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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Glen Jones, Jr., Plaintiff, v. Janice K. Brewer, Governor of Arizona, Scott Smith, Chief of Staff to Governor Brewer, Brian Livingston, Chairman and Executive Director. Arizona Board of Clemency, John Lasota, Member, Arizona Board of Executive Clemency, Ellen Kirschbaum, Member, Arizona Board of Executive Clemency, Donna Harris, Member, Arizona Board of Executive Clemency, Defendants.	Case No: 2:13-cv-01962-ROS COMPLAINT FOR EQUITABLE, INJUNCTIVE, AND DECLARATORY RELIEF [42 U.S.C § 1983] DEATH-PENALTY CASE **Execution Scheduled October 23, 2013**

Nature of Action

1. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 for violations and threatened violations by agencies of the State of Arizona and persons acting in their official capacities, including the Governor and her representatives and the Arizona Board of Executive Clemency ("the Board") and its members.

2. Defendants, while acting under color of state law, have violated Plaintiff's rights to due process of law and to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

3. This Complaint does not challenge Plaintiff's underlying capital conviction or sentence of death. Rather, Plaintiff challenges the undue influence placed on the Board members, by the Governor and others in her office, to deny him full and fair consideration of his application for a commutation of his death sentence and the absence of procedures for him to fully and fairly present his case for commutation of his sentence of death to the Board.

4. Plaintiff seeks equitable, injunctive, and declaratory relief to prevent Defendants from holding a commutation hearing in the absence of a full, fair, and independent process that would permit a full and fair presentation of Plaintiff's case for commutation, including his case of actual innocence, and to enjoin his execution until such time as a full and fair clemency process becomes available. Plaintiff further seeks the relief described below.

Jurisdiction and Venue

5. 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. § 1367 (supplemental), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202 (injunctive relief). Plaintiff invokes this Court's jurisdiction pursuant to Article III of the United States Constitution, 42 U.S.C. § 1983, and 42 U.S.C. § 1985(3).

6. Venue is proper pursuant to 28 U.S.C. § 1391(b). Plaintiff is currently incarcerated at the Arizona State Prison Complex ("ASPC") – Eyman, Browning Unit, 4374 East Butte Avenue, Florence, Arizona, which is located in this District.

7. The Office of the Governor, the Arizona Board of Executive Clemency, and all Defendants' offices are located in Phoenix, Arizona, which is

within the District of Arizona. Further, the events that form the basis for this action occurred within the District of Arizona.

The Parties

8. Plaintiff Robert Glen Jones is a United States citizen and a resident of the State of Arizona. He is currently subject to a death sentence imposed by the Superior Court of Pima County. Plaintiff is incarcerated at ASPC-Eyman, Browning Unit, in Florence, Arizona.

9. Plaintiff Jones is under a warrant of execution. His execution has been scheduled for October 23, 2013. His execution will take place at the Central Unit at ASPC-Florence within the State of Arizona and within this judicial district.

10. Defendant Janice K. Brewer is the Governor of the State of Arizona. She is being sued in her official capacity for equitable, injunctive, and declaratory relief.

11. Defendant Scott Smith is the Chief of Staff to the Governor of Arizona and is being sued in his official capacity for equitable, injunctive and declaratory relief.

12. Defendant Brian Livingston is the Chairman of the Arizona Board of Executive Clemency and is being sued in his official capacity for equitable, injunctive, and declaratory relief.

13. Defendants John LaSota, Ellen Kirschbaum, and Donna Harris are members of the Arizona Board of Executive Clemency and are being sued in their official capacity for equitable, injunctive, and declaratory relief.

14. There is presently one vacancy on the five-member Board.

Exhaustion of Administrative Remedies

15. Exhaustion is not necessary under the Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e, because this suit does not challenge prison

conditions and because there are no available administrative remedies that could address the challenged federal constitutional and state statutory violations.

16. It would be futile for Plaintiff to attempt to exhaust any remedies available to him in an effort to resolve this issue.

17. As to Plaintiff's Second Claim, *infra*, the Board responded it did not have subpoena power or authority. To the extent exhaustion may be necessary, Plaintiff has exhausted his administrative remedies.

Relevant Facts

Facts related to the setting of Plaintiff's case for a clemency/ commutation hearing.

18. Plaintiff incorporates by reference each and every statement and allegation set forth throughout this Complaint as if fully rewritten.

19. In 1998, Plaintiff Robert Glen Jones, Jr., was convicted of six counts of first- degree murder and related offenses and was sentenced to death. He sought and was denied relief from his conviction and sentence in state and federal court. *See Jones v. Ryan*, 691 F.3d 1093, 1095-96 & n. 1 (9th Cir. 2012).

20. On August 27, 2013, the Arizona Supreme Court issued a warrant of execution for Plaintiff and set his execution for October 23, 2013.

21. On September 16, 2013, Plaintiff's counsel, Assistant Federal Public Defender Timothy M. Gabrielsen, wrote to Brian Livingston, Chairman of the Arizona Board of Executive Clemency ("Board"), to ascertain whether the Board possesses authority to issue subpoenas to private entities to compel the production of evidence in support of a claim for commutation. On September 25, 2013, Attorney Gabrielsen spoke by phone with the Chairman, who indicated *inter alia* that Plaintiff's clemency hearing was set for October 16, 2013, and that a formal notice would issue around September 30, 2013.

Background facts relating to the Arizona Board of Executive Clemency

22. The Arizona Board of Executive Clemency is an independent public body created by the Arizona State Legislature to act as a check on the Governor's authority to grant clemency. Arizona Revised Statute §31-401.

23. The members of the Board are appointed by the Governor to five year staggered terms. Arizona Revised Statute §31-401. The purpose of the staggered terms serves to ensure that no particular Governor will have complete control over the appointments to the Board with the intent of maintaining neutrality amongst the members. All current members of the Board were appointed by Governor Brewer.

24. Each newly appointed Board member must complete a four week training course "relating to the duties and activities of the board." Arizona Revised Statute §31-401(C).

25. Board members may only be removed by the Governor and only for cause. Arizona Revised Statute §31-401(E).

26. The Board is subject to the Arizona Open Meetings law. Arizona Revised Statute § 38-431.

27. A meeting "means the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." Arizona Revised Statute §38-431(4).

28. A quorum of the Board is generally considered three members, but can be as few as two members. Arizona Revised Statute §31-401(I).

29. Under the open meetings law, "legal action" "means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state." Arizona Revised Statute §38-431.

30. The Governor of the State of Arizona is not empowered to grant a request for executive clemency unless the Board issues a favorable recommendation. A tie vote is interpreted as a denial of executive clemency and deprives the Governor of the authority to grant an application.

Facts relating to efforts by the Office of the Governor to Interfere in Board Operation, Influence Board Votes, and Retaliate Against Members as a Result of Votes

31. On or about April 9, 2012, Jesse Hernandez was appointed to the Board of Executive Clemency as Chairman and Executive Director. Hernandez replaced Duane Belcher who had sought to be reappointed to the position he had held for two decades.

32. On or about April 9, 2012, Melvin Thomas was appointed to the Board.

33. On or about April 10, 2012, Brian Livingston was appointed to the Board.

34. Mr. Thomas and Mr. Livingston were appointed to replace Members Ellen Stenson and Marilyn Wilkens.

35. Mr. Belcher, Ms. Stenson, and Ms. Wilkens had each applied to retain their appointments to the Board.

36. Mr. Belcher was not afforded an interview and his name was not forwarded to the Governor as a nominee for his position. Declaration of Duane Belcher. (Exhibit 1.) In his sworn declaration, Belcher states:

> I served on the Board for approximately 20 years. When Governor Brewer decided to replace three Board members (including myself) at one time, I was quite surprised. During my tenure with the Board, I had never seen a time where an Arizona Governor had replaced so many Board members at one time. It was my opinion that the Governor's office wanted Board Members who would vote the wishes of her office, rather than vote their conscience, based on the facts and circumstances of each case.

37. (*Id* at ¶ 7.) Mr. Belcher further explains that he came to that opinion based on his interaction with Defendant Smith, and others acting as agents for Defendant Governor Brewer.

> In early 2012, I had a meeting with Joe Sciarotta and Scott Smith, General Counsel and Deputy Chief of Staff to Governor Brewer. They were direct, and made it clear to me, that the Governor's office was unhappy with my vote to recommend clemency for William Macumber in 2009 and again in 2011. I was told that the Governor was "blindsided" by the Board's vote to recommend Clemency in the Macumber case. They also questioned me regarding the Board's vote to recommend clemency in the case of Robert Flibotte ADC #265716. The aforementioned were considered to be high profile cases.

38. (*Id* at ¶ 4.) As a result of this meeting, the former Chairman concluded, "In my view the Governor's Office was attempting to influence the Board's vote in certain cases that were recommended for executive clemency." (*Id* at ¶ 5.)

39. Ms. Stenson was afforded an interview. Ms. Stenson's interview was held in executive session, without prior notice. The Governor's Chief of Staff, Defendant Scott Smith, "ran the show." Declaration of Ellen Stenson. (Exhibit 2 at ¶ 4.) During the interview, Mr. Smith asked Ms. Stenson if she stood by her 2009 vote to recommend commutation for Bill Macumber. (*Id* at ¶ 5.) Mr. Macumber's case had brought national attention because of a persuasive case of innocence. At the time the question was asked, it was apparent to all involved that Mr. Macumber's case could "quite possibl[y]" come before the Board in the future. (*Id* at ¶ 5.) Ms. Stenson informed Mr. Smith that she stood by her 2009 vote. Ms. Stenson's name was not forwarded to the Governor for nomination. She was not re-appointed. Ms. Stenson believes that her 2009 vote together with her

answer that she would vote the same way "influenced the Governor's decision to oust [her] from the Board." (*Id* at ¶ 6.)

40. Marilyn Wilkens was similarly removed from her seat by the Governor in retaliation for her votes recommending clemency in a high profile case. Ms. Wilkens was interviewed. Similar to Ms. Stenson, Ms. Wilken's interview was held in executive session without prior notice. "When I arrived for my interview, I learned that it would be conducted in an executive session, rather than in a public forum. This struck me as unusual. Had I been informed and been aware that I could object to the closed-door discussion, I would have expressed my concern and requested that my interview be conducted in a public session." Declaration of Marilyn Wilkins (Exhibit 3 at ¶ 2.)

41. Like Stenson, Wilkens was also questioned about her vote on a high-profile case:

> During my reappointment interview in executive session, it was explained that there was dissatisfaction with my vote on a particular commutation of sentence case; I was informed that I had not voted in accordance with the way the Governor's staff (representing the Governor in the interview), had preferred as an outcome on the case, clearly then indicating the Governor's Office displeasure with my vote.
>
> Specifically Scott Smith, who at that time was the Deputy Chief of Staff for Governor Jan Brewer, and also a member of the candidate Selection Committee, was displeased that I voted to reduce the sentence of Robert Flibotte, a 74-year first-time male sex offender who had been sentenced to 90 years prison time for possession of child pornography. I explained during my interview, the facts and case history to the Selection Committee members, that I employed in finalizing my decision to vote a recommendation for a reduction in sentence. Mr. Smith was face-to-face with me, with about five inches separating us. He was shaking his finger at me and told me in a raised voice, almost yelling at me, that I voted to let a "sex offender" go. He became very agitated, refusing to accept the tenets of my explanation, which outlined that Mr. Flibotte would be under probation the remainder of his life and also supervised

> by Gila County Probation Services and would be required to publicly register as a sex offender. This discussion concluded my candidate interview with the Committee.

(*Id*. at ¶ 4.)

42. Ms. Wilkens also believes that she was not reappointed because of her voting record and intent to remain independent of the Governor.

> I have concluded that I was not reappointed to continue my service with the Board because the Governor's office does not want to receive clemency recommendations from Board members in high-profile cases.

(*Id*. at ¶7 .)

43. The fact that the previous members had been removed as punishment for their votes was made known to the new appointees who replaced them. Former Member Melvin Thomas, who resigned from the Board in August, 2013, declares, "I was aware that three Board members who left before me were forced out because each one had recommended clemency in on or more cases that got sent up to Governor Brewer." Declaration of Melvin Thomas. (Exhibit 4 at ¶ 3.) Thomas also stated, "The other members of the Board while I served were also aware that their predecessors lost their jobs because of how they voted." (*Id*. at ¶ 4.)

44. Mr. Thomas swore under oath that, "At least one Board member who had voted for clemency received a letter from the Governor's office informing him or her that the Governor was displeased with his or her vote. I know about this letter because one of the individuals who received one showed it to me." (*Id*.)

45. During the time Mr. Thomas and Mr. Hernandez served on the Board members of the Governor's staff acting as agents of the Governor, including Defendant Smith, openly and overtly attempted to influence the votes of the Board on pending matters. Mr. Thomas swore, "On more than one occasion, Chairman

Hernandez informed the Board members that Governor Brewer was unhappy with one of our recent decisions or that she would be unhappy if we voted a certain way in an upcoming case. Mr. Hernandez indicated that he was getting his information from the Governor's office." (*Id*. at ¶ 5.)

46. Although the Board was created by the Arizona legislature to be an independent body *Laird v. Sims*, 147 P. 738, 739-40 (1915,) under Governor Brewer the Board is not independent, at least with respect to high profile cases. Former Chairman Hernandez learned this shortly after being appointed to the Board. Mr. Hernandez has declared under oath, "Soon after I took office I learned that the Board is not independent of the Governor." Declaration of Jesse Hernandez. (Exhibit 5 at ¶ 4.)

47. Defendant Smith, acting on behalf of Defendant Governor Brewer, summoned Hernandez to his office for what Hernandez describes as "come to Jesus" meetings. (*Id*. at ¶ 4.). In the first meeting, Defendant Smith, "lectured [Hernandez] about Governor Brewer's policy to be tough on crime. [Smith] said, 'We don't want another Macumber of Flibotte.' [Hernandez] immediately understood this to mean that Governor Brewer was directing [Hernandez] not to recommend clemency in high-profile cases." (*Id*. at ¶ 4.)

48. Mr. Hernandez has declared that he knew who Defendant Smith was referring to when he mentioned Macumber and Flibotte. He was aware that Mr. Macumber's case has garnered national attention and that the previous board had recommended clemency and Governor Brewer had twice denied Macumber clemency. He also knew that Macumber's son had confronted Brewer at a press conference, embarrassing her and causing her to "shut it down." (*Id*. at ¶ 5.). Mr. Hernandez knew that Flibotte who was serving 90 years for downloading child pornography. The previous board had voted for a partial commutation of sentence. (*Id*. at ¶ 5.) Mr. Hernandez declares, "It was crystal-clear to me that Mr. Smith

was telling me that, as the new Chairman, I was expected to ensure that the Board not recommend clemency in particular kinds of cases." (*Id*. at ¶ 5.)

49. Defendant Smith summoned Hernandez to several more "come to Jesus meetings." Each meeting coincided with a high profile case. Each time, "Smith, or the other members of the Governor's staff would tell me the Governor's philosophy that she must be tough on crime. I was also told that it was important to stay in line with these views 'for the sake of the administration.' The clear implication was that we were not to vote for clemency in the upcoming case." (*Id*. at ¶ 5.)

50. Hernandez declares that the Governor's message is well understood by the other members of the Board which includes Defendants Livingston, Kirschbaum and LaSota. Hernandez states, "During my time on the Board, the other members understood clearly that they risked losing their jobs if they voted contrary to the Governor's wishes and forced her to decide a case that she did not want to decide. For instance, I once mentioned to Ellen Kirschbaum that I noticed that she was 'always a no' vote. She agreed and stated that the reason was that she would imagine, 'What would the Governor think?'" (*Id*. at ¶ 7.)

51. As a result of his experiences on the Board, Hernandez concludes, "Because the Board is not independent from the Governor and members are aware their jobs are at stake, the Board will *never* vote for commutation of a death sentence. There is not even the tiniest sliver of hope that any death-row prisoner will ever get a majority vote recommendation for clemency" (*Id*. at ¶ 8.) (emphasis in original). Mr. Hernandez states that any application would be "a waste of time" because the application would be "automatically turned down." (*Id*. at ¶ 8.)

Facts related to the Arizona Board of Executive Clemency's lack of subpoena authority.

52. On September 16, 2013, Plaintiff's counsel, Assistant Federal Public Defender Timothy M. Gabrielsen, wrote to Brian Livingston, Chairman of the Arizona Board of Executive Clemency ("Board"), to ascertain whether the Board possesses authority to issue subpoenas to private entities to compel the production of evidence in support of a claim for commutation. Declaration of Tim Gabrielsen. (Exhibit 6 at ¶ 2.)

53. After not hearing back from the Chairman, counsel called the Board on September 25, 2013, but was unable to reach the Chairman. (*Id*. at ¶ 3.) Later on that date, the Chairman returned the call and indicated that the Board does not possess subpoena authority. (*Id*.)

54. On September 26, 2013, counsel received a telephone call from counsel for the Board, Assistant Attorney General Kelly Gibson, who indicated she was responding to counsel's September 16, 2013, letter to Mr. Livingston in which counsel requested to know whether the Board possessed subpoena power. (*Id*. at ¶ 4.) Ms. Gibson inquired as to the nature of the entity upon which Plaintiff would serve a subpoena and the subject matter the subpoena would concern. (*Id*. at ¶ 5.)

55. Plaintiff's counsel described briefly that the subpoena would be directed to Behavioral Intervention, Inc. ("BI"), of Boulder, Colorado, which manufactured an electronic monitoring system used to monitor curfew compliance for David Nordstrom, Plaintiff's co-defendant in the Moon homicides and an early suspect in the homicides at the Fire Fighters. (*Id*. at ¶ 6.)

56. Ms. Gibson indicated uncertainty as to whether the Board possessed subpoena power, but further indicated that if a subpoena were issued, there would be no enforcement mechanism to compel compliance. (*Id*. at ¶ 9.) Ms. Gibson stated that she would attempt to obtain a more definitive statement as to subpoena

power and enforceability, and that she would call counsel again later on September 26, 2013.

57. Ms. Gibson has not called back. (*Id*. at ¶ 11.)

Claims for Relief

Claim One

Defendants' Actions have resulted in a non-neutral, arbitrary clemency process in which the governor interference into the Board's operation deprives Plaintiff of his due process and equal protection rights and right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. (42 U.S.C. § 1983)

58. Plaintiff incorporates by reference each and every statement and allegation set forth throughout this complaint as if fully set forth herein.

59. Plaintiff has a constitutionally protected interest in his life which may not be deprived by the state without due process of law. He is entitled to minimum due process guarantees at his clemency hearing which include the right to reasonable notice and an opportunity for a fair hearing and decision makers who do not act in an arbitrary and capricious manner. *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272, 288, (1998)(O'Connor, J., concurring in the result). Reading Justice O'Connor's concurring opinion, which was joined by Souter, Ginsburg and Breyer, JJ., together with Justice Stevens's concurring opinion, a majority of the Court agreed that "[j]udicial intervention might. . . be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process." *Id*.

60. Arizona's due process protections are even broader, requiring that there "must be a hearing in a substantial sense . . . in accordance with the cherished judicial tradition embodying the basic concepts of fair play." *McGee v. Arizona State Bd. of Pardons & Paroles*, 376 P.2d 779, 781 (1962) (quotations and citations omitted). *See State Bd. of Pardons & Paroles v. Superior Court*, 467

P.2d 917, 920, 922 (1970) (Arizona Superior Court has power to review Board proceedings to determine due process in commutation hearing and may return matter to Board for further proceedings); *Banks v. Bd. of Pardons & Paroles*, 629 P.2d 1035 (App.I. 1981). Arizona's guarantee of due process animates and strengthens Plaintiff's right to federal due process in executive clemency.

61. In Arizona, the power to commute or grant reprieve of a sentence of death is vested in the governor by Article 5, Section 5 of the Arizona Constitution, and Arizona Revised Statute § 31-443. (The governor, subject to any limitations provided by law, may grant reprieves, commutations and pardons, after conviction, for all offenses, except impeachment, upon conditions, restrictions and limitations [s]he deems appropriate.)

62. The power of the governor to commute or grant a reprieve of a death sentence is governed by Arizona Revised Statute § 31-402(A). (For all persons who committed a felony offense before January 1, 1994, the board of executive clemency shall have exclusive power to pass upon and recommend reprieves, commutations, paroles and pardons. No reprieve, commutation or pardon may be granted by the governor unless it has first been recommended by the board.)

63. Plaintiff is not eligible to have his death sentence commuted nor may he be granted a reprieve without a favorable recommendation from the clemency board.

64. Defendant Smith, acting as the agent of Defendant Brewer, actively sought to influence the votes of the Board in a secretive, arbitrary, and capricious manner. His actions have had a direct and intended negative impact on Plaintiff's ability to even access executive clemency.

65. Two current board members, in violation of Arizona's open meetings act, have already stated, unequivocally, that they will not vote for clemency for the Edward Schad, whose clemency hearing is scheduled for October 2, 2013. There are only four current sitting members on the Board. Plaintiff cannot receive

a favorable clemency vote because a tie vote of 2-2 is a negative recommendation.[1]

66. It is thus impossible for Plaintiff to receive a full, fair, independent clemency hearing which is guaranteed to him by statute. Nor can he receive a clemency hearing that comports with due process where the majority of qualified board members has already determined the outcome of his application based on arbitrary and capricious factors.

67. Furthermore, Defendant Smith's actions on behalf of Defendant Governor Brewer, have so impacted the Board that it is impossible for any death-row prisoner to access executive clemency while Governor Brewer holds office. Defendant's actions have rendered the Arizona Executive Clemency process hollow.

68. Sworn statements by all five of the most recent members of the Clemency Board, including both of its two Chairpersons, establish that the individuals constitutionally entrusted to decide whether Plaintiff will live or die operate under the constant fear of losing their jobs if their vote displeases Governor Brewer. These declarations show that the Board will not vote to displease Governor Brewer. Those in favor of clemency in high-profile or controversial cases, just like Plaintiff's.

69. Ex-Chairman Hernandez swore that he was called to repeated off-site "come to Jesus" meetings with the Governor's Chief of Staff and told how to vote in multiple cases, and ex-member Thomas in turn swore that Hernandez conveyed these sentiments to the other board members, including those who currently sit.

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[1] This happened to Jeffery Landrigan. The board voted 2-2 in favor of recommending clemency. Paul Davenport, *Arizona panel balks at recommending commutation*, USA Today, Oct. 22, 2010, *available at* http://usatoday30.usatoday.com/news/nation/states/arizona/2010-10-21-3215770724_x.htm (last visited Sept. 27, 2013). However, this tie went to the state and the Board's vote was considered a negative recommendation.

70. Two of the three members currently slated to make recommendations to the Governor whether the next prisoner scheduled for execution, Mr. Schad, should receive mercy have already illegally discussed his fate and decided that they would vote "no." One of these members specifically stated that her anticipated "no" vote was a direct result of her fear of the Governor.

71. These facts establish that not only Board members operate out of fear rather than neutrality, and that the Board in current practical terms, has no constitutional independence. No Arizona death-row prisoner will *ever* have an opportunity for a fair clemency process in Arizona as it currently operates. Arizona's scheme cannot supply Plaintiff with even the minimal constitutional due process to which he is entitled.

72. The system to which Plaintiff is subject to is far worse than the example condemned by the majority in *Woodard*: for Mr. Jones, a flip of the coin might well have proven more likely to produce a favorable result than a clemency proceeding wherein the Board has already avowed not to grant clemency and the Governor expects the members to vote in accordance with her wishes. This violates Plaintiffs right to due process and equal protection, and violates his right to be free from cruel and unusual punishment.

Claim Two

The Board's lack of authority to issue and compel compliance with a subpoena denies Plaintiff his rights to due process of law and to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments because the absence of adequate procedures renders him unable to vindicate a claim of actual innocence at clemency. (42 U.S.C. § 1983)

73. Arizona's clemency Board is not equipped with subpoena authority that would permit Plaintiff to vindicate a claim of innocence.[2] This process

[2] In his habeas investigation, counsel for Plaintiff uncovered material suppressed in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), that tended to refute co-defendant David Nordstrom's alibi that he was on an electronic monitoring system (EMS) at his residence and not at the scene of the crime, which supports Mr. Jones's his claim of innocence. *See Jones v. Ryan*, No. 4:03-cv-00478 (D. Ariz.) Dkt. 106. A Pima county parolee informed Plaintiff's prosecutor before trial that her EMS, which proved to be a BI unit, malfunctioned, but that information was not disclosed to Plaintiff prior to trial.

Undersigned counsel uncovered that David Nordstrom's EMS unit was a BI Model 9000 manufactured by Behavioral Intervention, Inc. ("BI") of Boulder, Colorado, and that BI's EMS units frequently malfunctioned. Plaintiff's counsel attempted to obtain records on the performance and maintenance of BI EMS units from BI, the Pima County Attorney, and the Arizona Department of Corrections ("ADC"), which purchased the EMS units from BI. Letter from Timothy M. Gabrielsen to BI, Inc., June 28, 2013 (Exhibit 7); Letters of Timothy M. Gabrielsen to Kellie Johnson, Chief Criminal Deputy Pima County Attorney, June 25 and August 2, 2013 (Exhibit 8); Letter from Timothy M. Gabrielsen to Charles Ryan, Director, Arizona Department of Corrections, July 2, 2013 (Exhibit 9). Plaintiff learned for the first time, in ADC's response to a public records request, that BI performed the electronic monitoring of David Nordstrom. Letter from Mary Ondreyco, Legal Support Unit Supervisor, Arizona Department of Corrections, to Tim Gabrielsen, July 29, 2013 (Exhibit 10). BI has not responded to Plaintiff's request for records. (Exhibit 6 at ¶ 12.) The Pima County Attorney and ADC have indicated to Plaintiff's counsel that those offices possess no EMS records. *Id*.

These documents are important for clemency because they would inculpate David Nordstrom and exculpate Plaintiff, who has long maintained his innocence and claimed witnesses confused him and Nordstrom.

violates federal due process and the right to be free from cruel and unusual punishment.

74. Plaintiff has a constitutionally protected interest in his life which may not be deprived by the state without due process of law. He is entitled to at least minimal federal due process at his clemency hearing, which includes the right to reasonable notice and an opportunity for a fair hearing and decision makers who do not act in an arbitrary and capricious manner. *See* ¶¶ 59-60, *supra*.

75. Moreover, the Eighth and Fourteenth Amendments, "regardless of the verbal formula employed" categorically prohibit the execution of an innocent person, which is a "constitutionally intolerable event." *Id*. at 419 (O'Connor & Kennedy, JJ., concurring). It is "crystal clear" that the execution of an innocent person violates the Eighth Amendment, because such action "is at odds with any standard of decency that I can imagine." *Id*. at 431-432 (Blackmun, Stevens, Souter, JJ., dissenting).

76. In anticipation of his filing a clemency petition and proceeding to hearing in October, Plaintiff continues to seek to subpoena monitoring and maintenance records from BI with respect to Nordstrom's particular unit, which bore a serial number, and similar units sold to ADC in 1995 and 1996.

77. On September 16, 2013, Plaintiff's counsel wrote to Brian Livingston, Chairman of the Arizona Board of Executive Clemency ("Board"), to ascertain whether the Board possesses authority to issue subpoenas to private entities to compel the production of evidence in support of a claim for commutation. Declaration of Tim Gabrielsen. (Exhibit 6 at ¶ 2.)

78. In a phone conversation on September 25, 2013, the Chairman indicated that the Board does not possess subpoena authority. (*Id*. at ¶ 3.)

79. On September 26, 2013, counsel received a telephone call from counsel for the Board, Assistant Attorney General Kelly Gibson, who indicated she was responding to counsel's September 16, 2013, letter to Mr. Livingston in

which counsel requested to know whether the Board possessed subpoena power. (*Id*. at ¶ 4.) Ms. Gibson inquired as to the nature of the entity upon which Plaintiff would serve a subpoena and the subject matter the subpoena would concern. (*Id*. at ¶ 5.)

80. Plaintiff's counsel described briefly that the subpoena would be directed to Behavioral Intervention, Inc., of Boulder, Colorado, which manufactured the EMS used to monitor curfew compliance for David Nordstrom, Plaintiff's co-defendant in the Moon homicides and an early suspect in the homicides at the Fire Fighters. (*Id*. at ¶ 6.)

81. Ms. Gibson indicated uncertainty as to whether the Board possessed subpoena power, but further indicated that if a subpoena were issued, there would be no enforcement mechanism to compel compliance. (*Id*. at ¶ 9.) Ms. Gibson stated that she would attempt to obtain a more definitive statement as to subpoena power and enforceability, and that she would call counsel again later on September 26, 2013.

82. Ms. Gibson has not called back. (*Id*. at ¶ 11.)

83. The Board's process does not include the power to issue or compel compliance with a subpoena.

84. Forcing Plaintiff to prepare his petition for executive clemency and requiring him to appear at hearing without the Board or state law providing adequate process for compelling the production of evidence that would inculpate David Nordstrom and exculpate Plaintiff would deny Plaintiff his life interest without due process as recognized in *Woodard*.

85. The Board's procedure would also violate the Eighth and Fourteenth Amendments. The Supreme Court admonishes that "[c]lemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, 506 U.S. 390, 411-12 (1993). It has "provided the 'fail safe' in our

criminal justice system" where a prisoner is wrongfully convicted. *Id* at 415. *Herrera* further notes that "[h]istory shows that the traditional remedy for claims of innocence based on evidence, discovered too late in the day to file a new trial motion, has been executive clemency." *Id*. at 417.

86 The Supreme Court recognized in *Harbison v. Bell*, 556 U.S. 180, 193-94 (2009), that federal habeas counsel's discovery of evidence suppressed in violation of *Brady*, which showed that "a third party murdered the victim and that [the petitioner's] co-defendant falsely implicated [the petitioner], could be marshaled together with information about the petitioner's background in a clemency application." *Harbison* cited *Herrera* and reinforced the primacy of clemency as the "fail safe" to allow consideration of newly-discovered evidence of actual innocence, even evidence suppressed in violation of *Brady*, where the evidence could be interposed to stop an execution. 556 U.S. at 192.

87. It is imperative that Arizona's clemency procedures contain provisions for compelling the production of witnesses and documents where a prisoner brings an actual innocence claim based on new evidence or, as here, evidence that was suppressed by prosecutors at the time of trial that might have timely led to the discovery of evidence of innocence.

Claim Three

Defendants conspired under color of state law to deprive high-profile Arizona prisoners access to executive clemency in violation of the Eighth and Fourteenth Amendments to the United States Constitution. (42 U.S.C. § 1985)

88. Plaintiff incorporates by reference each and every statement and allegation set forth in this complaint as if fully set forth herein.

89. To state a claim under 42 U.S.C. § 1985(3), Mr. Jones must allege that the Defendants conspired, "for the purposes of depriving . . . any person or class of persons of the equal protection of the laws," and that the Defendants took action to further the conspiracy, whereby Mr. Jones was "'injured in his person or

property' or [] 'deprived of having and exercising any right or privilege of a citizen of the United States.'" *Griffin v. Breckenridge*, 403 U.S. 88, 102-103 (1971). "There must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Id.* at 102.

90. Here, Defendants acting together have conspired to deprive the class of high-profile prisoners, including death row prisoners, access to executive clemency in violation of the equal protection of the law. As described in detail above, Defendants actively sought to influence the votes of the Board – those who would determine high-profile and death-row prisoners' access to executive clemency. The Governor's representatives held closed, secret "come to Jesus" meetings with, at least, the former chairman of the Board. Despite the requirement that an independent Board determine, based on the facts and circumstances of a case, whether a death-row prisoner is entitled to clemency, those present at these meetings discussed the Governor's wishes regarding clemency votes. The Governor's representatives made clear that the Governor wished the Board to vote to deny clemency in high-profile prisoners' cases. The former chairman of the Board communicated those wishes to the Board. Further, at least one member of the Board was aware that the Governor specifically contacted a Board member regarding his or her vote, and was aware that Board members had been forced off of the Board for recommending clemency in past cases. (Exhibit 4 at ¶ 4, Exhibit 5 at ¶ 7.)

91. The facts described here and above demonstrate that Defendants conspired to deny clemency recommendations for the purposes of depriving high-profile prisoners access to executive clemency. (Exhibit 4 at ¶ 3 and 4, Exhibit 5 at ¶ 4-7). As the former chairmen of the Board has declared, "Because the Board is not independent from the Governor and members are aware their jobs are at stake, the Board will *never* vote for commutation of a death sentence. There is not

even the tiniest sliver of hope that any death-row prisoner will ever get a majority vote recommendation for clemency." (Exhibit 5 at ¶ 8.)

92. Defendants took action to further the conspiracy by writing to express the Governor's wishes regarding clemency, holding the threat of adverse employment consequences over the Board members, and instilling a plan that no death-sentenced prisoner would receive a majority clemency vote. Defendants also furthered the conspiracy by deciding in advance that they would not vote for clemency, invoking the reason "What would the Governor think?" (Exhibit 5 at ¶ 7 and 9.)

93. Mr. Jones is a high-profile prisoner by virtue of his death sentence. As such, he is a member of a class of prisoners against which Defendants have conspired. Defendants have done so with the purpose and effect of injuring his person and depriving him of due process and the equal protection of the law. Mr. Jones is entitled to full and fair clemency proceedings, and to the same process and protections as other prisoners. The conspiracy described above harms Mr. Jones by denying him any possibility of a full and fair clemency hearing and depriving him of his Eighth and Fourteenth Amendment rights to due process and to be free from cruel and unusual punishments.

Prayer for Relief

WHEREFORE, Plaintiff prays for:

(1) Temporary, preliminary, and permanent injunctive relief to enjoin the Arizona Board of Executive Clemency from holding or convening any presently-scheduled consideration of Plaintiff's application for executive clemency or from setting a date for Plaintiff to apply for executive clemency, convening to consider Plaintiff's application for executive clemency, or rendering any recommendation for or against a commutation of his death sentence;

(2) Temporary, preliminary, and permanent injunctive relief to enjoin the Arizona Board of Executive Clemency from convening until a legally-

constituted, legally-performing, conflict-free, and independent Board may be empanelled to fully and fairly consider Plaintiff's Petition for Executive Clemency;

(3) Temporary, preliminary, and permanent injunctive relief to enjoin the Arizona Board of Executive Clemency from convening to consider Plaintiff's Petition for Executive Clemency until the Board provides Plaintiff adequate mechanisms, including the power to subpoena witnesses and documents, to vindicate his rights to present his claims to the Board;

(4) Temporary, preliminary, and permanent injunctive relief to enjoin the Governor of the State of Arizona and her agents or representatives from having contact with the Arizona Board of Executive Clemency, its Chairman, Members or staff for the purposes of discussing clemency petitions;

(5) A declaratory judgment that undue pressure placed on the Board by the Governor and her intermediaries renders the Defendants unable to perform their quasi-judicial duties fairly and impartially and their convening to consider Plaintiff's Petition for Executive Clemency would violate Plaintiff's rights under the Eighth and Fourteenth Amendments to the United States Constitution;

(6) A declaratory judgment that Defendants denying Plaintiff the right to subpoena witnesses and documents relevant to his Petition for Executive Clemency would violate Plaintiff's rights under the Eighth and Fourteenth Amendments to the United States Constitution;

(7) Temporary, preliminary, and permanent injunctive relief to enjoin Defendants, their officers, agents, servants, employees, and all persons acting in concert with them from carrying out Plaintiff's warrant of execution until such time as Defendants can demonstrate that measures are in place to ensure Plaintiff's clemency process and execution comply with the Eighth and Fourteenth Amendments to the United States Constitution.

(8) Appropriate and necessary discovery and an evidentiary hearing to permit Plaintiff to prove his constitutional claims;

(9) Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and the laws of the United States;

(10) Costs of the suit; and

(11) Any such other relief as the Court deems just and proper.

Respectfully submitted this 1st day of October 2013.

Jon M. Sands
Federal Public Defender
Dale A. Baich
Timothy M. Gabrielsen
Assistant Federal Public Defenders

s/ Timothy Gabrielsen
Counsel for Petitioner-Appellant

Certificate of Service

I hereby certify that on October 1, 2013 , I electronically filed the foregoing Complaint for Equitable, Injunctive, and Declaratory Relief [42 U.S.C. § 1983 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 L. Hanson
Legal Assistant
Capital Habeas Unit

Exhibit Index

Exhibit 1 – Declaration of Duane Blecher

Exhibit 2 – Declaration of Ellen Stenson

Exhibit 3 – Declaration of Marilyn Wilkins

Exhibit 4 – Declaration of Melvin Thomas

Exhibit 5 – Declaration of Jesse Hernandez

Exhibit 6 – Declaration of Tim Garielsen

Exhibit 7 – Letter from Timothy M. Gabrielsen to BI, Inc., June 28, 2013

Exhibit 8 – Letters of Timothy M. Gabrielsen to Kellie Johnson, Chief Criminal Deputy Pima County Attorney, June 25 and August 2, 2013

Exhibit 9 – Letter from Timothy M. Gabrielsen to Charles Ryan, Director, Arizona Department of Corrections, July 2, 2013

Exhibit 10 – Letter from Mary Ondreyco, Legal Support Unit Supervisor, Arizona Department of Corrections, to Tim Gabrielsen, July 29, 2013

Exhibit 1

Declaration of Duane Belcher

I, Duane Belcher, under penalty of perjury, state the following to be true and accurate to the best of my personal recollection and knowledge.

1. I served on/for the Arizona Board of Executive Clemency (the "Board") in the following capacities from approximately 1992 until April 23, 2012: Board Member, Chairman, Chairman/Executive Director, and Executive Director.

2. My last term ended in January, 2011, however, I continued serving on the Board until April, 2012 when a new Board Member was nominated and subsequently confirmed by the Arizona State Senate. I had previously submitted an application to be re-appointed to serve another term on the Board. I was informed that I would not be considered for re-appointed to the Board but was asked if I were willing to remain with the Board for a period of time to serve in a training capacity for the three new incoming Board Members.

3. In my view, my vote as a Board Member was mine to make based on the information (documents and testimony) that I received during a public hearing. The Governor could not "own my vote"; only I could. I always voted my conscience.

4. In early 2012, I had a meeting with Joe Sciarotta and Scott Smith, General Counsel and Deputy Chief of Staff to Governor Brewer. They were direct, and made it clear to me, that the Governor's office was unhappy with my vote to recommend clemency for William Macumber in 2009 and again in 2011. I was told that the Governor was "blindsided" by the Board's vote to recommend Clemency in the Macumber case. They also questioned me regarding the Board's vote to recommend clemency in the case of Robert Flibotte ADC #265716. The aforementioned were considered to be high profile cases.

5. If the Board voted against recommending clemency, the matter ended, however, if the Board voted to recommend clemency, the case would then be submitted to the Governor for her to accept or reject. In my view the Governor's Office was attempting to influence the Board's vote in certain cases that were recommended for executive clemency.

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6. I was abruptly terminated on April 23, 2012, by Scott Smith from my training agreement. Earlier that day, the three new members of the Board had failed to show up for hearings at the scheduled beginning time, leaving members of the public waiting due to insufficient number of Board Members to conduct hearings. Although no official reason was given in writing, I was informed by Scott Smith that I should have contacted the new Board Members and made sure that they were present.

7. I served on the Board for approximately 20 years. When Governor Brewer decided to replace three Board members (including myself) at one time, I was quite surprised. During my tenure with the Board, I had never seen a time where an Arizona Governor had replaced so many Board members at one time. It was my opinion that the Governor's office wanted Board Members who would vote the wishes of her office, rather than vote their conscience, based on the facts and circumstances of each case.

Signed this 26th day of September, 2013.

Duane Belcher

Duane Belcher

Exhibit 2

Declaration of Ellen Stenson

I, Ellen Stenson, under penalty of perjury, state the following to be true and accurate to the best of my personal knowledge, information and belief:

1. I served as a Member on the Arizona Board of Executive Clemency (the "Board") from 2007, when I was appointed by Governor Napolitano, until April of 2012.

2. When my term expired in 2012, I had hoped to continue to serve on the Board. I applied to maintain my position but was not chosen by Governor Brewer. My replacement occurred at the same time as those of Chairman Duane Belcher, who had served for at least twenty years, and Member Marilyn Wilkens. All three of us wished to remain on the Board, and we expressed that wish to the Governor's Office. I was very surprised that the Governor nevertheless replaced three of the five-member Board at once. It appeared to be an unusual, if unprecedented event. The Governor's action did not make sense to me because I believed it would be very difficult to select and adequately train a chairperson and two members before their votes were needed. I believed that it would be unfair to the inmates, the victims' families, and anyone else involved in the process.

3. Our ousters in April 2012 generated significant press because it was an unusual event. The Governor's spokesperson was quoted in the press stating that our departures were not forced in retaliation for any of our previous votes. However, my experience during my interview with the Executive Clemency Selection Committee ("Committee) led me to conclude that this was not true.

4. My 2012 interview was a very different experience from my 2007 interview. Committee members interviewing me in 2012 included Scott Smith, Joe Sciarotta, Eileen Klein, Linda Stiles, and one other individual. However, in contrast to my previous interview, which was more of a relaxed conversation among the Committee and myself, this interview was short and combative. Scott Smith ran the show, and most of the interview consisted of Mr. Smith firing questions at me.

5. Mr. Smith specifically asked me whether I stood by my 2009 vote to recommend commutation for Bill Macumber, a man who had served over 30 years for a murder and had brought forth substantial evidence to the Board that he was innocent. Governor Brewer had denied Mr. Macumber clemency in November 2009, in spite of the Board's unanimous recommendation of five pro-clemency votes. Her decision made national news and generated significant criticism. Two years later, Mr. Macumber was permitted to re-apply for clemency. Mr. Belcher and I were the only still-sitting Board

members from the 2009 Board which had unanimously recommended clemency. His hearing was scheduled for March, 2012. However, well before the hearing date was scheduled, I had a trip planned to Ohio to assist my sister in adopting two children, and the trip could not be rescheduled. I understand that the 2012 vote was 2-2, with Chairman Belcher and Member Jack LaSota voting for clemency and Ellen Kirschbaum and Marilyn Wilkens voting against it. Because there was a tie, the case was not sent to the Governor to decide. Had I been able to be present for the vote, assuming that the evidence was substantially the same as in 2009, I would have voted again to recommend clemency, and the case would have gone to the Governor again. At the time of my Committee interview in 2012, Mr. Macumber was still imprisoned, and so it was quite possible that his case would come before the Board again.

6. My response to Mr. Smith's question whether I stood by my 2009 vote was Yes. I told him that I still believed that Mr. Macumber deserved a chance at parole and that I would stand by my 2009 vote. I was not reappointed. I believe that my 2009 Macumber vote in combination with my interview response that I did not regret my 2009 vote and my indication that I would likely vote the same way, if given the chance, influenced the Governor's decision to oust me from the Board.

7. Another event that concerned me was that in 2009, shortly after Governor Brewer took office, the legislature voted to significantly reduce our pay and our benefits. The annual salary was suddenly reduced from approximately $47,000 to $37,000, and we lost benefits. My understanding is that the Governor's office had lobbied for these cuts. It appeared to me that the clemency Board was the only public agency to receive these kind of salary and benefits cuts at this time. Therefore, I contacted the Arizona Department of Administration to inquire, and I was told that I was correct: no other state agency had been targeted for salary and benefits cuts at this time and that the office was not aware that this had ever been done before. At least one previous Board member left as a direct result of the cuts.

Signed this 30th day of September, 2013, in Maricopa County, Phoenix, Arizona.

Ellen Stenson

Exhibit 3

Declaration of Marilyn Wilkens

I, Marilyn Wilkens, under penalty of perjury, state the following to be true and accurate to the best of my personal knowledge:

1. I served on the Arizona Board of Executive Clemency (the "Board") from January of 2010, when I was appointed by Governor Jan Brewer to fill a vacant position, until April of 2012.

2. At that point, I applied for reappointment to my seat on the Board. I had wanted to continue to serve with my Board colleagues and participate with the important deliberative work of the panel. I was scheduled for an interview by the Executive Clemency Selection Committee, ("Committee"). When I arrived for my interview, I learned that it would be conducted in an executive session, rather than in a public forum. This struck me as unusual. Had I been informed and been aware that I could object to the closed-door discussion, I would have expressed my concern and requested that my interview be conducted in a public session.

3. During my reappointment interview in executive session, it was explained that there was dissatisfaction with my vote on a particular commutation of sentence case; I was informed that I had not voted in accordance with the way the Governor's staff (representing the Governor in the interview), had preferred as an outcome on the case, clearly then indicating the Governor's Office displeasure with my vote.

4. Specifically Scott Smith, who at that time was the Deputy Chief of Staff for Governor Jan Brewer, and also a member of the candidate Selection Committee, was displeased that I voted to reduce the sentence of Robert Flibotte, a 74-year first-time male sex offender who had been sentenced to 90 years prison time for possession of child pornography. I explained during my interview, the facts and case history to the Selection Committee members, that I employed in finalizing my decision to vote a recommendation for a reduction in sentence. Mr. Smith was face-to-face with me, with about five inches separating us. He was shaking his finger at me and told me in a raised voice, almost yelling at me, that I voted to let a "sex offender" go. He became very agitated, refusing to accept the tenets of my explanation, which outlined that Mr. Flibotte would be under probation the remainder of his life and also supervised by Gila County Probation Services and would be required to publicly register as a sex offender. This discussion concluded my candidate interview with the Committee.

5. I am comfortable with, and committed to, thoughtfully speaking my mind. This was true for the 34 years I worked as a state employee and the subsequent two plus years I served as a public appointee. When presented with cases, I proceeded to review, deliberate and ultimately vote, commensurate with the facts and records made available to each of us on the Board.

6. In the Flibotte case, the elderly offender had significant support for a sentence reduction from his resident community in Payson, and this was after his case had received substantial ongoing media attention. The Board voted to recommend a sentence reduction for Mr. Flibotte, and the case was subsequently sent to Governor Brewer for a final decision. Governor Brewer denied the Boards' clemency recommendation in the matter of this case.

7. I have concluded that I was not reappointed to continue my service with the Board because the Governor's office does not want to receive clemency recommendations from Board members in high-profile cases. Board recommendations, which obligate the Governor's authority to provide a decision in a publicly visible and hence potentially controversial matter, appear to not be a preferred option in the relationship between the Board and the Executive Branch. That subtlety in desired Board case outcomes, by this Governor, and her current staff, may have been too easily misunderstood by myself and other former and current Board members.

Signed this 26 day of September, 2013, in Maricopa County, Arizona.

Marilyn Wilkens

Exhibit 4

Declaration of Melvin Thomas

I, Melvin Thomas, under penalty of perjury, state the following to be true and accurate to the best of my personal knowledge:

1. I served as a member of the Arizona Board of Executive Clemency (the "Board") from April 9, 2012, until my resignation on August 5, 2013. I was appointed by Governor Brewer on April 3, 2012, and I swore my loyalty oath of office on April 9, 2012.

2. I was appointed to the Board by Governor Brewer at the same time that Chairman Jesse Hernandez and Member Brian Livingston were appointed to the Board. We were appointed to succeed three outgoing members: Chairman Duane Belcher, Member Marilyn Wilkens, and Member Ellen Stensen.

3. During my time on the Board, my votes were dictated by my conscience. I did not worry about whether my votes were likely to make Governor Brewer or anybody else on the Board unhappy. I was aware that the three Board members who left before me were forced out because each one of them had recommended clemency in one or more cases that got sent up to Governor Brewer. At least one Board member who had voted for clemency received a letter from the Governor's office informing him or her that the Governor was displeased with his or her vote. I know about this letter because one of the individuals who received one showed it to me.

4. The other members of the Board while I served were also aware that their predecessors had lost their jobs because of how they voted. I knew that it was possible that I too could lose my job as a result of how I voted, but this did not affect my votes. I simply made sure I was prepared to go at any time, in case I was dismissed. I never received any kind of letter expressing displeasure with any of my votes. However, even if I had, it would not have made a difference to me because, at the end of the day, what matters is that I act with honor and integrity.

5. On more than one occasion, Chairman Hernandez informed the Board members that Governor Brewer had been unhappy with one of our recent our decisions or that she would be unhappy if we voted a certain way in an upcoming case. Mr. Hernandez indicated that he was getting his information from the Governor's office. However, I was not concerned, and I voted as I thought was right. Mr. Hernandez did not sit on most of the cases we heard, but he did sit on most of the high-profile cases that came before us.

Signed this 16th day of September, 2013, in Maricopa County, Phoenix, Arizona.

Melvin Thomas

Exhibit 5

Declaration of Jesse Hernandez

I, Jesse Hernandez, under penalty of perjury, state the following to be true and accurate to the best of my personal knowledge:

1. I served as Chairman and Director of the Arizona Board of Executive Clemency (the "Board") from April 19, 2012, until my resignation on August 16, 2013. I was appointed by Governor Brewer on April 3, 2012, and I swore my loyalty oath of office and was confirmed by the State Senate on April 19, 2012.

2. I was appointed to the Board by Governor Brewer at the same time that Melvin Thomas and Brian Livingston were appointed to the Board. We were appointed to succeed three outgoing members: Chairman Duane Belcher, Member Marilyn Wilkens, and Member Ellen Stensen.

3. The person who initially approached me about a position on the Board was Governor Brewer's Deputy Chief of Staff, Scott Smith. I interviewed with the Executive Clemency Nominating Committee at the end of March 2012, and was informed that I had been chosen by the Governor to serve as Chairman.

4. Soon after I took office, I learned that the Board is not independent from the Governor. Not long after I was sworn in, I was called to the first of several "come to Jesus" meetings with Scott Smith or other individuals representing Governor Brewer. Some of these meetings took place at the Governor's offices. Others took place at various non-office locations, including Starbucks. At this first meeting, Mr. Smith lectured me about Governor Brewer's policy to be tough on crime. He said, "We don't want another Macumber or Flibotte." I immediately understood this to mean that Governor Brewer was directing me not to recommend clemency in high-profile cases.

5. When Mr. Smith made this statement, I was well aware that "Macumber" referred to the high-profile case of Bill Macumber, who had served more than 30 years for a murder many people believed he did not commit. Previous boards voted twice to recommend that he receive clemency, and Governor Brewer twice denied his application. I was aware that the Governor received negative press as a result of her decisions and that Mr. Macumber's ~~brother~~ son had complained so vocally at a television news conference that the Governor had been forced to shut it down. I was also aware that "Flibotte" referred to another case in which the previous Board had voted to commute a portion of a sentence of 90 years for offenses of downloading pornography. It was crystal-clear to me that Mr. Smith was telling me that, as the new

Chairman, I was expected to ensure that the Board not recommend clemency in particular kinds of cases, rather than voting according to our consciences.

6. I was also called to several more of these "come to Jesus" meetings with Smith or others from the Governor's office over the next several months. The meetings coincided with high-profile cases that the Board was scheduled to decide. One involved the Tim Casner case, and another involved Betty Smithey. Again, Smith or the other member of the Governor's staff would tell me the Governor's philosophy that she must be tough on crime. I was also told that it was important to stay in line with these views "for the sake of the administration." The clear implication was that we were not to vote for clemency in the upcoming case.

7. Another reason that the Governor's message to me was so clear was that the rest of the Board and I were well aware that the three members of the previous Board had been ousted as a result of their pro-clemency votes in the Macumber or other cases. During my time on the Board, the other members understood clearly that they risked losing their jobs if they voted contrary to the Governor's wishes and forced her to decide a case that she did not want to decide. For instance, I once mentioned to Ellen Kirschbaum that I noticed that she was "always a no" vote. She agreed and stated that the reason was that she would imagine, "What would the Governor think?"

8. Because the Board is not independent from the Governor and members are aware that their jobs are at stake, the Board will *never* vote for commutation of a death sentence. There is not even the tiniest sliver of hope that any death-row prisoner will ever get a majority vote recommendation for clemency. In December of 2012, death row prisoner Richard Stokley was scheduled to be executed. Mr. Stokley wrote the Board a letter stating that he declined to apply for clemency. He explained that he believed that a commutation hearing would be a waste of time because he knew that his application would automatically be turned down. Mr. Stokley had it right: it would be a waste of time for any death-sentenced prisoner to ask this Board for clemency.

9. A couple of months ago, Brian Livingston sent the Board an email to update us that death-row prisoner Edward Schad had received a stay of execution. I overheard members Kirschbaum, Thomas, and Livingston discussing Mr. Schad's case in the break room. They all agreed that they would not be voting for clemency in his case. Ms. Kirschbaum said something similar to what she had told me before: "I could not put my name on that. What would the Governor think?"

Signed this 23 day of September, 2013, in Maricopa County, Phoenix, Arizona.

Jesse Hernandez

Exhibit 6

DECLARATION OF TIMOTHY M. GABRIELSEN

I, Timothy M. Gabrielsen, declare that the following information is true to the best of my information and belief:

1. I am an assistant federal public defender in the Offices of the Federal Public Defender for the District of Arizona, Capital Habeas Unit. I serve as federal and clemency counsel for Robert Jones.

2. On September 16, 2013, I wrote to Brian Livingston, Chairman of the Arizona Board of Executive Clemency, to ascertain whether the Board possesses authority to issue subpoenas to private entities to compel the production of evidence in support of a claim for commutation.

3. After not hearing back from the Chairman, I called the Board's offices on September 25, 2013, but was unable to reach the Chairman. I left a message for him to call me. Later on that date, the Chairman returned the call and indicated that the Board does not possess subpoena authority. He also indicated that Mr. Jones' clemency hearing would be set for October 16, 2013, and that formal notice would be sent around September 30, 2013.

4. On September 26, 2013, I received a telephone call from counsel for the Board, Assistant Attorney General Kelly Gibson, who indicated she was responding to my letter of September 16, 2013, to Chairman Livingston.

5. Ms. Gibson inquired as to the nature of the entity for which I wanted the Board to authorize a subpoena and the subject of the subpoena.

6. I indicated that the subpoena would be directed to Behavioral Intervention, Inc. ("BI"), of Boulder, Colorado. I further indicated that I had learned that BI had manufactured the electronic monitoring system ("EMS") used to monitor curfew compliance for David Nordstrom, Mr. Jones' co-defendant in two homicides at the Moon Smoke Shop and an early suspect in the four homicides at the Fire Fighters Union Hall on May 30 and June 13, 1996, respectively.

7. I indicated that I had learned that BI sold EMS systems to the Arizona Department of Corrections, whose responsibility was, at the time Nordstrom was on parole in 1996, to provide electronic monitoring of Arizona parolees such as Mr. Nordstrom.

8. I also indicated to Ms. Gibson that I had learned that EMS systems manufactured by BI were alleged to have malfunctioned in other jurisdictions and that I was interested in learning whether Nordstrom's unit could have provided a false alibi for him in Mr. Jones' case.

9. Ms. Gibson indicated uncertainty as to whether the Board possessed subpoena power, but further indicated that she did not believe there was any enforcement power if the target of a subpoena refused to comply with it.

10. Ms. Gibson stated that she would look into the matter and would call me with a more definitive statement if one were available. She indicated that she would try to call again later on September 26, 2013, because she understood that time is of the essence due to Mr. Jones' execution date.

11. As of this date, I have not received another call from Ms. Gibson.

12. Although I wrote to Behavioral Intervention, Inc., on June 28, 2013, to obtain electronic monitoring records, I have not received any response from BI.

13. The Pima County Attorney's Office and the Arizona Department of Corrections have indicated that they searched for relevant records pertaining to the EMS unit used on David Nordstrom, EMS records generally, and records pertaining to BI, but they have found none.

Signed this 27th day of September, 2013, in Tucson, Arizona.

Timothy M. Gabrielsen

Exhibit 7

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

June 28, 2013

BI Incorporated
6400 Lookout Road
Boulder, CO 80301

Re: State of Arizona v. Robert Glen Jones, Pima County No. CR-57526

To Whom It May Concern,

Our office was very recently appointed to represent Mr. Jones in the U.S. Court of Appeals for the Ninth Circuit in federal habeas corpus appeals. We have also entered an appearance for Mr. Jones in the U.S. Supreme Court. These proceedings stem from his capital murder convictions in Pima County, Arizona, in 1998. The State of Arizona has requested an execution date by the state supreme court. We respectfully inform you that time is of the essence.

A co-defendant, David Nordstrom, was suspected in the homicides for which Mr. Jones was convicted and sentenced to death. He pleaded guilty to lesser charges in exchange for his testimony against Jones. Nordstrom was on parole at the time of the homicides and being monitored through the Arizona Department of Corrections my means of a BI 9000 Series Offender Electronic Monitoring system. That EMS system was employed as an alibi by Mr. Nordstrom to deflect suspicion that he was involved in the homicides at one of two crime scenes in Tucson on June 13, 1996. He acknowledged being present at a first homicide scene on May 30, 1996.

We seek to review the effectiveness of the BI 9000 units in use by the Arizona Department of Corrections and its Parole Department, and Arizona county law enforcement and courts between January 25, 1996, the date Nordstrom was connected to the EMS, and June 13, 2013, as reflected in, but not limited to, records of sales of the units to those offices, units returned to BI for maintenance or repair, complaints received about defective products, or other correspondence received from Arizona authorities with respect to the BI 9000. We also seek forms or reports generated by BI that reflect the collection or gathering of that data. If available, we also seek data from BI with respect to data gathered from other entities nationally that reflect the performance of the BI 9000 during that period.

We ask that you provide the Capital Habeas Unit with a complete, accurate and legible copy of all files pertaining to BI 9000 Series Offender Electronic Monitoring system. We also request a cover letter certifying that you are providing us with a complete and accurate copy of all requested records. If records have been destroyed due to a records retention policy, please so indicate. If your office withholds any materials, please provide us with a list of materials withheld and a written explanation identifying the basis for that withholding.

We appreciate your expediency in processing this request.

Please call me at (520) 879-7570 or e-mail me at tim_gabrielsen@fd.org to advise me of the costs associated PRIOR TO STARTING ANY DUPLICATION. Our office cannot process any payments without prior authorization. Thank you for your cooperation.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Exhibit 8

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

COPY

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

June 25, 2013

Ms. Kellie Johnson
Chief Criminal Deputy County Attorney
Pima County Attorney's Office
32 N. Stone, Suite 1400
Tucson, Arizona 85701

Re: State of Arizona v. Robert Glen Jones, CR-57526

Dear Ms. Johnson,

Our office was recently appointed to represent Mr. Jones in the U.S. Supreme Court and in any additional federal habeas proceedings. These proceedings stem from his capital murder conviction in Pima County in 1998.

We request an opportunity to review the Pima County Attorney's case files, pursuant to your office's open file policy, so that we may identify and duplicate any and all documents or items that we do not currently have for our files.

Please contact me at 520-879-7570 or Andrew Sowards, my lead investigator at 520-879-7654, with any question regarding this request. We hope to schedule a mutually convenient time to view the file as soon as possible. Thank you in advance for your cooperation and assistance in this matter.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

Cc: Lacey Stover Gard

Office of
FEDERAL PUBLIC DEFENDER
for the District of Arizona
Capital Habeas Unit

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

August 2, 2013

Ms. Kellie Johnson
Chief Criminal Deputy County Attorney
Pima County Attorney's Office
32 N. Stone, Suite 1400
Tucson, Arizona 85701

Re: State of Arizona v. Robert Glen Jones, CR-57526

Dear Ms. Johnson,

Recently you granted our office the opportunity to review the Pima County Attorney's case files for both Robert Jones and Scott Nordstrom. I thank you for setting aside time for our investigator, Andrew Sowards, to be able to come to your offices and review that material.

In review of the case files, we did not notice any documents pertaining to communication between your office and BI, Incorporated, the company that manufactured the BI Model 9000 electronic monitoring units in use by the Arizona Department of Corrections and its Parole Department in 1996, the period of time Mr. Jones' co-defendant David Nordstrom was connected to the EMS device while on parole. You may know the EMS records served as David's alibi for four of the six Pima County homicides for which he was a suspect. You may know that there were complaints against BI, Inc. in several jurisdictions for parolees or detainees evading detection when in violation of curfew, who committed sometimes violent crimes.

We are attempting to obtain records in the possession of BI, Inc. and Arizona DOC, law enforcement and prosecuting agencies that document sales, maintenance and repairs of BI Model 9000 EMS units used to monitor Arizona parolees or detainees in the period that included 1996. I respectfully ask that your office review its files to detennine whether such correspondence or other records exist. If they do, I would ask that your office contact me.

Thank you again for your continued assistance in facilitating access to a complete copy of the case file.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

Cc: Lacey Stover Gard

Exhibit 9

Office of
FEDERAL PUBLIC DEFENDER
for the **District** of Arizona
Capital Habeas Unit

COPY

Jon M. Sands
Federal Public Defender

Direct line: (520) 879-7570
email: tim_gabrielsen@fd.org

July 2, 2013

Mr. Charles Ryan, Director
Arizona Department of Corrections
1601 West Jefferson
Phoenix, AZ 85007

Mr. Paul O'Connell
Operations Manager
Community Corrections
Arizona Department of Corrections
1601 West Jefferson
Phoenix, AZ 85007

Re: Robert Glen Jones, ADC #070566,
State of Arizona v. Robert Glen Jones, Pima County No. CR-57526;

David Nordstrom, ADC #097612
State of Arizona v. David Nordstrom, Pima County No. CR-55947

Dear Director Ryan and Mr. O'Connell:

Our office very recently was appointed to represent Robert Jones in his death penalty appeals in the U.S Court of Appeals for the Ninth Circuit. We also just notified the Arizona Supreme Court that we will represent Mr. Jones with respect the motion filed by the State of Arizona for a warrant of execution, which was filed on June 25, 2013.

We respectfully request all parole records, including all electronic monitoring records, on David Nordstrom, Robert Jones' co-defendant in two homicides for which Mr. Jones was convicted and sentenced death in the above-captioned Pima County case. Time, obviously, is of the essence. The offenses took place at The Moon Smoke Shop in Tucson on May 30, 1996. Mr. Nordstrom pleaded to lesser offenses, testified against Mr. Jones and his brother, Scott Nordstrom, in their separate trials, served time in prison, and was released by ADC.

David Nordstrom was suspected of four additional homicides with Mr. Jones and his brother Scott on June 13, 1996, at the Firefighters Union Hall in Tucson. His alibi for those offenses was that he was on home arrest for a prior conviction at the time of those homicides and was monitored by the ADC's parole department. We believe Nordstrom was monitored by means of a BI 9000 Series Offender Electronic Monitoring system, which was manufactured by BI, Inc., a Colorado company. He was connected to the unit on January 25, 1996.

We seek to review the information in your possession with respect to BI 9000 units in use by ADC and its Parole Department between January 1, 1996, and June 30, 2013, as reflected in, but not limited to, ADC's records of purchase of EMS systems from BI, reports of units returned to BI for maintenance or repair, complaints issued by ADC to BI regarding defective or malfunctioning products, or other correspondence sent to BI with respect to the BI 9000 or other BI EMS systems in use in Arizona at the time if Nordstrom was, in fact, monitored by some other model. We also seek forms or reports generated by ADC that reflect the collection or gathering of data in Arizona concerning BI's EMS systems.

We appreciate your expediency in processing this request.

Please call me at (520) 879-7570 or e-mail me at tim_gabrielsen@fd.org to advise me of the costs associated PRIOR TO STARTING ANY DUPLICATION. Our office cannot process any payments without prior authorization. Thank you for your cooperation.

Sincerely,

Tim Gabrielsen
Assistant Federal Public Defender

407 W. Congress Street, Suite 501, Tucson, Arizona 85701
(520) 879-7614 / (800) 758-7054 / facsimile (520) 622-6844

Exhibit 10

Arizona Department of Corrections

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov

JANICE K. BREWER
GOVERNOR

CHARLES L. RYAN
DIRECTOR

July 29, 2013

Tim Gabrielsen
Office of the Federal Public Defender- District of Arizona
407 W. Congress, Suite 501
Tucson, Arizona 85701

Re: Public Records Request - Robert Glenn Jones, ADC #070566, State of Arizona v. Robert Glen Jones, Pima County No. CR 57526-David Nordstrom, ADC #097612, State of Arizona v. David Nordstrom, Pima County No. CR 55947

Dear Mr. Gabrielsen:

I am responding on behalf of Director Ryan and Paul O'Connell to your written request dated July 2, 2013. The Arizona Department of Corrections (ADC) does not have any responsive records. ADC ceased using the BI 9000 electronic monitoring system in 2005. Under ADC's record retention schedule, contracts and requests for purchases are retained for six years after the fiscal year the contract was fulfilled, canceled or revoked. Similarly, purchase order records issued under contract are retained for six years after the fiscal year created or received. Per your request, I have enclosed a copy of the applicable policies. ADC is checking with archives to see if there are stored records responsive to your request. I will forward any responsive records if located by the records management center at the Arizona State Library Archives, and Public Records. A minute entry from the Pima County Superior Court dated April 23, 1997, indicates that inmate Nordstrom's parole records were provided to his attorney Laura Udal. I have enclosed a copy of the minute entry for your convenience.

In regard to your request for monitoring reports or data generated by or in connection with the EMS worn by inmate Nordstrom, the inmate was monitored electronically by BI and the monitoring system was maintained electronically by BI. ADC has no records responsive to this request. Please let me know if you have any questions. I can be reached me at 602-542-4916.

Sincerely,

Mary Ondreyco
Legal Support Unit Supervisor

Enclosures as stated

cc: Paul O'Connell, Director Community Corrections
Jeff Zick, Division Chief Capital Appeals, Assistant Attorney General
Dawn Northup, General Counsel
CLR 83107287

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Robert Glen Jones, Jr.

(b) County of Residence of First Listed Plaintiff Pinal
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Timothy M. Gabrielsen, 407 W. Congress St., Suite 501, Tucson, AZ 85701 520-879-7500: Dale A. Baich, 850 W. Adams St, Suite 201, Phoenix, AZ 85007 602-382-2816

DEFENDANTS

Janice K. Brewer, Governor of Arizona, Scott Smith, Brian Livingston, John Lasota, Ellen Kirschbaum, Donna Harris,

County of Residence of First Listed Defendant Maricopa
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Kelley Gillilan-Gibson

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☒ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☒ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. § 1983

Brief description of cause:
Due process violation/government interference with clemency board

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 0.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Silver DOCKET NUMBER 2:13-cv-01962-ROS

DATE 10/01/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Robert Glen Jones, Jr. 070566
Name and Prisoner/Booking Number
Arizona State Prison Complex
Place of Confinement
ASPC, Eyman-Browning Unit, P. O. Box 3400
Mailing Address
Florence, AZ 85132
City, State, Zip Code

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Robert Glen Jones Jr., Plaintiff, vs. _____, Defendant(s).	CASE NO. _____ APPLICATION TO PROCEED *IN FORMA PAUPERIS* BY A PRISONER CIVIL (NON-HABEAS)

I, Robert Glen Jones, Jr., declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

1. Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained?
☒ Yes ☐ No If "Yes," how many have you filed? 1.
Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? ☐ Yes ☒ No If "Yes," how many of them? _____.

2. Are you currently employed at the institution where you are confined? ☐ Yes ☒ No
If "Yes," state the amount of your pay and where you work. _____

3. Do you receive any other payments from the institution where you are confined? ☐ Yes ☒ No
If "Yes," state the source and amount of the payments. _____

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? ☐Yes ☒No
If "Yes," state the sources and amounts of the income, savings, or assets. _____

I declare under penalty of perjury that the above information is true and correct.

September 19, 2013 Robert Glen Jones
DATE SIGNATURE OF APPLICANT

CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT

I, Robert Glen Jones, Jr., hereby consent to having the designated correctional officials at this institution release to the Court my trust account information. I further consent to having the designated correctional officials at this institution withdraw from my trust account the funds required to comply with the order of this Court for the payment of filing fees in accordance with 28 U.S.C. § 1915(b).

My consent includes withdrawal from my account by correctional officials of partial initial payments to this Court equal to 20% of the greater of:

(A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or

(B) the average monthly balance in my account for the six-month period preceding my filing of this action.

My consent also includes monthly withdrawals from my account by correctional officials of an amount equal to 20% of each month's income. Whenever the amount in my account reaches $10.00, correctional officials will withdraw that amount and forward it to the Court until the required filing fee is paid in full. I understand that I am liable for paying the entire fee, even if my case is dismissed by the Court before the fee is fully paid.

September 19, 2013 Robert Glen Jones
DATE SIGNATURE OF APPLICANT

CERTIFICATE OF CORRECTIONAL OFFICIAL AS TO STATUS OF APPLICANT'S TRUST ACCOUNT

I, C. Stitt 2821, certify that as of the date applicant signed this application:
(Printed name of official)

The applicant's trust account balance at this institution is: CS $53.40 46.09
The applicant's average monthly deposits during the prior six months is: $CS 23.33 14.17
The applicant's average monthly balance during the prior six months is: $CS 8.40 4.06
The attached certified account statement accurately reflects the status of the applicant's account.

9-23-13 C. Stitt C.O. III 2821 ASPC-Eyman
DATE AUTHORIZED SIGNATURE TITLE/ID NUMBER INSTITUTION

ARIZONA DEPARTMENT OF CORRECTIONS
INMATE TRUST ACCOUNTS OFFICE

CERTIFIED STATEMENT OF ACCOUNT

JONES, ROBERT **#070566**

As of **September 20, 2013** , the above named inmate had a spendable and retention amount balance of **$46.09** in his/her trust account. During the past six months, the inmate's average monthly spendable/retention balance was **$4.06** and the average monthly deposit to the inmate's account during this time was **$14.17**

Account statements for the previous six months are as follows:

	Spendable Amount	Total Deposits
March 2013	$11.17	$5.00
April 2013	$1.60	$0.00
May 2013	$4.20	$5.00
June 2013	$6.40	$50.00
July 2013	$0.96	$5.00
August 2013	$0.00	$20.00
TOTAL	$24.33	$85.00
AVERAGE	$4.06	$14.17

Signature of Authorized Employee **September 20, 2013**

ASPC- **EYMAN**
Per Department Order 905-T
Service charge of $.25 per page for **6** pages: **$1.50** due.

Original - Inmate Copy 1 - Institution Inmate Trust Accounts Copy 2 - Central Office Inmate Trust Accounts

03/29/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:15:50 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

PENDING CHECKS: 0.00

NAME: JONES, ROBERT
NUMBER: 070566
STATUS: ACTIVE

BEGINNING BALANCE 03/01/2013:	25.34	HOLD AMOUNTS:	0.00
TOTAL DEPOSITS:	5.00	RETENTION FUND:	0.00
TOTAL WITHDRAWALS:	13.92	DISCHARGE DEP:	5.25
ENDING/CURRENT BALANCE 03/29/2013:	16.42	SPENDABLE AMT.:	11.17
		ENCUMBERED AMT.:	0.00

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE	REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
03/01/2013	A21308	0024	03/01/2013	POSTAGE NON-LGL	COMCHK	POSTAGE NON-LGL		0.10	25.24
03/08/2013	A21920	0061	03/08/2013	STORE PNT OE SL	597224	ORDER-ID 101241L09		11.67	13.57
03/13/2013	A21324	0006	03/13/2013	POSTAGE NON-LGL	COMCHK	POSTAGE NON-LGL		0.05	13.52
03/16/2013	A21999	0228	03/16/2013	UTILITIES	UTILTY	AS OF 20130316		2.00	11.52
03/18/2013	A21210	0042	03/18/2013	MONEY ORDRS/CKS	04432	J. PETERSON	5.00		16.52
03/18/2013	A21750	0055	03/18/2013	ITA FEES	COMCHK	20130318A21210 10		0.05	16.47
03/20/2013	A21331	0029	03/20/2013	POSTAGE NON-LGL	COMCHK	POSTAGE NON-LGL		0.05	16.42

04/30/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:13:47 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

PENDING CHECKS: 0.00

NAME: JONES, ROBERT
NUMBER: 070566
STATUS: ACTIVE

BEGINNING BALANCE 04/01/2013:	16.42	HOLD AMOUNTS:	0.00
TOTAL DEPOSITS:	0.00	RETENTION FUND:	0.00
TOTAL WITHDRAWALS:	9.57	DISCHARGE DEP:	5.25
ENDING/CUERENT BALANCE 04/30/2013:	6.85	SPENDABLE AMT.:	1.60

ENCUMBERED AMT.: 0.00

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
04/12/2013	A21920	0057	04/12/2013	STORE PNT OF SL	628893 ORDER-ID 101260188		7.57	8.85
04/20/2013	A21999	0229	04/20/2013	UTILITIES	UTILTY AS OF 20130420		2.00	6.85

05/31/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:16:24 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

NAME: JONES, ROBERT
NUMBER: 070566
STATUS: ACTIVE

BEGINNING BALANCE 05/01/2013:	6.85	PENDING CHECKS:	0.00
TOTAL DEPOSITS:	5.00	HOLD AMOUNTS:	0.00
TOTAL WITHDRAWALS:	2.40	RETENTION FUND:	0.00
ENDING/CURRENT SALANCE 05/31/2013:	9.45	DISCHARGE DEP:	5.25
		SPENDABLE AMT.:	4.20
		ENCUMBERED AMT.:	0.00

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE	REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
05/03/2013	A21373	0031	05/03/2013	POSTAGE NON-LGL	COMCHK	POSTAGE NON-LGL		0.25	6.60
05/08/2013	A21216	0046	05/08/2013	MONEY ORDRS/CKS	16558	J. PETERSON 3G21	5.00		11.60
05/08/2013	A21751	0055	05/08/2013	ITA FEES	COMCHK	20130508A21216 10		0.05	11.55
05/15/2013	A21379	0149	05/15/2013	POSTAGE NON-LGL	COMCHK	POSTAGE		0.05	11.50
05/18/2013	A21999	0230	05/18/2013	UTILITIES	UTILTY	AS OF 20130518		2.00	9.50
05/29/2013	A21395	0028	05/29/2013	POSTAGE NON-LGL	COMCHK	POSTAGE NON-LGL		0.05	9.45

06/28/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:16:28 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

				PENDING CHECKS:	0.00
NAME:	JONES, ROBERT	BEGINNING BALANCE 06/01/2013:	9.45	HOLD AMOUNTS:	0.00
NUMBER:	070566	TOTAL DEPOSITS:	50.00	RETENTION FUND:	0.00
STATUS:	ACTIVE	TOTAL WITHDRAWALS:	47.80	DISCHARGE DEP:	5.25
		ENDING/CURRENT BALANCE 06/28/2013:	11.65	SPENDABLE AMT.:	6.40
				ENCUMBERED AMT.:	0.00

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE	REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
06/14/2013	A21920	0052	06/14/2013	STORE PNT OF SL	630076	ORDER-ID 101293934		4.20	5.25
06/25/2013	A21230	0002	06/05/2013	MONEY ORDRS/CKS	SUSPEN	L. SEBERT 3G21	50.00		55.25
06/25/2013	A21800	0008	06/15/2013	UTILITIES	COMCHK	AS OF 20130615		2.00	53.25
06/25/2013	A21751	0002	06/25/2013	ITA FEES	COMCHK	20130625A21230 10		0.50	52.75
06/28/2013	A21920	0057	06/28/2013	STORE PNT OF SL	630325	ORDER-ID 101301742		41.10	11.65

07/31/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:11:32 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

NAME: JONES, ROBERT
NUMBER: 070566
STATUS: ACTIVE

BEGINNING BALANCE 07/01/2013:	11.65	PENDING CHECKS:	0.00
TOTAL DEPOSITS:	5.00	HOLD AMOUNTS:	0.00
TOTAL WITHDRAWALS:	10.44	RETENTION FUND:	0.00
ENDING/CURRENT BALANCE 07/31/2013:	6.21	DISCHARGE DEP:	5.25
		SPENDABLE AMT.:	0.96
		ENCUMBERED AMT.:	0.00

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE	REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
07/05/2013	A21920	0050	07/05/2013	STORE PNT OF SL	630389	ORDER-ID 101305738		2.25	9.40
07/11/2013	A21229	0054	07/11/2013	MONEY ORDRS/CKS	04792	J. PETERSON 3G21	5.00		14.40
07/11/2013	A21750	0074	07/11/2013	ITA FEES	COMCHK	20130711A21229 10		0.05	14.35
07/19/2013	A21920	0053	07/19/2013	STORE PNT OF SL	630729	ORDER-ID 101313182		5.14	9.21
07/20/2013	A21999	0222	07/20/2013	UTILITIES	UTILTY	AS OF 20130720		2.00	7.21
07/30/2013	A21453	0008	07/30/2013	COPIES - LEGAL	COMCHK	NOTARY		1.00	6.21

08/30/2013 ARIZONA DEPARTMENT OF CORRECTIONS PAGE 1
18:14:50 BNKO85 INMATE STATEMENT OF ACCOUNT
B10BK85M A27-ASPC-E BROWNING D/RW

PENDING CHECKS: 0.00

NAME: JONES, ROBERT
NUMBER: 070566
STATUS: HOLD

BEGINNING BALANCE 08/01/2013: 6.21
TOTAL DEPOSITS: 20.00
TOTAL WITHDRAWALS: 20.01
ENDING/CURRENT BALANCE 08/30/2013: 6.20

HOLD AMOUNTS: 2.00
RETENTION FUND: 0.00
DISCHARGE DEP: 5.25
SPENDABLE AMT.: 0.00

ENCUMBERED AMT.: 0.95

POST DATE	BATCH NO.	ITEM NO.	RECEIPT DATE	TRANSACTION TYPE	REFERENCE	REMITTER	AMOUNT OF DEPOSIT	AMOUNT OF WITHDRAWAL	REMAINING BALANCE
08/05/2013	A21225	0003	08/05/2013	MONEY ORDRS/CKS	06818	C. VOLZ 3G2	20.00		26.21
08/05/2013	A21750	0004	08/05/2013	ITA FEES	COMCHK	20130805A21225 10		0.20	26.01
08/09/2013	A21920	0061	08/09/2013	STORE PNT OF SL	631041	ORDER-ID 101323918		19.81	6.20
********** SUSPENSE ACCOUNT DETAIL BELOW THIS LINE **********									
08/17/2013	A21999	1694	08/17/2013	UTILITIES	UTILTY	AS OF 20130817		2.00	

ARIZONA DEPARTMENT OF CORRECTIONS

Inmate Letter

Requests are limited to one page and one issue. NO ATTACHMENTS PERMITTED. Please print all information.

Inmate Name (Last, First M.I.)	ADC Number	Institution/Unit	Date
Jones Jr. Robert G	705666	3G17	9/19/13

To:	Location
Co III Stitt	George

State briefly but completely the problem on which you desire assistance. Provide as many details as possible.

Please Send Me A Certified Printout Of My Banking Account For Court Documentation.

Thank You

RECEIVED
SEP 19 2013
ADC

Inmate Signature: Robert G Jones

Date: 9/19/13

Have You Discussed This With Institution Staff? ☐ Yes ☐ No

If yes, give the staff member's name:

Distribution: White - Master Record File Canary - Inmate

916-1
5/13/10