fully rewritten here.

12 162. Defendants have created, maintained, and implemented lethal-injection
13 protocols, procedures, practices, customs, and training and execution methods that they
14 intend to use to execute Condemned Plaintiffs. As designed and applied, Defendants'
15 lethal-injection execution Procedures are constitutionally flawed. Defendants have no
16 legitimate penological justification for adopting lethal-injection Procedures that create a
17 substantial risk of needlessly and gratuitously inflicting severe pain and a lingering death
18 on Condemned Plaintiffs.

19 163. The excessive discretion vested in ADC, Defendants' proven failure to
20 adhere to any stable and reliable method of providing a reasonably prompt and pain-free
21 execution, and Defendants' improvised decision to give Wood thirteen doses more than
22 was permitted under the procedures, demonstrate that each execution carried out by
23 Defendants constitutes an experiment conducted on prisoners to determine how they
24 react to drugs intended to kill them. This violates the Eighth and Fourteenth
25 Amendments' guarantee of dignity even in punishment, and the right to be free from
26 unusual punishments.

27 164. If Defendants experiment on Condemned Plaintiffs pursuant to the
28 Procedures, Defendants will violate Condemned Plaintiffs' rights under the Eighth

1 Amendment and their rights to substantive and procedural Due Process under the
2 Fourteenth Amendment of the United States Constitution.

3 **Claim Seven (by Condemned Plaintiffs only): Defendants' failure to timely disclose**
4 **the precise method of execution until days before the execution deprives**
5 **Condemned Plaintiffs of their right to know and challenge their method of**
6 **execution, in violation the Fourteenth Amendment's Due Process Clause.**

7 165. Condemned Plaintiffs incorporate by reference each and every statement
8 and allegation set forth throughout this Complaint as if fully rewritten here.

9 166. Defendants' Procedures arbitrarily, irrationally, and without a compelling
10 State interest, deny Condemned Plaintiffs their right to know how ADC intends to
11 execute them.

12 167. By deliberately concealing information about the specific drugs, expiration
13 dates, provenance, storage, dosages, administration technique, and other details about
14 how ADC intends to execute Condemned Plaintiffs, and by seeking warrants to execute
15 Condemned Plaintiffs before Defendants themselves know what drugs they will use and
16 how they will use them, Defendants have deprived Condemned Plaintiffs of their right to
17 notice and an opportunity to be heard, in violation of the Due Process Clause of the
18 Fourteenth Amendment. Condemned Plaintiffs have no meaningful opportunity to
19 challenge the method of execution or the drugs or dosages selected if they do not learn
20 of the method until only 20 days before their execution or if, as in Wood's case, they and
21 the courts are given grossly inaccurate information as to the amount of drugs that will be
22 used.

23 **Claim Eight (by Condemned Plaintiffs only): Defendants' pattern of deviating from**
24 **their Procedures and exercising their discretion in inhumane ways increases the**
25 **risk of being subjected to a lingering death, in violation the Fourteenth**
26 **Amendment's Equal Protection Clause.**

27 168. Condemned Plaintiffs incorporate by reference each and every statement
28 and allegation set forth throughout this Complaint as if fully rewritten here.

1 169. The Fourteenth Amendment to the United States Constitution requires that
2 similarly situated Condemned Plaintiffs be treated alike. Condemned Plaintiffs,
3 individually, are each a “class of one,” similarly situated relative to one another and to
4 any other prisoner facing execution in Arizona because all such individuals face
5 execution under the Procedures.

6 170. Codifying ad hoc Procedures that lead to disparate treatment across
7 executions without a principled basis for determining when deviations are warranted
8 violates the Equal Protection Clause and impairs Condemned Plaintiffs’ fundamental
9 rights, including the right to be free from cruel and unusual punishment.

10 171. Where disparate treatment burdens a fundamental right, strict scrutiny
11 applies, and the state action will be upheld only if the state can show that such action is
12 narrowly drawn to serve a compelling state interest.

13 172. Even absent a burden upon a fundamental right, the government still
14 violates the Equal Protection Clause if individuals are “intentionally treated differently
15 from others similarly situated and . . . there is no rational basis for the difference in
16 treatment.”

17 173. Defendants have created, maintained, and implemented lethal-injection
18 protocols, procedures, practices, customs, and training and execution methods that they
19 intend to use to execute Condemned Plaintiffs. As designed and applied, Defendants’
20 lethal-injection execution Procedures are constitutionally flawed. Defendants have no
21 legitimate penological justification, nor rational basis, nor compelling state interest in
22 permitting the Director to, at whim, administer any amount, of any drug, without notice,
23 to a prisoner who is being executed.

24 174. The Procedures provide no guidelines or standards for determining when
25 and under what circumstances such distinctions may be warranted. Clear standards must
26 exist, and deviations from those standards result in equal protection violations.
27 Defendants have adopted Procedures that codify unbridled discretion and arbitrary
28

1 treatment. Deviation is the standard, as demonstrated by Defendants' administration of
2 Wood's execution.

3 **Claim Nine (by Condemned Plaintiffs only): Defendants' failure to devise**
4 **Procedures for lethal injection that reliably result in a prompt and painless death**
5 **conflicts with the Arizona's lethal injection law as construed by Defendants.**

6 175. Condemned Plaintiffs incorporate by reference each and every statement
7 and allegation set forth throughout this Complaint as if fully rewritten here.

8 176. In prior litigation, Defendants have construed Arizona's statute authorizing
9 execution by lethal injection as requiring a "humane," "dignified" death that results in
10 "the least amount of discomfort" possible. Defendants have bound themselves to this
11 position and sworn to abide by these promises.

12 177. These promises create a property interest in the benefit conferred upon the
13 individual. *Wolf v. McDonnell*, 418 U.S. 539, 557 (1974).

14 178. Defendants have created, maintained, and implemented lethal-injection
15 protocols that fail to fulfill the statutory mandate of a "humane" execution. This deprives
16 Condemned Plaintiffs of their Fourteenth Amendment property interest in the benefit of
17 a "humane" death by lethal injection.

18 179. Defendants do not have Procedures that meet their own standard. By
19 adopting and employing Procedures that afford virtually no protection against a painful
20 or lingering death and that provide no recourse for a botched execution, if Defendants
21 execute Condemned Plaintiffs under their current lethal injection Procedures,
22 Defendants will violate Condemned Plaintiffs' constitutional rights to Due Process under
23 the Fourteenth Amendment of the United States Constitution.

24 //

25 //

26 //

Prayer for Relief

Wherefore, the Coalition and Condemned Plaintiffs jointly pray for:

1. Temporary, preliminary, and permanent injunctive relief to enjoin the Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from concealing execution-related, non-personally identifying information that the Coalition and Condemned Plaintiffs require in order to ensure their First Amendment right of access to governmental proceedings, including but not limited to:
 - a. The manufacturer(s) and other suppliers of the lethal-injection and other drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - b. The lot numbers of the lethal-injection and other drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - c. The NDCs of the lethal-injection and other drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - d. The expiration dates of the lethal-injection and other drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - e. Documentation (not including personally identifying information) establishing that those who will handle controlled substances in the executions have the appropriate DEA authorization to do so;
 - f. Documentation sufficient to establish from whom the drugs were purchased;
 - g. Documentation sufficient to establish where and how the drugs that have been and/or are proposed to be used for executions have been or will be transported and stored, at all stages from the point of purchase to their use in an execution;

- h. Documentation (not including personally identifying information) establishing that those who will be responsible for inserting any IVs are qualified to do so;
 - i. The precise dosage and administration process of the lethal-injection drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - j. The rationale for Defendants' selection of the drugs, dosages, and process it will use in Condemned Plaintiffs' executions;
 - k. Defendants' expectation of the length of time the process will take to render the prisoner unconscious and to die, and the rationale for that expectation;
 - l. The ability for witnesses to observe visually and aurally the entirety of an prisoner's execution, unfettered, from the time that the prisoner is brought into the death chamber, and before any medical procedures are begun or needles or intravenous lines administered, until death; and
 - m. Information detailing emergency contingency procedures and the qualifications of personnel who are expected to intervene if medical intervention is necessary;
2. An order granting Plaintiffs their reasonable attorneys' fees under 42 U.S.C. § 1988 and the laws of the United States; and
 3. Any such other relief as the Court deems just and proper.

The Condemned Plaintiffs additionally pray for:

4. An order declaring that Defendants' current means, methods, practices, procedures, and customs regarding execution by lethal injection violate the First, Eighth, and Fourteenth Amendments to the United States Constitution;
5. Temporary, preliminary, and permanent injunctive relief barring Defendants from executing Condemned Plaintiffs under the current or any future protocol, so long as such execution would violate Condemned Plaintiffs' federal

1 constitutional rights under the First, Eighth, and Fourteenth Amendments to
2 the United States Constitution;

3 6. Temporary, preliminary, and permanent injunctive relief to enjoin the
4 Defendants, their officers, agents, servants, employees, and all persons acting
5 in concert with them from concealing information that is not related to the
6 identification of persons participating in executions, and that is necessary to
7 ensure Condemned Plaintiffs' First Amendment right to petition the
8 government for redress of grievances, including but not limited to:

- 9 a. The manufacturer(s) and other suppliers of the lethal-injection drugs that
10 Defendants will or may use in Condemned Plaintiffs' executions;
- 11 b. The lot numbers of the lethal-injection drugs that Defendants will or may
12 use in Condemned Plaintiffs' executions;
- 13 c. The NDCs of the lethal-injection drugs that Defendants will or may use in
14 Condemned Plaintiffs' executions;
- 15 d. The expiration dates of the lethal-injection drugs that Defendants will or
16 may use in Condemned Plaintiffs' executions;
- 17 e. Documentation (not including personally identifying information)
18 establishing that those who will handle controlled substances in the
19 executions have the appropriate DEA authorization to do so;
- 20 f. Documentation sufficient to establish from whom the drugs were
21 purchased;
- 22 g. Documentation sufficient to establish where and how the drugs that have
23 been and/or are proposed to be used for executions have been or will be
24 transported and stored, at all stages from the point of purchase to their use
25 in an execution;
- 26 h. Documentation (not including personally identifying information)
27 establishing that those who will be responsible for inserting any IVs are
28 qualified to do so;

- i. The precise dosage and administration process of the lethal-injection drugs that Defendants will or may use in Condemned Plaintiffs' executions;
 - j. Immediate access to a private telephone for Condemned Plaintiffs' counsel during executions in the event that an immediate intervention by the Court is needed;
 - k. The rationale for Defendants' selection of the dosages and process it will use in Condemned Plaintiffs' executions;
 - l. Defendants' expectation of the length of time the process will take to render the prisoner unconscious and to die, and the rationale for that expectation;
 - m. The ability for Condemned Plaintiffs' counsel to observe visually and aurally the entirety of a prisoner's execution, unfettered, from the time that the prisoner is brought into the death chamber, and before any medical procedures are begun or needles or intravenous lines administered, until death; and
 - n. Information detailing emergency contingency procedures and the qualifications of personnel who are expected to intervene if medical intervention is necessary;
7. Appropriate and necessary discovery and an evidentiary hearing to permit Condemned Plaintiffs to prove their constitutional claims;
 8. Appointment of an independent monitor to assess Defendants' creation of and adherence to a constitutional execution protocol;
 9. An order granting Condemned Plaintiffs their reasonable attorneys' fees under 42 U.S.C. § 1988 and the laws of the United States; and
 10. Any such other relief as the Court deems just and proper.

//

//

//

1 Respectfully submitted this 18th day of September, 2014.

2 Jon M. Sands
3 Federal Public Defender
4 District of Arizona
5 Dale A. Baich
6 Robin C. Konrad

7 s/ Dale A. Baich
8 *Counsel for Plaintiffs* Charles Michael
9 Hedlund; Graham S. Henry; David
10 Gulbrandson; Todd Smith; and
11 Eldon Schurz

12 Mark E. Haddad (*admitted pro hac vice*)
13 Alycia A. Degen (*admitted pro hac vice*)
14 Joshua E. Anderson (*admitted pro hac vice*)
15 Aimee G. Mackay (*admitted pro hac vice*)
16 Collin P. Wedel (*admitted pro hac vice*)
17 Lauren A. McCray (*admitted pro hac vice*)
18 SIDLEY AUSTIN LLP

19 s/ Mark E. Haddad
20 *Counsel for Plaintiffs* First Amendment
21 Coalition of Arizona, Inc.; Charles Michael
22 Hedlund; Graham S. Henry; David
23 Gulbrandson; Todd Smith; and
24 Eldon Schurz
25
26
27
28

Certificate of Service

I hereby certify that on September 18, 2014, I electronically filed the foregoing First Amended Complaint for Violations of 42 U.S.C. § 1983 and Equitable, Injunctive, and Declaratory Relief with the Clerk's Office by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Chelsea Hanson
Legal Secretary
Capital Habeas Unit

Exhibit A

 DEPARTMENT ORDER MANUAL	ARIZONA DEPARTMENT OF CORRECTIONS	CHAPTER: 700 OPERATIONAL SECURITY	OPR: OPS
		DEPARTMENT ORDER: 710 <i>EXECUTION PROCEDURES</i>	SUPERSEDES: DO 710 (01/25/12)
			EFFECTIVE DATE: SEPTEMBER 21, 2012
			REPLACEMENT PAGE EFFECTIVE DATE: MARCH 26, 2014

TABLE OF CONTENTS

PURPOSE

RESPONSIBILITY

PROCEDURES

PAGE

710.01	COMPLEX AND DIRECTOR'S OFFICE RESPONSIBILITIES.....	2
710.02	EXECUTION TEAM MEMBERS	4
710.03	COMMUTATION HEARING PROCEEDINGS	9
710.04	DESIGNATION OF WITNESSES BY DIRECTOR	10
710.05	STATE AND LOCAL LAW ENFORCEMENT BRIEFING; SITE CHECKS	11
710.06	THIRTY- FIVE DAYS PRIOR TO THE DAY OF EXECUTION – COMPLEX	11
710.07	THIRTY-FIVE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE.....	13
710.08	TWENTY-ONE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE.....	14
710.09	FOURTEEN DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE	14
710.10	TWO DAYS PRIOR TO THE DAY OF EXECUTION	14
710.11	TWENTY-FOUR HOURS PRIOR TO THE DAY OF EXECUTION	15
710.12	TWELVE HOURS PRIOR TO AND THROUGH THE EXECUTION	15
710.13	POST-EXECUTION	19
710.14	PROCEDURES FOR NEWS MEDIA	20
	IMPLEMENTATION.....	21
	CROSS-REFERENCE INDEX	22
	AUTHORITY	22
	ATTACHMENTS	

PURPOSE

This Department Order establishes procedures for planning and carrying out the execution of a person convicted of a capital offense and sentenced to death. These procedures shall be followed as written unless deviation or adjustment is required, as determined by the Director of the Arizona Department of Corrections (Department). This Department Order outlines internal procedures and does not create any legally enforceable rights or obligations.

RESPONSIBILITY

The Department ensures the execution of a person sentenced to death under State law by a court of competent authority and jurisdiction is carried out in keeping with statute, case law and professional practices.

The Department shall make every effort in the planning and preparation of an execution to ensure the execution process:

- Faithfully adheres to constitutional mandates against cruel and unusual punishment.
- Is handled in a manner that minimizes its impact on the safety, security and operational integrity of the prison and the community in which it occurs.
- Accommodates the public's right to obtain certain information concerning the execution.
- Reasonably addresses the privacy interests of persons as provided by law.
- Provides contingency planning to identify and address unforeseen problems.
- Allows for stays of execution, commutations and other exigencies up to the time that the sentence is imposed.
- Provides opportunity for citizens to exercise their First Amendment rights to demonstrate for or against capital punishment in a lawful manner.
- Ensures there is an appropriate response to unlawful civil disobedience, trespass and other violations of the law by any person attempting to impact the execution or the operation of the prison.

The Department shall detain, seek the arrest and encourage prosecution of persons whose conduct includes:

- Violating prohibitions against filming, taping, broadcasting or otherwise electronically documenting the execution of the inmate.
- Trespassing and otherwise entering upon Department property without authorization.
- Participating in unlawful demonstrations or unlawfully attempting to disrupt, prevent and otherwise interfere with the execution.
- Unlawfully threatening, intimidating and otherwise attempting to influence authorized persons involved in the execution process.
- These prohibitions apply to the inmate population as well as department personnel and members of the general public engaging or attempting to engage in disruptive and other prohibited behaviors.

Participating staff shall adhere to the Department's Code of Ethics and Guided Principles, evidencing:

- Appropriate levels of professionalism, restraint and courtesy when interacting with witnesses, demonstrators, attorneys, news media, state and local law enforcement and any other member of the public directly and indirectly involved with the imposition of the sentence of death.
- All assigned duties are performed proficiently and professionally.
- Their ability to exercise the option to withdraw from the process by the prescribed means at any time.
- Conduct that appropriately reflects the solemnity of the activities in which they elect to engage and the duties they choose to perform.

- Reserving public comment on any and all facets of the execution except as expressly provided in Department Order #201, Information Release.
- Any Department employee who learns of identifying information regarding any person who participates in or performs any function of an execution must keep that information confidential.

IMPORTANT GUIDELINES REGARDING CONFIDENTIALITY AND VOLUNTARINESS OF PARTICIPATION IN AN EXECUTION:

- The anonymity of any person, as defined in A.R.S. 1-215(28) and A.R.S. 13-105(30), who participates in or performs any ancillary function(s) in the execution, including the source of the execution chemicals, and any information contained in records that would identify those persons are, as required by statute, to remain confidential and are not subject to disclosure. A.R.S. 13-757 (C).
- All team members serve on a strictly voluntary basis. At any point before, during or after an execution any team member may decline to participate or participate further without additional notice and explanation or repercussion.
- The Division Director for Offender Operations shall ensure all team members understand and comply with the provisions contained herein.

PROCEDURES

710.01 COMPLEX AND DIRECTOR'S OFFICE RESPONSIBILITIES UPON RECEIPT OF WARRANT OF EXECUTION

1.1 Upon receipt of the Warrant of Execution from the Attorney General's Office:

1.1.1 General Counsel shall:

- 1.1.1.1 Notify the Director, Division Director for Offender Operations, the Wardens of ASPC-Florence and ASPC-Eyman or ASPC-Perryville, and the Media and Public Relations Office.
- 1.1.1.2 Forward the original Warrant of Execution to the Warden of ASPC-Florence;
- 1.1.1.3 Forward copies of the original Warrant of Execution to the Warden of ASPC-Eyman or ASPC-Perryville;
- 1.1.1.4 Notify the Victim Services Team Leader, who shall contact the victim(s) and inform them of the court's issuance of the Warrant of Execution.

1.1.2 The Director shall:

- 1.1.2.1 Select the time of execution and provide notice to the Arizona Supreme Court and the parties at least 20 calendar days prior to the execution date. (Arizona Rules of Criminal Procedures, Rule 31.17(c)(3)).
- 1.1.2.2 Notify the inmate that if the offense was committed prior to November 23, 1992, he shall choose in writing either lethal injection or lethal gas. If the inmate fails to choose either lethal injection or lethal gas, the penalty of death shall be inflicted by lethal injection (A.R.S. 13-757 (B)).

- 1.1.2.3 Have the authority, under exigent circumstances, to change the timeframes established in this Department Order.
- 1.1.3 The ASPC-Eyman or ASPC-Perryville Warden shall:
 - 1.1.3.1 Direct the inmate to submit the Inmate Witness and Notification Information, Form 710-2, to the Warden no later than 14 days prior to the scheduled execution date.
 - 1.1.3.1.1 Inform the inmate that two clergy and five other persons may be invited to be present at the execution.
 - 1.1.3.1.2 Notify the inmate that minors are prohibited from witnessing the execution pursuant to A.R.S. 13-758.
 - 1.1.3.1.3 Notify the inmate that requests for Department or contract staff to attend the execution shall be denied.
 - 1.1.3.1.4 Notify the inmate that requests for other inmates to attend the execution shall be denied.
 - 1.1.3.2 Direct the inmate to review and update as necessary the Notification in Case of Accident, Serious Illness or Death and Disposition of Property, Form 711-1. The Warden shall direct the inmate to provide any changes no later than 14 days prior to the execution. If the inmate provides no instruction, the property and accounts shall be disposed in accordance with Department Order #711, Notification of Inmate Hospitalization or Death.
 - 1.1.3.3 Advise the inmate that his/her body shall not be used for organ donation.
 - 1.1.3.4 Summarize the options available with the inmate for release and disposition of their body after the autopsy is performed. The Warden shall direct the inmate to review the previously completed Disposition of Remains, Form 710-3, and update as necessary no later than 14 days prior to the execution. If the inmate provides no information or the information is insufficient or incorrect the deceased shall be disposed in accordance with Department Order #711, Notification of Inmate Hospitalization or Death.
 - 1.1.3.5 Advise the inmate he may request a last meal by completing the Last Meal Request, Form 710-5, and returning it no later than 14 days prior to the execution. Reasonable effort shall be made to accommodate the request.

710.02 EXECUTION TEAM MEMBERS

- 1.1 The Division Director for Offender Operations shall:
 - 1.1.1 Establish a training schedule and identify dates for periodic on-site practice by the Housing Unit 9 Section Teams, to include 10 training scenarios within the 12 months preceding the scheduled execution.
 - 1.1.2 Conduct a minimum of two training sessions with multiple scenarios 2 days prior to the scheduled execution. The IV Team members shall participate in at least one training session with multiple scenarios within one day prior to the scheduled execution.
 - 1.1.2.1 All training sessions shall be documented and be included as part of a permanent record created by the ASPC-Florence Warden to be submitted to the Department's General Counsel for archive, post execution.
 - 1.1.3 Ensure periodic testing of all of the equipment in Housing Unit 9 occurs, affirming electrical, plumbing, heating and air conditioning units are in working order and the gas chamber is maintained.
- 1.2 The Division Director for Offender Operations provides for the planning and overall direction of all pre-execution, execution and post-execution activities. The Division Director coordinates the activities of the Southern and Northern Regional Operations Directors (SROD and NROD) and the ASPC-Eyman or ASPC-Perryville and ASPC-Florence Wardens who activate the following teams and oversee their activities, specifically:
 - 1.2.1 Command
 - 1.2.1.1 Consists of a minimum of three team members:
 - 1.2.1.1.1 Commander.
 - 1.2.1.1.2 Recorder.
 - 1.2.1.1.3 Telephone operator.
 - 1.2.1.1.4 Others as necessary.
 - 1.2.1.2 Team members are selected by the Division Director for Offender Operations with the documented approval of the Director.
 - 1.2.1.3 Its team leader is selected by the Division Director for Offender Operations.
 - 1.2.1.4 Primary function of Command is the overall coordination of execution procedures.

1.2.2 Housing Unit 9 Section

1.2.2.1 Consists of a section leader and two teams:

1.2.2.1.1 Restraint Team.

1.2.2.1.2 Special Operations Team.

1.2.2.2 Team leaders are selected by the Division Director for Offender Operations with the documented approval of the Director.

1.2.2.3 The section leader is the ASPC-Florence Warden.

1.2.2.4 Primary function of the section leader is the overall coordination of activities of the Restraint Team and the Special Operations Team to ensure compliance with conditions of confinement and application of approved procedures.

1.2.3 Restraint Team

1.2.3.1 Consists of seven team members divided into two teams of three and one team leader.

1.2.3.2 Its team members and the team leader are selected by the Division Director for Offender Operations with the documented approval of the Director.

1.2.3.3 Primary function of the Restraint Team is to provide continuous observation of the inmate on the day of the execution and apply appropriate restraint procedures and inmate management prior to, during and after the execution.

1.2.4 Special Operations Team

1.2.4.1 Consists of a minimum of five team members:

1.2.4.1.1 Team Leader.

1.2.4.1.2 Recorder.

1.2.4.1.3 Three additional team members.

1.2.4.2 Its team members and team leader are selected by the Division Director for Offender Operations with the documented approval of the Director.

1.2.4.3 The Special Operations Team Leader shall designate functions of the other team members, including the selection of a member to observe the procedure and serve as the Recorder.

1.2.4.4 Primary function of the Special Operations Team is to implement the protocols associated with the execution with its primary duty being the administration of the chemicals, and additionally mixing the chemicals under the direct supervision of the IV Team Leader.

1.2.5 Intravenous Team Members (IV Team)

1.2.5.1 The IV Team will consist of any two or more of the following: physician(s), physician assistant(s), nurse(s), emergency medical technician(s) (EMT's), paramedic(s), military corpsman or other certified or licensed personnel including those trained in the United States Military. All team members shall be currently certified or licensed within the United States to place IV lines.

1.2.5.2 The IV Team members shall be selected by the Director. Selection of any team member shall include a review of the proposed team member's qualifications, training, experience, and/or any professional license(s) and certification(s) they may hold. Licensing and criminal history reviews shall be conducted, by the Inspector General's Office prior to assigning or retaining any IV Team member and upon the issuance of a Warrant of Execution.

1.2.5.3 The Director shall designate the IV Team Leader. The Division Director for Offender Operations shall ensure all team members thoroughly understand all provisions contained herein as written and by practice.

1.2.5.4 The IV Team shall be responsible for inserting either peripheral IV catheters or a central femoral line as determined by the Director acting upon the recommendation of the IV Team Leader. The IV Team Leader shall ensure all lines are functioning properly throughout the procedure, supervise the Special Operations team in the mixing of the chemicals, preparing the syringes, and monitoring the inmate (including the level of consciousness and establishing the time of death). The IV Team Leader shall supervise the administration of the chemicals. A central femoral venous line will not be used unless the person placing the line is currently certified or licensed within the United States to place a central femoral line.

1.2.5.5 IV Team members shall only be required to participate in the training sessions scheduled for one day prior to the actual execution.

1.2.5.6 Documentation of IV Team members' qualifications, including training of the team members, shall be maintained by the Department Director or his designee.

- 1.2.6 Maintenance Response Team (MRT)
 - 1.2.6.1 Consists of three team members and a team leader, and reports to Command.
 - 1.2.6.2 Team members are selected by the ASPC-Florence Warden.
 - 1.2.6.3 Primary function of MRT is to test all Housing Unit 9 equipment utilized to impose the sentence of death and to ensure electrical, plumbing, heating and air conditioning units are in working order.
- 1.2.7 Critical Incident Response Team (CIRT)
 - 1.2.7.1 Consists of three team members and a team leader, and reports to Command.
 - 1.2.7.2 The leader is the Employee Relations Administrator or designee.
 - 1.2.7.3 Team members are CIRT responders and selected by the Employee Relations Administrator.
 - 1.2.7.4 Primary function of CIRT is to educate staff regarding possible psychological responses and effective coping mechanisms to affected staff at all levels in the Department prior to, during and after the execution. CIRT shall provide ongoing follow up contact to staff.
- 1.2.8 Traffic Control Team
 - 1.2.8.1 Consists of eight team members and a team leader, and reports to Command.
 - 1.2.8.2 Team members and the team leader are selected by the Division Director for Offender Operations.
 - 1.2.8.3 Primary function is to confer with state and local law enforcement agencies, establish check points and parameters for traffic control and formulate inter-agency emergency response strategies. The team also coordinates the ingress/egress for Department and contract staff and other persons whose attendance is necessary at ASPC-Eyman or ASPC-Perryville and ASPC-Florence. The Team's focus is the period of time starting twenty-four hours prior to the execution and concluding when normal activities resume after the execution.
- 1.2.9 Escort Team
 - 1.2.9.1 Consists of eight team members and a team leader, and reports to Command.
 - 1.2.9.2 Team members and the team leader are selected by the Division Director for Offender Operations.

- 1.2.9.3 Primary function is to coordinate the movement of all pre-approved witnesses on and off prison grounds and within its perimeter. One Escort Team is assigned to escort and assist pre-approved official, victim, media, and inmate witnesses. Escort team members always remain with witnesses within the established perimeter.

1.2.10 Victim Services Team

- 1.2.10.1 Consists of two team members and reports to the Escort Team leader.
- 1.2.10.2 The team leader is the Victim Services Office Administrator.
- 1.2.10.3 Primary function is to ensure victims of the crime that resulted in the imposition of death are informed of the execution date and their opportunity to witness the execution. The team explains the execution process. If the victim is interested in attending, the team submits the victim's name(s) for consideration.
- 1.2.10.4 Day of the Execution - The team leader meets with the victim(s) in a predetermined staging area and accompanies them throughout the process, including a briefing by the Director. The Team provides support and advocacy as appropriate.
- 1.2.10.5 If the victim(s) is interested in speaking with the media after the execution, the victim(s) is escorted to the Press Room for brief media availability.
- 1.2.10.6 Post-Execution - The team leader ensures the victim(s) receives follow up phone calls and support.

1.2.11 Population Assessment

- 1.2.11.1 Southern Region Operations Director:
 - 1.2.11.1.1 Is responsible for the coordination of monitoring and evaluation of inmate activity at ASPC-Eyman and ASPC-Florence.
 - 1.2.11.1.2 Continuously monitors and assesses the inmate population for any activity related to the execution or its impact on the prison's operation at ASPC-Eyman and ASPC-Florence.
- 1.2.11.2 ASPC-Perryville Warden:
 - 1.2.11.2.1 Is responsible for the coordination of monitoring and evaluation of inmate activity at ASPC-Perryville.

- 1.2.11.2.2 Continuously monitors and assesses the inmate population for any activity related to the execution or its impact on the prison's operation.

1.3 Designation of ADC Staff and Others Selected to Assist with the Execution

- 1.3.1 The ASPC-Eyman or ASPC-Perryville and ASPC-Florence Wardens shall review the current teams' rosters and recommend retention and replacement of staff and alternates to the Division Director for Offender Operations.
- 1.3.2 The Division Director for Offender Operations shall evaluate the teams' composition and the Wardens' recommendations and forward final recommendations to the Director.
- 1.3.3 In the selection and retention of section leaders and Housing Unit 9 team members, the Division Director for Offender Operations shall consider:
 - 1.3.3.1 No employee who was suspended or demoted in the past 12 months shall be considered. Any staff currently under investigation is also ineligible.
 - 1.3.3.2 Special consideration may be given to staff with pertinent specialized training and qualifications.
 - 1.3.3.3 Staff with less than two years employment with the Department shall not be considered.
 - 1.3.3.4 No staff serving on any team shall be related to the inmate by blood or marriage or have any other legal relationship with the inmate, their family or the crime victim(s).
- 1.3.4 Staff participation in the execution process is strictly voluntary. No Department employee is required to attend or participate in an execution. Any staff volunteers may withdraw from performing their assigned duties specific to the execution at any time by advising their Team Leader, advising a Team Member or advising their immediate Chain of Command. All staff participating in the execution shall be required to sign a Notice of Execution Involvement, Form 710-8.

710.03 COMMUTATION HEARING PROCEEDINGS

- 1.1 The Arizona Board of Executive Clemency (BOEC) shall:
 - 1.1.1 Contact the ASPC-Eyman or ASPC-Perryville Warden to arrange for the BOEC Executive Director or designee to meet with the inmate in person to advise the inmate that a commutation hearing may be held, and that the inmate may participate in the hearing in person or by submitting a written statement to the BOEC.

- 1.1.2 Advise the Department of its plans to convene a Commutation Hearing and its date and time. Upon receipt of the notice, the ASPC-Eyman or ASPC-Perryville Warden shall arrange for a location in which the Commutation Hearing will be held.
 - 1.1.2.1 If the BOEC Commutation Hearing is held at the prison, the Department shall:
 - 1.1.2.1.1 Require those in attendance to adhere to dress code as outlined in Department Order #911, Inmate Visitation.
 - 1.1.2.1.2 Comply with the open meeting laws as it applies to Board of Executive Clemency hearings pursuant to A.R.S. 38-431.08.

710.04 DESIGNATION OF WITNESSES BY DIRECTOR

- 1.1 The Director or designee shall be present during the execution.
 - 1.1.1 The Director shall invite:
 - 1.1.1.1 The Arizona Attorney General. A.R.S. 13-758.
 - 1.1.1.2 Twelve or more reputable citizens, including up to five Arizona-market media.
 - 1.1.1.3 The five official media witnesses selected as representatives, from media-print, television/cable, radio, and the local market where the crime occurred. These official media witnesses shall also agree to serve as pool reporters.
 - 1.1.1.4 Law Enforcement and prosecutors from the jurisdiction where the crime occurred.
 - 1.1.1.5 Any crime victims and survivors of the crime for which the sentence of death will be imposed, once the Victim Services Team identifies those persons and provides to the Director a list of victim witnesses within 14 days prior to the scheduled execution.
 - 1.1.2 Minors shall not be permitted to witness an execution. A.R.S. 13-758.
 - 1.1.3 All witnesses are subject to a records check. Selection to participate is contingent upon security clearance and Witness Agreement to adhere to the provisions stipulated in the Official Witness Agreement and Official Witness/Pool Reporters Agreements, Forms 710-6 and 710-7. The Director shall retain full discretion as to the selection of and any changes in the witnesses selected for each scheduled execution.

710.05 STATE AND LOCAL LAW ENFORCEMENT BRIEFING; SITE CHECKS

- 1.1 The Division Director for Offender Operations shall ensure state and local law enforcement is periodically briefed and adequately prepared for the execution.
- 1.2 All of the equipment necessary to the administration of the execution shall be available on site and in good working order including:
 - 1.2.1 Transportation vehicles.
 - 1.2.2 Communication devices with inter-operability capability and restricted frequencies.
 - 1.2.3 Climate control.
 - 1.2.4 Tool control.
 - 1.2.5 Safety equipment.
 - 1.2.6 Audio/visual equipment.
 - 1.2.7 Utility infrastructure.
 - 1.2.8 Key control/locking devices.
 - 1.2.9 Medical emergency response capability.
- 1.3 The Division Director for Offender Operations shall take all necessary steps to timely rectify deficiencies.

710.06 THIRTY- FIVE DAYS PRIOR TO THE DAY OF EXECUTION – COMPLEX

- 1.1 The Warden or designee of ASPC-Eyman or ASPC-Perryville shall confirm in writing the following steps were completed:
 - 1.1.1 Read the Warrant to the inmate.
 - 1.1.2 Outline for the inmate how conditions of confinement will be modified over the next thirty-five days and briefly describe the relevant aspects of the execution process.
 - 1.1.3 Offer the inmate the opportunity to contact their Attorney of Record by phone and to speak with a facility Chaplain.
 - 1.1.4 Obtain the inmate's current weight and provide that information to the Division Director for Offender Operations and the Housing Unit 9 Section Leader.
 - 1.1.5 Transfer the inmate to the single-person cell on Death Row Browning or the Lumley Unit that has been retrofitted expressly for the purpose of holding the inmate.

- 1.1.5.1 Before transferring the inmate into the cell, the inmate shall be strip searched, screened on the BOSS chair and then issued a new set of clothes and shoes to wear.
 - 1.1.5.2 The single-person cell shall be thoroughly searched prior to placing the inmate in the cell.
 - 1.1.6 Place the inmate on 24-hour Continuous Observation and post staff to the inmate's cell on an on-going basis to maintain visual contact with the inmate until such time as the inmate is transferred to Housing Unit 9 at ASPC-Florence.
 - 1.1.7 Establish an Observation Record to chronicle staff's observations of the inmate's activities and behavior until the sentence of death is imposed.
- 1.2 Conditions of Confinement - The ASPC-Eyman or ASPC-Perryville Warden shall:
 - 1.2.1 Ensure none of the inmate's personal property is transferred with the inmate, except as provided in this section.
 - 1.2.2 Have the inmate's personal property inventoried in their presence before the transfer of cells occurs and then have it boxed, sealed and removed from the cell. Store the inmate's property pending receipt of written instruction by the inmate regarding disposition of property or otherwise dispose of the property as outlined in section 710.01 of this Department Order.
 - 1.2.3 Ensure all remaining property possessed by the inmate in the cell comply with indigent status items; any exceptions must be pre-approved in writing by the Division Director for Offender Operations.
 - 1.2.4 Allow the inmate to keep in the cell one box each of legal and religious materials, a pencil and paper, and a book or periodical.
 - 1.2.5 Issue the inmate a new mattress, pillow and bedding.
 - 1.2.6 Provide the inmate limited hygiene supplies, including a towel and washcloth, and exchange these items on a daily basis.
 - 1.2.7 Issue the inmate a clean set of clothing and bedding daily.
 - 1.2.8 Ensure all inmate medications are unit-dosed and, when available issued in liquid form, and none of the inmate's medication including over-the-counter medications be dispensed or maintained by the inmate as Keep-on-Person.
 - 1.2.9 Ensure the inmate has access to a department television set that is secured outside of the cell, and does not have access to any other appliances.
 - 1.2.10 Continue to provide outdoor exercise and showers, non-contact visits and phone calls per the current schedule for other death row inmates in Browning or the Lumley unit.

710.07 THIRTY-FIVE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE**1.1 The Division Director for Offender Operations:**

- 1.1.1 Identifies and assigns team leaders and members, with documented approval by the Director, and upon approval shall activate the teams.
- 1.1.2 Confirms preventive maintenance in Housing Unit 9 occurs and that an equipment inventory is completed, and appropriate and timely action is taken.
- 1.1.3 Directs the initiation of the Continuous Observation Log commencing on the 35th day prior to the day of the execution. The log shall follow the inmate from ASPC-Eyman or ASPC-Perryville to Housing Unit 9 at ASPC-Florence and be maintained until the execution occurs or a stay of execution is issued.
- 1.1.4 Activates the training schedule ensuring staff participating in the execution receives adequate training, written instruction and practice, all of which is documented.

1.2 The Assistant Director for Health Services Contract Monitoring Bureau:

- 1.2.1 Directs ADC's Health Services staff or ADC's contracted Health Services provider to conduct a medical records file review to identify any prescribed medication(s) and dosages the inmate is currently or was recently taking. ADC's Health Services staff or ADC's contracted Health Services provider shall modify prescribed medications as may be necessary.
- 1.2.2 Directs ADC's Health Services staff or ADC's contracted Health Services provider to dispense all inmate medications in unit doses and, when available in liquid form. No medication including over-the-counter medications shall be provided or maintained by the inmate as Keep-on-Person.
- 1.2.3 Ensures ADC's Health Services staff or ADC's contracted Health Services provider continuously monitors for significant changes in the inmate's medical or mental health and reports findings immediately to the Department's General Counsel.

1.3 The Media and Public Relations Office:

- 1.3.1 Issues a news advisory announcing the date of the execution.
- 1.3.2 Facilitates up to one non-contact interview with the inmate by phone, per day, with Arizona media from the day the Warrant is issued until the day before the sentence of death is imposed excluding weekends and state and federal holidays. The inmate and Attorney of Record may select among these requests that are submitted to the Media and Public Relations Office and recommend the order in which they occur. The inmate may refuse any or all media requests for interviews.

1.4 The Office of Victim Services - Identifies and advises victims of the crime for which the inmate has been sentenced to death of the issuance of the Warrant of Execution and the scheduled date and time of the execution.

710.08 TWENTY-ONE DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE**1.1 The Media and Public Relations Office:**

- 1.1.1 Forwards media-witness applications to the Inspector General for background investigation. The Inspector General shall advise the Director of any issues arising from such investigations.
- 1.1.2 Sends media-witness agreement forms (Official Witness Agreement, Form 710-6 and as applicable, Official Witness/Pool Reporter Agreement, Form 710-7) to identified media-witnesses, and establishes a deadline for the return of all such forms.
- 1.1.3 All witnesses shall sign and timely submit an Official Witness Agreement, Form 710-6, prior to being cleared and added to the witness list.
 - 1.1.3.1 All official witnesses who are also members of media/press and are selected to serve as pool reporters shall also sign and timely return the Official Witness/Pool Reporter Agreement, Form 710-7.

710.09 FOURTEEN DAYS PRIOR TO THE DAY OF EXECUTION – CENTRAL OFFICE**1.1 The Inspector General or designee:**

- 1.1.1 Finalizes arrangements with a Medical Examiner Office for the disposition of the body, security for the Medical Examiner's vehicle and the custodial transfer of the body.
- 1.1.2 Obtain a body bag and tag from the Medical Examiner's Office.

1.2 General Counsel:

- 1.2.1 Finalizes a list of all witnesses including official, victim, inmate witnesses and media/pool reporters, through coordination with the Offices of Victim Services and Media and Public Relations, for the Director's review and documented approval.
 - 1.2.1.1 Upon documented approval the Director or designee shall prepare a written invitation to each chosen witness. (See Attachment A).

1.3 The Media and Public Relations Office - Issue a news advisory announcing the date and time of the execution.**710.10 TWO DAYS PRIOR TO THE DAY OF EXECUTION****1.1 The Division Director for Offender Operations:**

- 1.1.1 Schedules and conducts on-site scenario training sessions, modifying practices as warranted.
- 1.1.2 Confirms adequate staffing and vehicles are in place for regular operations and the execution.

1.2 The ASPC-Florence Warden:

- 1.2.1 Confirms staff assigned to the Maintenance Response Team (MRT) is scheduled and will be on-site eight hours prior to the time scheduled for the imposition of sentence.
- 1.2.2 Restricts access to Housing Unit 9 to those with expressly assigned duties.
- 1.2.3 Readies Housing Unit 9 for the transfer of the inmate.
- 1.2.4 Verifies execution inventory and equipment checks are completed and open issues resolved.

710.11 TWENTY-FOUR HOURS PRIOR TO THE DAY OF EXECUTION

- 1.1 On-site scenario exercises continue.
- 1.2 Final preparation of Housing Unit 9 is completed. Each room receives final evaluation specific to its functions including security, climate control, lighting, sound, sanitation, and that separation screens and appropriate restraints are at the ready.
- 1.3 Detailed staff briefings are provided.
- 1.4 The ASPC-Eyman or ASPC-Perryville Warden shall ensure the inmate receives the last meal by 1900 hours. Every reasonable effort to accommodate the last meal request will have been made. All eating utensils and remaining food and beverage shall be removed upon completion of the meal.
- 1.5 The ASPC-Eyman or ASPC-Perryville Warden shall ensure non-contact visits and phone calls are concluded by 2100 hours.
 - 1.5.1 The inmate's telephone privileges shall be terminated at 2100 hours the day prior to the execution, excluding calls from the inmate's Attorney of Record and others as approved by the Division Director for Offender Operations.
 - 1.5.2 The inmate's visitation privileges shall be terminated at 2100 hours the day prior to the execution. The inmate will be permitted two hours of in-person visitation with no more than two Attorneys of Record, concluding one hour prior to the scheduled execution.
- 1.6 The inmate is prepared for transfer to Housing Unit 9 by the prescribed means.

710.12 TWELVE HOURS PRIOR TO AND THROUGH THE EXECUTION

- 1.1 Restricting Access to Institution Property - During the final twelve hours prior to the execution, access to ASPC-Eyman or ASPC-Perryville and ASPC-Florence is limited to:
 - 1.1.1 On-duty personnel.
 - 1.1.2 On-duty contract workers.
 - 1.1.3 Volunteers deemed necessary by the Wardens.

- 1.1.4 Approved delivery vehicles.
- 1.1.5 Law enforcement personnel on business-related matters.
- 1.1.6 Restrictions to these facilities shall remain in effect until normal operations resume after the execution or a stay of execution is issued.

1.2 Transfer of the inmate from Browning or Lumley Unit to Housing Unit 9

- 1.2.1 The inmate shall be secured and transferred by the Execution Restraint Team per the prescribed means the night before the execution.
- 1.2.2 Housing Unit 9 staff shall take custody of the inmate and the Observation Log. Staff shall assume maintenance of the log until the execution is completed or a stay of execution is issued.
- 1.2.3 Upon the inmate's arrival, the inmate may be offered a mild sedative.
- 1.2.4 No later than five hours prior to the execution, the inmate shall be offered a light meal. All eating utensils and remaining food shall be removed upon completion of the meal.
- 1.2.5 No later than four hours prior to the execution, the inmate may be offered a mild sedative.
- 1.2.6 These time frames may be adjusted as necessary in the event of a stay of execution or other exigencies.

1.3 Housing Unit 9 Conditions of Confinement

- 1.3.1 The inmate shall remain on Continuous Watch. Staff shall record observations and make entries in the Observation Record during the final four hours in hours, and minutes.
- 1.3.2 The inmate shall be issued one pair each of pants, boxer shorts and socks, and a shirt on the morning of the execution.
- 1.3.3 The cell shall be furnished with a mattress, pillow and pillowcase, one each top and bottom sheet, a blanket, a washcloth and towel, and toilet paper.
- 1.3.4 The inmate may have a pencil and paper, religious items, a book or periodical and indigent-sized hygiene supplies (liquid soap, toothpaste) and a toothbrush and comb. These items may be made available only for the duration of the use and shall be removed immediately thereafter. Any other requested property shall require approval by the Division Director for Offender Operations, and shall be documented.

- 1.4 Population Management - ASPC-Eyman or ASPC-Perryville and ASPC-Florence shall go on lockdown status from between two to six hours prior to the time the execution is scheduled to occur at the direction of Command. They shall remain on lock down throughout the execution. After the conclusion of the execution, the prisons shall return to regular operations at the direction of Command.

1.5 Additional Operations Requirements

1.5.1 Witness Escort Teams shall process, transport and remain with pre-approved official witnesses, inmate witnesses, media witnesses and victim(s) witnesses through the conclusion of the execution and their return to designated staging areas per prescribed means.

1.5.1.1 Teams shall ensure each witness group is separated from the other witness groups at all times.

1.5.1.2 The Director or designee shall provide a brief overview of the execution for the official witnesses. The Director may advise witnesses that the curtains in the execution chamber may be drawn prior to the conclusion of the execution if necessary and then reopened when the execution resumes and that an IV Team member may enter into the chamber and physically manipulate the inmate to check consciousness.

1.5.2 Upon the direction of the Director to proceed:

1.5.2.1 The APSC-Florence Warden shall direct the Execution Restraint Team to prepare the inmate for escort into the execution chamber.

1.5.2.2 Prior to moving the inmate from the holding cell to the execution table, the Director shall confer with the Attorney General or designee and the Governor or designee to confirm there is no legal impediment to proceeding with the lawful execution.

1.5.2.3 When the inmate is secured on the execution table by the team and readied by qualified medical personnel, the Warden shall advise the Director.

1.5.2.4 The Director shall reconfirm with the Attorney General or designee and the Governor or designee that there is no legal impediment to proceeding. Upon oral confirmation that there is no legal impediment to proceeding with the execution, the Director may order the Warden to proceed with the execution.

1.5.2.4.1 If there is a legal impediment the Director shall instruct the ASPC-Florence Warden to stop, and to notify the inmate and witnesses that the execution has been stayed or delayed. The Warden shall also notify Command to notify the Media and Public Relations staff who shall advise the media in the Press Room.

- 1.5.2.5 The Warden shall read aloud a summary of the Warrant of Execution. The Warden shall ask the inmate if he wishes to make a last statement that is reasonable in length and does not contain vulgar language or intentionally offensive statements directed at the witnesses. The microphone will remain on during the last statement. It will be turned off in the event the inmate uses vulgarity or makes intentionally offensive statements.
 - 1.5.2.6 The Director shall instruct the disbursement of chemicals to begin by the prescribed means.
- 1.5.3 Pronouncement and Documentation of Death
 - 1.5.3.1 The Director shall announce death when it has occurred.
 - 1.5.3.2 The ASPC-Florence Warden shall complete and sign the return of the Death Warrant pursuant to A.R.S. 13-759. The Director shall file the document with the sentencing court and the Arizona Supreme Court within 48 hours.
 - 1.5.3.3 A Medical Examiner shall take custody of the body and issue a Certificate of Death.
- 1.6 Stay of Execution - Upon receipt of notification that the court has issued a Stay of Execution, the Director shall advise Command.
 - 1.6.1 Upon receipt of notification, the Housing Unit 9 Section Leader shall:
 - 1.6.1.1 Instruct the Special Operations to stand down.
 - 1.6.1.2 Direct the Restraint Team to remove the inmate from the chamber and return to the Housing Unit 9 cell, pending movement back to Death Row at Browning or Lumley Unit as authorized by Command.
 - 1.6.1.3 Advise the witnesses a Stay of Execution has been issued.
 - 1.6.2 Command shall inform the following teams of the Stay of Execution:
 - 1.6.2.1 Traffic Control Team Leader.
 - 1.6.2.2 Population Assessment.
 - 1.6.2.3 Critical Incident Response Team Leader.
 - 1.6.2.4 Media Relations Director.
 - 1.6.2.5 Victim Services Team Leader.
 - 1.6.2.6 Escort Team leader.

- 1.6.3 The Traffic Control Team Leader shall notify protestors of the issuance of the Stay of Execution.
- 1.6.4 The Escort Team shall commence escorting witness groups from Housing Unit 9 as set forth herein.
- 1.6.5 Upon Command's instruction, the inmate shall be transported from Housing Unit 9 back to Death Row at Browning or Lumley Unit and their personal possessions returned.

710.13 POST-EXECUTION

1.1 Removing Witnesses from Housing Unit 9

- 1.1.1 After the pronouncement of death, witnesses shall be escorted in the prescribed order from the facility.
 - 1.1.1.1 Each group of witnesses will continue to be kept separated from the other groups at all times.
 - 1.1.1.2 Official witnesses who are media pool reporters will return to the Press Room to participate in the media briefing.
 - 1.1.1.3 Victim witnesses speaking with the media will be escorted to the Press Room.
- 1.1.2 Media may remain on site in a designated location outside the secure perimeter for a limited time to complete live broadcasts.

1.2 Site Clean Up

- 1.2.1 Under the supervision of a person designated by the ASPC-Florence Warden, Housing Unit 9 shall be cleaned and secured.
- 1.2.2 Institutional staff trained in infectious diseases preventive practices will utilize appropriate precautions in cleaning Housing Unit 9.

1.3 Normal Operations

- 1.3.1 Command shall determine when the prisons resume normal operations after receiving assessments from the Wardens of ASPC-Florence and ASPC-Eyman or ASPC-Perryville.
- 1.3.2 Department personnel shall be deactivated at the direction of Command.

1.4 Execution Documentation

- 1.4.1 The ASPC-Florence Warden shall be responsible to gather all documents pertaining to the execution and forward to the Department's General Counsel for archive.

- 1.4.2 Pursuant to A.R.S. 13-759 (B), the Director shall send written notification to the sentencing court and the Arizona Supreme Court stating the time, mode and manner in which the Warrant was carried out. (See Attachments B and C)

710.14 PROCEDURES FOR NEWS MEDIA

- 1.1 Reasonable efforts will be made to accommodate representatives of the news media before, during and after a scheduled execution however; the Department reserves the right to regulate media access to ensure the orderly and safe operations of its prisons.
- 1.2 The Media and Public Relations Office shall coordinate the release of information to news media outlets. All Department and contract staff are expressly prohibited from providing information not readily available in the public domain.
- 1.3 Update Prior to the Execution - Following activation of the Press Room, the Media Relations Director and the Media and Public Relations Officer shall provide the news media with regular briefings or updates.
- 1.4 Media Orientation and Releases - The Media Relations Director shall provide general information regarding the execution and about the inmate.
 - 1.4.1 Media Representatives will be informed how the press pool will be established and advised that if they are selected as press pool witnesses, they shall be required to complete and sign Media Witness Press Pool Agreement, Form 710-7, in addition the Official Witness Agreement, Form 710-6, prior to the execution.
 - 1.4.2 Media Representatives will return to the Press Room after the execution to answer questions of all other media representatives concerning their observations during the execution, prior to filing or reporting their story.
- 1.5 Press Room Operations
 - 1.5.1 Media representatives requesting to witness an execution must submit written requests to the Media and Public Relations Office no later than 28 days prior to the execution. Each request must include the name, social security number and birth date of media requesting access. Only those news organizations that have submitted written requests within the stated time frame shall be considered.
 - 1.5.2 The Media and Public Relations Office shall finalize recommendations for selected media to perform official witness/pool reporter functions 14 days prior to the execution.
- 1.6 Briefing Packets and Updates
 - 1.6.1 The Media Relations Office shall provide press briefing packets for reporters.
 - 1.6.2 A brief summary of inmate's activities during the final twenty-four hours, activities related to the execution and sequence of events, may be provided.

1.7 News Media Selection

- 1.7.1 No more than five members of the Arizona media may be selected to witness the execution as official witnesses. Selected media will perform the additional duties of pool reporter:
 - 1.7.1.1 Print.
 - 1.7.1.2 Radio.
 - 1.7.1.3 Television/Cable.
 - 1.7.1.4 Local media representative in the market where the crime was committed.
- 1.7.2 Media is held to the same standards for conduct as are all other official witnesses.
- 1.7.3 Command may exclude any media witness at any time if the media witness fails to abide by the provisions of the Official Witness and Pool Reporter Agreements (Forms 710-6 and 710-7).
- 1.7.4 Media witnesses are not permitted to bring unauthorized items into Housing Unit 9. Unauthorized items include:
 - 1.7.4.1 Electronic or mechanical recording devices.
 - 1.7.4.2 Still, moving picture or video tape camera.
 - 1.7.4.3 Tape recorders or similar devices.
 - 1.7.4.4 Radio/television broadcasting devices.
- 1.7.5 Each pool reporter shall be provided a tablet of paper and a pencil to take notes from the time they complete security screening and board the bus until they are returned to the Press Room after the conclusion of the execution.
- 1.7.6 Official witnesses who are pool reporters shall attend a pre-execution briefing.

IMPLEMENTATION

The ASPC-Florence and ASPC-Perryville Wardens shall maintain Post Order #015, Death Watch Security Officer, delineating post-specific responsibilities. The ASPC-Florence Warden shall also maintain Post Order #015-A01, Housing Unit-9 Security Watch.

{Original Signature on File}

CHARLES L. RYAN
DIRECTOR

ATTACHMENTS

Attachment A - Letter of Invitation to Witness an Execution
Attachment B - Return of Warrant Notification - Supreme Court
Attachment C - Return of Warrant Notification - Superior Court
Attachment D - Preparation and Administration of Chemicals

FORMS LIST

710-1, Method of Execution
710-2, Inmate Witness Information
710-3, Disposition of Remains
710-4, Authorized Witnesses for Execution Log (A, B and C)
710-5, Last Meal Request
710-6, Official Witness Agreement
710-7, Official Witness/Pool Reporter Agreement
710-8, Notice of Execution Involvement

CROSS-REFERENCE INDEX

Department Order #201, Information Release
Department Order #207, Media Relations
Department Order #711, Notification of Inmate Hospitalization or Death
Department Order #911, Inmate Visitation

AUTHORITY

A.R.S. 13-757 (B), Methods of Infliction of Sentence of Death
A.R.S. 13-757 (C), Identity of Executioners
A.R.S. 13-758, Persons Present at Execution of Sentence of Death; Limitations
A.R.S. 13-759 (B), Return Upon Death Warrant
A.R.S. 13-4021 through 13-4026, Insanity or Pregnancy of Persons under Death Sentence
Arizona Rules of Criminal Procedure, Rule 31.17(c)(3), Date and Time of Execution; Notification to Supreme Court
A.R.S. 1-215 (28), Definitions
A.R.S. 13-105 (30), Definitions

ATTACHMENT A
DEPARTMENT ORDER 710

SAMPLE

LETTER OF INVITATION TO WITNESS AN EXECUTION

Date

Name

Mailing address

Mailing address

Dear _____

Thank you for expressing interesting in serving as a witness.

Please be advised that you are selected to witness the execution of _____
[name] _____ [number], on _____ [date] at _____ [time] subject to the conditions stipulated
in this correspondence.

There are three kinds of witnesses. They are 1) Official Witnesses including Official Witnesses who are members of the media and will serve as Pool Reporters, 2) the Inmate's Witnesses and 3) the Victim(s) Witnesses.

All witnesses are required to complete the *Witness Agreement* form and return it to the Media Relations Office of the Arizona Department of Corrections no later than _____ [date] by fax, mail, hand delivery or as an e-mail attachment.

Official Witnesses who are members of the media and will be serving as Pool Reporters are also required to complete the *Official Witnesses/Pool Reporters Agreement* form. This form must be returned as well to the Media Relations Office of the Arizona Department of Corrections no later than the Friday before the scheduled date of the execution, _____ [date] by the same means.

Failure to fully complete and return on time the required forms with receipt by the Department before 5 P.M. on _____ [date], will result in your removal from the list of approved witnesses.

For additional information and to confirm receipt of your materials, you are welcome to contact the Media Relations Office by phone at 602-542-3133, by fax at 602-542-2859 or e-mail at media@azcorrections.gov.

Sincerely,

Media Relation Director

Applicable Attachments:

___ *Witness Agreement* form

___ *Official Witnesses/Pool Reporters Agreement* form

**ATTACHMENT B
DEPARTMENT ORDER 710**

SAMPLE

RETURN OF WARRANT NOTIFICATION

Supreme Court

DATE:

The Honorable
Chief Justice of the Supreme Court of Arizona
402 Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3329

RE: Return of Warrant of Execution

State vs.

Supreme Court Number:

County Number:

Chief Justice:

This is to advise you that in accordance with the Warrant of Execution, Supreme Court Number, and pursuant to A.R.S. 13-759(B), the imposition of the sentence of death of _____ was carried out at the Arizona State Prison Complex-Florence on _____, 20 ____, at _____ A.M./P.M.

The mode and manner of the death was by lethal _____.

Sincerely,

Charles L. Ryan
Director
Arizona Department of Corrections

**ATTACHMENT C
DEPARTMENT ORDER 710**

SAMPLE

RETURN OF WARRANT NOTIFICATION

Superior Court

DATE:

The Honorable
Presiding Judge
Superior Court of Arizona
In County _____,
_____, Arizona

RE: Return of Warrant of Execution

State vs.

Supreme Court Number:

County Number:

Judge _____:

This is to advise you that in accordance with the Warrant of Execution, Supreme Court Number, and pursuant to A.R.S. 13-759(B), the imposition of the sentence of death of _____ was carried out at the Arizona State Prison Complex-Florence on _____, 20 ____, at _____ A.M./P.M.

The mode and manner of the death was by lethal _____.

Sincerely,

Charles L. Ryan
Director
Arizona Department of Corrections

ATTACHMENT D
DEPARTMENT ORDER 710
Page 1 of 7

PREPARATION AND ADMINISTRATION OF CHEMICALS

A. Obtaining Chemicals and Equipment

1. Upon receipt of the Warrant of Execution, the Housing Unit 9 Section Leader shall:
 - I. Confirm the equipment for the procedure and ensure all equipment necessary to properly conduct the procedure is on site, immediately available for use and functioning properly.
 - II. Ensure all medical equipment, including a backup electrocardiograph is on site, immediately available for use and functioning properly.
 - III. Ensure that complete sets of chemicals are on site and immediately available for use.
 - IV. Ensure the chemicals are ordered, arrive as scheduled and are properly stored. The chemicals shall be stored in a secured, locked area that is temperature regulated and monitored to ensure compliance with manufacturer specifications, under the direct control of the Housing Unit 9 Section Leader.

B. Preparation of Chemicals

1. At the appropriate time, the Housing Unit 9 Section Leader shall transfer custody of the chemicals to the Special Operations Team to begin the chemical(s) and syringe preparation in the chemical room, under the direct supervision by the IV Team Leader.
2. The Special Operations Team Leader will assign a team member(s) to assist preparing each chemical and the corresponding syringe. The IV Team Leader will supervise the process. The IV Team Leader, with the assistance of the Special Operations Team members, shall prepare the designated chemical and syringes for a total of one complete set of chemicals. One full set of syringes is used in the implementation of the death sentence and an additional complete set of the necessary chemicals shall be obtained and kept available in the chemical room, but need not be drawn into syringes unless the primary dosages prove to be insufficient for successful completion of the execution.
3. The IV Team Leader, with the assistance of a Special Operations Team member, shall be responsible for preparing and labeling the assigned sterile syringes in a distinctive manner identifying the specific chemical contained in each syringe by i) assigned number, ii) chemical name, iii) chemical amount and iv) the designated color, as set forth in the chemical charts below. This information shall be preprinted on a label, with one label affixed to each syringe to ensure the label remains visible.

C. Chemical Charts; Choice of Protocol

1. Charts for all chemical protocols follow. The Director shall have the sole discretion as to which lethal chemical(s) will be used for the scheduled execution. This decision will be provided to the inmate in writing 20 calendar days prior to the scheduled execution date.
2. If compounded Pentobarbital is used it shall be obtained from a certified or licensed compounding pharmacist or compounding pharmacy in good standing with their licensing board. Licensing, certification, and criminal history reviews shall be conducted by the Inspector General's Office prior to obtaining the compounded Pentobarbital. A qualitative analysis of the compounded Pentobarbital to be used in the execution shall be performed no more than 30 calendar days prior to the execution date. The decision to use compounded Pentobarbital will be provided to the inmate in writing 20 calendar days prior to the scheduled execution.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 2 of 7

CHART A: ONE-DRUG PROTOCOL WITH PENTOBARBITAL

CHEMICAL CHART	
Syringe No.	Label
1A	60mL Heparin/Saline, BLACK
2A	2.5gm Pentobarbital, GREEN
3A	2.5gm Pentobarbital, GREEN
4A	60mL Heparin/Saline, BLACK

- Syringes 2A, and 3A, will have a dose of 2.5 gm of Pentobarbital for a total of 5 grams. Each syringe containing Pentobarbital shall have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.
- Syringes 1A, and 4A, each contain 60 ml. of a Heparin/Saline solution, at a concentration of 10 units of Heparin per milliliter, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

CHART B: ONE-DRUG PROTOCOL WITH SODIUM PENTOTHAL

CHEMICAL CHART	
Syringe No.	Label
1A	60mL Heparin/Saline, BLACK
2A	1.25gm Sodium Pentothal, GREEN
3A	1.25gm Sodium Pentothal, GREEN
4A	1.25gm Sodium Pentothal, GREEN
5A	1.25gm Sodium Pentothal, GREEN
6A	60mL Heparin/Saline, BLACK

- Syringes 2A, 3A, 4A, 5A, each contain 1.25 gm/50ml. of Sodium Pentothal / 1 in 50 ml. of sterile water in four 60 ml. syringes for a total dose of 5 grams of Sodium Pentothal. Each syringe containing Sodium Pentothal shall have a **GREEN** label which contains the name of chemical, chemical amount and the designated syringe number.
- Syringes 1A, and 6A, each contain 60 ml. of a Heparin/Saline solution, at a concentration of 10 units of Heparin per milliliter, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 3 of 7

CHART C: TWO-DRUG PROTOCOL WITH MIDAZOLAM AND HYDROMORPHONE

CHEMICAL CHART	
Syringe No.	Label
1A	60mL Heparin/Saline, BLACK
2A	50mg Midazolam and 50mg Hydromorphone, GREEN
3A	60mL Heparin/Saline, BLACK

- Syringe 2A, will have a dose of 50mg of Midazolam and 50mg Hydromorphone. The syringe containing Midazolam and Hydromorphone shall have a **GREEN** label which contains the name of each chemical, chemical amounts and the designated syringe number.
 - Syringes 1A, and 3A, each contain 60 ml. of a Heparin/Saline solution, at a concentration of 10 units of Heparin per milliliter, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.
3. After the IV Team prepares all required syringes with the proper chemicals and labels as provided in the Chemical Chart, the IV Team Leader shall attach one complete set of the prepared and labeled syringes to the 2-Gang, 2-Way Manifold in the order in which the chemical are to be administered. The syringes will be attached to the 2-Gang, 2-Way Manifold in a manner to ensure there is no crowding, with each syringe resting in its corresponding place in the shadow board which is labeled with the name of the chemical, color, chemical amount and the designated syringe number.
 4. The syringes shall be affixed in such a manner to ensure the syringe labels are clearly visible. Prior to attaching the syringes to the 2-Gang, 2-Way Manifold, the flow of each gauge on the manifold shall be checked by the IV Team Leader running the Heparin/Saline solution through the line to confirm there is no obstruction.
 5. After all syringes are prepared and affixed to the 2-Gang, 2-Way Manifold in proper order, the Special Operations Team Leader shall confirm that all syringes are properly labeled and attached to the manifold in the order in which the chemicals are to be administered as designated by the Chemical Chart. Each chemical shall be administered in the predetermined order in which the syringes are affixed to the manifold.
 6. The quantities and types of chemicals prepared and administered may not be changed in any manner without prior documented approval of the Director.
 7. All prepared chemicals shall be utilized or properly disposed of in a timely manner after the time designated for the execution to occur.
 8. The chemical amounts as set forth in the Chemical Chart are designated for the execution of persons weighing 500 pounds or less. The chemical amounts will be reviewed and may be revised as necessary for an inmate exceeding this body weight.
 9. The Special Operations Team Recorder is responsible for completing the Correctional Service Log, Form 105-6. The Recorder shall document on the form the amount of each chemical administered and confirm that it was administered in the order set forth in the Chemical Chart. Any deviation from the written procedure shall be noted and explained on the form.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 4 of 7

D. Movement and Monitoring of Inmate

1. Prior to moving the inmate from the holding cell to the execution table, the Director will confer with the Attorney General or designee and the Governor or designee to confirm there is no legal impediment to proceeding with the lawful execution and there are no motions pending before a court which may stay further proceedings.
2. The inmate may be offered a mild sedative based on the inmate's need. The sedative shall be provided to the inmate no later than four hours prior to the execution, unless it is determined medically necessary.
3. At the designated time, the inmate will be brought into the execution room and secured on the table by the prescribed means with the inmate's arms positioned at an angle away from the inmate's side.
4. The inmate will be positioned to enable the IV Team or the Special Operations Team Leader and the Warden to directly observe the inmate and to monitor the inmate's face with the aid of a high resolution color camera and a high resolution color monitor.
5. After the inmate has been secured to the execution table, the Restraint Team Leader shall personally check the restraints which secure the inmate to the table to ensure they are not so restrictive as to impede the inmate's circulation, yet sufficient to prevent the inmate from manipulating the catheter and IV lines.
6. A microphone will be affixed to the inmate's shirt to enable the IV Team, or the Special Operations Team Leader, to verbally communicate directly with the inmate and hear any utterances or noises made by the inmate throughout the procedure. The Special Operations Team Leader will confirm the microphone is functioning properly, and that the inmate can be heard in the chemical room.
7. The Restraint Team members will attach the leads from the electrocardiograph to the inmate's chest once the inmate is secured. The IV Team Leader shall confirm that the electrocardiograph is functioning properly and that the proper graph paper is used. A backup electrocardiograph shall be on site and readily available if necessary. Prior to the day of and on the day of the execution both electrocardiograph instruments shall be checked to confirm they are functioning properly.
8. An IV Team member shall be assigned to monitor the EKG, and mark the EKG graph paper at the commencement and completion of the administration of the lethal chemical(s).
9. Throughout the procedure, the IV Team Leader shall monitor the inmate's level of consciousness and electrocardiograph readings utilizing direct observation, audio equipment, camera and monitor as well as any other medically approved method(s) deemed necessary by the IV Team Leader. The IV Team Leader shall be responsible for monitoring the inmate's level of consciousness.
10. Closed-circuit monitors will allow witnesses in designated witness room to observe the IV Team's vein assessment and placement of IV catheters in the inmate. In addition, a microphone will be turned on during the IV Team's assessment and placement of IV catheters.

E. Intravenous Lines

1. The Director acting upon the advice of the IV Team Leader shall determine the catheter sites. A femoral central line shall only be used if the person inserting the line is currently certified or licensed within the United States to insert a femoral central line. The IV Team members shall insert a primary IV catheter and a backup IV catheter.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 5 of 7

2. The IV Team Leader shall ensure the catheters are properly secured and properly connected to the IV lines and out of reach of the inmate's hands. A flow of Heparin/Saline shall be started in each line and administered at a slow rate to keep the lines open.
3. The primary IV catheter will be used to administer the lethal chemical(s) and the backup catheter will be reserved in the event of the failure of the first line. Any failure of a venous access line shall be immediately reported to the Director.
4. The IV catheter in use shall remain visible to the Warden throughout the procedure.
5. The Warden shall physically remain in the room with the inmate throughout the administration of the lethal chemical(s) in a position sufficient to clearly observe the inmate and the primary and backup IV sites for any potential problems and shall immediately notify the IV Team Leader and Director should any issue occur. Upon receipt of such notification, the Director may stop the proceedings and take all steps necessary in consultation with the IV Team Leader prior to proceeding further with the execution.
6. Should the use of the backup IV catheter be determined to be necessary, a set of backup chemicals should be administered in the backup IV.

F. Administration of Chemicals

1. At the time the execution is to commence and prior to administering the lethal chemical(s), the Director will reconfirm with the Attorney General or designee and the Governor or designee that there is no legal impediment to proceeding with the execution. Upon receipt of oral confirmation that there is no legal impediment, the Director will order the administration of the chemicals to begin.
2. Upon receipt of the Director's order and under observation of the IV Team Leader, the Special Operations Team Leader will instruct the assigned Special Operations Team member(s) to begin dispensing the lethal chemical(s).
3. Upon direction from the Special Operations Team Leader, the assigned Special Operations Team member will visually and orally confirm the chemical name on the syringe and then administer the full dose of the lethal chemical(s) immediately followed by the Heparin/Saline flush.
4. When three minutes has elapsed since commencing the administration of the lethal chemical(s), the IV Team Leader, dressed in a manner to preserve their anonymity, will enter into the room where the Warden and inmate are located to physically confirm the inmate is unconscious by using all necessary medically appropriate methods. The IV Team Leader will also confirm that the IV line remains affixed and functioning properly.
5. If, after three minutes, the inmate remains conscious, the IV Team shall communicate this information to the Director, along with all IV Team input. The Director will determine how to proceed or, if necessary, to start the procedure over at a later time or stand down. The Director may direct the curtains to the witness viewing room be closed, and, if necessary, for witnesses to be removed from the facility.
6. If deemed appropriate, the Director may instruct the Special Operations Team to administer an additional dose of the lethal chemical(s) followed by the Heparin/Saline flush.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 6 of 7

7. Upon administering the lethal chemical(s) and Heparin/Saline from a backup set, the IV Team shall confirm the inmate is unconscious by sight and sound, utilizing the audio equipment, camera and monitor. The IV Team Leader will again physically confirm the inmate is unconscious using proper medical procedures and verbally advise the Director of the same.
8. When all electrical activity of the heart has ceased as shown by the electrocardiograph, the IV Team Leader will confirm the inmate is deceased and the inmate's death shall be announced by the Director.
9. The Special Operations Team Recorder shall document on the Correctional Services Log the start and end times of the administration of the lethal chemical(s).
10. Throughout the entire procedure, the IV Team members, the Special Operations Team members and the Warden shall continually monitor the inmate using all available means to ensure that the inmate remains unconscious and that there are no complications.

G. Post Execution Procedures

1. Upon the pronouncement of death, the Director shall notify the Governor or designee and the Attorney General or designee via telephone that the sentence has been carried out and the time that death occurred.
2. An IV Team member will clamp and cut the IV lines leaving them connected to the inmate for examination by a Medical Examiner.
3. A Criminal Investigations Unit Investigator and a Medical Examiner will take photos of the inmate's body:
 - While in restraints prior to being placed in the body bag,
 - Without restraints prior to being placed in the body bag,
 - Sealed in the body bag, and
 - A photo of the seal in place on the bag.
4. The inmate's body will be placed on a Medical Examiner's gurney and released into the custody of a Medical Examiner's Office.
5. Once the inmate's body is placed in a Medical Examiner's transport vehicle, it will be escorted off the premises. The Examiner's Office will take the inmate's body to the medical examiner's office designated by the county.

H. Documentation of Chemicals and Stay

1. In the event that a pending stay results in more than a two hour delay, the catheters shall be removed, if applicable, and the inmate shall be returned to the holding cell until further notice.
2. The Correctional Service Logs the list of identifiers and the EKG tape shall be submitted to the Department's General Counsel for review and storage.

ATTACHMENT D
DEPARTMENT ORDER 710
Page 7 of 7

I. Contingency Procedure

1. An Automated External Defibrillator (AED) will be readily available on site in the event that the inmate goes into cardiac arrest at any time prior to dispensing the chemicals; trained medical staff shall make every effort to revive the inmate should this occur.
2. Trained medical personnel and emergency transportation, neither of which is involved in the execution process, shall be available in proximity to respond to the inmate should any medical emergency arise at any time before the order to proceed with the execution is issued by the Director.
3. If at any point any team member determines that any part of the execution process is not going according to procedure, they shall advise the IV Team Leader who shall immediately notify the Director. The Director may consult with persons deemed appropriate and will determine to go forward with the procedure, start the procedure over at a later time within the 24-hour day, or stand down.
4. There shall be no deviation from the procedures as set forth herein, without prior consent from the Director.

J. Debrief and Policy Review

1. The IV and Special Operations Teams will participate in an informal debriefing immediately upon completion of the event.
2. Upon an assignment to a Team, team members shall review Department Order #710, Execution Procedures.
3. Periodically, and in the discretion of the Director, a review of Department Order #710, Execution Procedures along with this attachment may be reviewed to confirm it remains consistent with the law. General Counsel shall advise the Director immediately upon any change that may impact these procedures.