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12 Counsel for Plaintiff

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

15 Edward Harold Schad, Jr.,
16 Plaintiff,

17 v.

18 Janice K. Brewer, Governor of Arizona,
19 Charles L. Ryan, Director, Arizona
20 Department of Corrections, Ron
21 Credio, Warden, Arizona Department
22 of Corrections-Eyman, Lance Hetmer,
23 Warden, Arizona Department of
24 Corrections-Florence
25 Defendants.

Case No. _____

COMPLAINT FOR EQUITABLE,
INJUNCTIVE, AND
DECLARATORY RELIEF [42 U.S.C
§ 1983]

**Execution Scheduled October 9,
2013**

26 **Nature of Action**

27 1. This action is brought pursuant to 42 U.S.C. § 1983 for violations
28 and threatened violations by the Arizona Department of Corrections (“ADC”) of
Plaintiff’s First Amendment right of access to governmental proceedings in the
execution context, and his right to due process under the Fourteenth Amendment
to the United States Constitution.

1 2. This Complaint does not challenge Plaintiff’s underlying capital
2 conviction or sentence of death, nor does it allege that lethal injection as a form of
3 execution is *per se* unconstitutional.

4 3. Plaintiff has reason to believe that ADC intends to execute him with
5 pentobarbital that is expired.

6 4. Plaintiff alleges that Defendants’ failure to provide him with proper
7 notice regarding the pentobarbital ADC intends to use in his execution violates his
8 First Amendment right of access to governmental proceedings in the execution
9 context, and his due-process rights under the Fourteenth Amendment of the
10 United States Constitution.

11 5. Plaintiff alleges that Defendants’ lack of transparency regarding their
12 supply of pentobarbital—demonstrated by their refusal to provide information to
13 him—violates his First Amendment right of access to governmental proceedings
14 in the execution context, and by preventing him from determining that Defendants
15 are capable of carrying out the death sentence in a lawful manner.

16 6. Plaintiff alleges that Defendants unconstitutionally rely on Arizona
17 Revised Statutes section 13-757(C), a statute that protects the identity of persons
18 who participate in executions, to hide public governmental activity from him, in
19 violation of his First Amendment right of access to governmental proceedings in
20 the execution context.

21 7. Plaintiff seeks equitable, injunctive, and declaratory relief to prevent
22 Defendants from carrying out his execution by using pentobarbital from a
23 concealed manufacturer.

24 8. Plaintiff seeks equitable, injunctive, and declaratory relief to prevent
25 Defendants from carrying out his execution by using pentobarbital from a
26 concealed distributor.

27
28

1 violations. Despite the inapplicability of the PLRA, Plaintiff has exhausted all the
2 remedies available to him in an effort to resolve this issue.

3 24. Plaintiff, through his counsel asked Dale A. Baich of the Office of
4 the Federal Public Defender for the District of Arizona to request certain
5 information from ADC about the drugs ADC intended to use in Plaintiff's
6 execution. Specifically, he asked for information about the drugs' manufacturer
7 and source; the drugs' lot numbers and expiration dates; whether the drugs are
8 from a domestic or foreign source; and whether the drugs have federal Food and
9 Drug Administration (FDA) approval. (Letter from Dale A. Baich to Charles
10 Ryan, July 19, 2013, attached as Ex. A.)

11 25. In that same letter, Director Ryan was asked to provide
12 documentation indicating that the persons tasked with executing him had authority
13 to handle substances that are classified as controlled substances under the federal
14 Controlled Substances Act. (Ex. A.)

15 26. On July 30, 2013, Director Ryan responded by asserting that ADC
16 "intends to use unexpired, domestically obtained Pentobarbital" for the execution.
17 (Letter from Charles Ryan to Dale A. Baich, July 30, 2013, attached as Ex. B.)

18 27. On August 6, 2013, Director Ryan was sent a follow-up letter, asking
19 for the answers to Plaintiff's previous questions, and asking if ADC intended to
20 use Nembutal[®], which is the brand name for FDA-approved pentobarbital. (Letter
21 from Dale A. Baich to Charles Ryan, Aug. 6, 2013, attached as Ex. C.)

22 28. On August 16, 2013, Director Ryan responded, asserting that
23 information about the name of the manufacturer and the source of the drug "is
24 confidential and is not subject to disclosure under A.R.S. § 13-757(C)." (Letter
25 from Charles Ryan to Dale A. Baich, August 16, 2013, attached as Ex. D.)

26 29. To date, the State has refused to provide Plaintiff with the
27 information he requested regarding the pentobarbital it intends to use in his
28 execution.

Federal Drug Laws

1
2 39. Drugs are regulated by, *inter alia*, the federal Food, Drug, and
3 Cosmetics Act (FDCA).

4 40. The FDCA is enforced by the federal Food and Drug Administration
5 (FDA).

6 41. The FDA requires registered drug establishments to provide the
7 agency with current lists of all drugs the establishments produce for commercial
8 distribution.

9 42. Each drug produced by registered drug establishments is identified
10 by a unique number called the National Drug Code (“NDC”).

11 43. If a drug is classified as a controlled substance under the federal
12 Controlled Substances Act, the drug is also regulated by the federal Drug
13 Enforcement Agency (“DEA”).

14 44. If a drug is a controlled substance, individuals who wish to handle it
15 must have appropriate registration from the DEA.

16 45. Sodium thiopental is a controlled substance.

17 46. Pentobarbital is a controlled substance.

Sodium Thiopental

18
19 47. Beginning in 2010, ADC developed a history of using illegitimately
20 obtained controlled-substance drugs in executions.

21 48. Sodium thiopental is not approved by the FDA.

22 49. Sodium thiopental does not have an NDC.

23 50. Sodium thiopental is a Schedule III drug under the federal Controlled
24 Substances Act (CSA).

25 51. In 2010, ADC’s protocol called for lethal injections to be carried out
26 via a three-drug procedure, the first drug of which was sodium thiopental.

27 52. In September 2010, the State of Arizona scheduled an execution for
28 Jeffrey Landrigan.

1 76. Currently, Akorn is the only FDA-approved source of pentobarbital.

2 77. As of July 2011, ADC had no legitimate source from which to
3 purchase Nembutal[®].

4 **ADC has obtained a new supply of Nembutal[®], but refuses to provide**
5 **expiration dates and other information about the supply.**

6 78. Last month, ADC produced documents indicating that ADC now has
7 a supply of Nembutal[®].

8 79. On September 17, 2013, the American Civil Liberties Union of
9 Arizona (ACLU) filed a public-records request with ADC, asking for information
10 pertaining to drugs ADC intends to use in Plaintiff's execution, including, *inter*
11 *alia*, the manufacturer, distributor, lot number, expiration date, and NDC of the
12 drugs.

13 80. On September 25, 2013, ADC gave certain information to ACLU
14 relating to the pentobarbital ADC intends to use in Plaintiff's execution. (Letter
15 from Dawn Northup to Kelly Flood, Sept. 25, 2013, attached as Ex. E.)

16 81. ADC's documents demonstrate that ADC ordered 25g of Nembutal[®].
17 (Invoice attached to Letter from Dawn Northup to Kelly Flood, Sept. 25, 2013,
18 attached as Ex. E(1).)

19 82. ADC redacted the month and day on which ADC ordered the
20 Nembutal[®], but left the year (2011) unredacted. (Ex. E(1).)

21 83. ADC redacted the month and day on which the shipment was due,
22 but left the year (2011) unredacted. (Ex. E(1).)

23 84. ADC redacted the drug's NDC. (Ex. E(1); *see also* Inventory Labels,
24 attached to Letter from Dawn Northup to Kelly Flood, Sept. 25, 2013, attached as
25 Ex. E(2).)

26 85. ADC either redacted or withheld the expiration dates of the
27 Nembutal[®]. (Ex. E(2).)

28

1 86. ADC either redacted or withheld the lot numbers of the Nembutal[®].
2 (Ex. E(2).)

3 87. ADC redacted the manufacturer name of the Nembutal[®]. (Ex. E(1)
4 and E(2).)

5 88. ADC redacted the distributor of the Nembutal[®]. (Ex. E(1) and E(2).)

6 89. ADC did not provide information demonstrating that ADC personnel
7 are authorized under federal law to handle controlled substances.

8 90. ADC claimed that “[t]he information that has been redacted is
9 confidential pursuant to A.R.S. § 13-757(C).” (Ex. E.)

10 **ADC currently refuses to provide the same type of information it**
11 **has previously provided.**

12 91. In July 2011, in response to a public-records lawsuit, ADC released
13 information about its supply of sodium thiopental.

14 92. ADC’s public-records release included the name of the foreign
15 supplier of the drug.

16 93. ADC’s public-records release included the lot numbers of the drug.

17 94. ADC’s public-records release included the expiration dates of the
18 drug.

19 95. In July 2011, when ADC provided documents in response to a
20 public-records lawsuit, ADC provided detailed information about its supply of
21 sodium thiopental, including distributor name, lot numbers, and expiration dates.

22 96. In August 2011, when ADC provided the FPD with lethal-drug
23 procurement records, ADC provided detailed information about its September
24 2010 supply of Nembutal[®].

25 97. The Nembutal[®] procurement records include the date the drug was
26 ordered.

27 98. The Nembutal[®] procurement records include the date the drug was
28 scheduled for delivery.

1 99. The Nembutal[®] procurement records include the drug's NDC.

2 100. The Nembutal[®] procurement records include expiration dates of the
3 drug.

4 101. The Nembutal[®] procurement records include lot numbers of the drug.

5 102. The Nembutal[®] procurement records include photographs of the vials
6 of the drug.

7 103. The Nembutal[®] procurement records include photographs of the vials
8 of the drug.

9 104. The Nembutal[®] procurement records include photographs of the
10 expiration dates on the boxes of the drug.

11 105. The Nembutal[®] procurement records include photographs of the lot
12 numbers on the boxes of the drug.

13 106. ADC now claims that numerical data and manufacturing information
14 is protected under an Arizona statute protecting the identity of persons
15 participating in executions.

16 107. Dates on which products are ordered are not people.

17 108. Dates on which products are ordered do not identify people involved
18 in executions.

19 109. Dates on which products are due to be delivered are not people.

20 110. Dates on which products are due to be delivered do not identify
21 people involved in executions.

22 111. NDCs are not people.

23 112. NDCs are numbers that do not identify people involved in
24 executions.

25 113. Expiration dates of drugs are not people.

26 114. Expiration dates of drugs do not identify people involved in
27 executions.

28 115. Lot numbers of drugs are not people.

1 116. Lot numbers of drugs do not identify people involved in executions.

2 117. The names of manufacturing establishments of drugs are not people.

3 118. The names of manufacturing establishments of drugs do not identify
4 people involved in executions.

5 119. The names of drug distribution companies are not people.

6 120. The names of drug distribution companies do not identify people
7 involved in executions.

8 121. ADC redacted order dates in order to hide the fact that ADC intends
9 to use expired Nembutal[®].

10 122. On information and belief, ADC redacted delivery dates in order to
11 hide the fact that ADC intends to use expired Nembutal[®].

12 123. On information and belief, ADC redacted the NDC of the Nembutal[®]
13 in order to hide information that could identify the manufacturer because the
14 manufacturer could verify expiration dates.

15 124. On information and belief, ADC redacted or withheld expiration
16 dates in order to hide the fact that ADC intends to use expired Nembutal[®].

17 125. On information and belief, ADC redacted or withheld lot numbers
18 because those numbers could be used to determine expiration dates.

19 126. On information and belief, ADC redacted the manufacturer of the
20 Nembutal[®] because the manufacturer could verify expiration dates.

21 127. On information and belief, ADC redacted the distributor of the
22 Nembutal[®] because the distributor could verify expiration dates.

23 128. On information and belief, ADC refused to provide information
24 relating to individual DEA authorizations to handle controlled substances because
25 certain members of the execution team are not licensed to handle controlled
26 substances.

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1 **Claims for Relief**

2 **Claim One: Defendants’ deliberate actions in hiding information**
3 **violates Plaintiff’s First Amendment right to be informed about**
4 **the manner in which the State implements the most serious penalty**
5 **available in the criminal-justice system.**

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

8 130. Defendants’ refusal to provide Plaintiff with information that would
9 enable him to determine how the State intends to execute him denies him his First
10 Amendment right of access to governmental proceedings. See Cal. First
11 Amendment Coal. v. Woodford, 299 F.3d 868, 873 (9th Cir. 2002) (“It is well-
12 settled that the First Amendment guarantees the public—and the press—a
13 qualified right of access to governmental proceedings.”); id. at 875 (noting that
14 the public’s First Amendment right of access to governmental proceedings
15 extends to executions).

16 131. Defendants’ deliberate concealment of information that would
17 enable Plaintiff to determine how the State intends to carry out the death sentence,
18 including information relating to lethal-injection drugs and the authority of
19 Defendants to handle controlled substances, denies Plaintiff of his First
20 Amendment right of access to governmental proceedings.

21 132. Defendants’ deliberate concealment of information that would enable
22 Plaintiff to determine how the State intends to carry out the death sentence,
23 including information relating to lethal-injection drugs and the authority of
24 Defendants to handle controlled substances, denies Plaintiff of his First
25 Amendment right to be informed about how the State intends to implement the
26 most serious punishment possible: the penalty of death.

1 executions, and that is necessary to ensuring Plaintiff's First
2 Amendment right of access to governmental proceedings, including
3 but not limited to information about

- 4 a. The manufacturer of lethal-injection drugs
5 b. The NDCs of lethal-injection drugs
6 c. The lot numbers of lethal-injection drugs
7 d. The expiration dates of lethal-injection drugs
8 e. Documentation indicating that those who will handle
9 pentobarbital or other controlled substances in the execution
10 have the appropriate DEA authorization to do so.

- 11 2. Appropriate and necessary discovery and an evidentiary hearing to
12 permit Plaintiff to prove his constitutional claims; and
13 3. Any such other relief as the Court deems just and proper.

14 Respectfully submitted this 2nd day of October 2013.

15
16 Kelley J. Henry
17 Denise Young

18 s/ Kelley J. Henry
19 Counsel for Plaintiff
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Exhibit A

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

Jon M. Sands
Federal Public Defender

direct line: 602-382-2816
email: dale_baich@fd.org

July 19, 2013

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

Dear Director Ryan:

I am writing to you on behalf of Robert Jones and Ed Schad, for whom the State has filed motions for warrants of execution.¹ In order for me to properly advise Messrs. Jones and Schad about their potential executions, I request that you provide me with the following information pertaining to the lethal substance that Arizona Department of Corrections (ADC) intends to use in his execution and ADC's authorization to use controlled substances in executions.

1. ADC Department Order 710 lists pentobarbital and sodium thiopental as the two default lethal substances used for executions in the one-drug protocol.² Because I believe that ADC does not have a current supply of pentobarbital³ or

¹ Mot. for Warrant of Execution, *State v. Jones*, No. CR-98-0537-AP June 25, 2013; Mot. for Warrant of Execution, *State v. Schad*, No. CR-13-0058-PC June 25, 2013.

² See ADC Dep't Order 710, Attachment D section C, effective date Sept. 21, 2012.

³ On September 27, 2010, ADC purchased a supply of Nembutal. See Defendant's Disclosures, Bates No. 01985 DFS' 26(a)(1) Disclosures and Responses to RFP's, (Nembutal Purchase Order), *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.), August 19, 2011.

That supply expired in March 2013. See Defendant's Disclosures, Bates No. 01973-01978 DPS' 26(a)(1) Disclosures and Responses to RFP's, (Photographs of Nembutal Supply), *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.), August 1, 2011.

Additionally, Nembutal has not been available to prisons in states that have capital punishment since July 1, 2011. See Lundbeck statement, *Lundbeck overhauls pentobarbital distribution program to restrict misuse*, <http://investor.lundbeck.com/releasedetail.cfm?ReleaseID=605775> (last visited May 25, 2012).

Director Charles Ryan
July 19, 2013
Page 2

sodium thiopental,⁴ please identify the name of each lethal substance⁵ ADC intends to use for the two executions now, so the clients can be properly advised. As you are aware, addressing these issues at the last minute is extremely difficult.⁶

2. Please provide me with the name of the manufacturer; the source of the substance, including whether the substance is from a domestic or foreign source; proof that the substance is approved by the Food and Drug Administration (FDA); and the legal authority for your acquisition and possession of the lethal substance ADC intends to use.
3. If ADC intends to use a substance that is not FDA-approved, please provide the source of that drug. In particular, if ADC intends to use a compounded substance, please identify the name of the pharmacist or other personnel who will provide the compounded substance.
4. Please provide me with the credentials⁷ of each IV Team member with respect to any Drug Enforcement Agency (DEA) registrations that authorize IV Team members to handle controlled substances.

⁴ You previously wrote ADC surrendered its supply of sodium thiopental to the Drug Enforcement Agency on February 2, 2012. Additionally, importation of additional supplies of sodium thiopental have been prohibited since March of 2012, under *Beaty v. FDA*, 853 F. Supp. 2d 30, 35 (D.D.C. 2012) *appeal filed, sub nom. Cook v. FDA*, No. 1:11-cv-00289-RJL (D.C. Cir.), and *argued* March 25, 2013.

⁵ Because I do not know how many lethal substances the ADC intends to use, I use “substance” in this letter to refer to one or multiple substances.

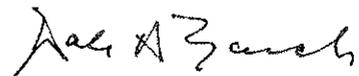
⁶ See *Towery v. Brewer*, 672 F.3d 650, 652-53 (9th Cir. 2012) (noting that the State of Arizona’s consistent approach to change protocols on the eve of executions forces the court to hear appeals at the “in the waning hours before executions” and cannot continue).

⁷ ADC Dep’t Order 710, section 710.02, 1.2.5.2.

Director Charles Ryan
July 19, 2013
Page 3

The information requested is critical in advising the clients regarding their pending executions. Your prompt response will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale A. Baich". The signature is written in a cursive style with some stylized flourishes.

Dale A. Baich
Supervisor
Capital Habeas Unit

DAB/clh

cc: Tim Gabrielsen
Denise I. Young
Kelley J. Henry

Exhibit B

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 30, 2013

Dale Baich, Supervisor
Capital Habeas Unit
Office of the Federal Public Defender
850 W. Adams St., Suite 201
Phoenix, AZ 85007

RECEIVED

AUG 01 2013

Federal Public Defender
Capital Habeas Unit

Re: Warrants of Execution for:
Robert Jones, ADC #070566 and Edward Schad, ADC #040496

Dear Mr. Baich:

In response to your letter of July 19, 2013, inquiring about the name and source of the drug the Arizona Department of Corrections ("ADC") intends to use for these executions, the ADC will follow the one-drug protocol set forth in Department Order 710 (Chart A, Attachment D). The ADC intends to use unexpired, domestically obtained Pentobarbital for these executions.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Ryan", with a long horizontal line extending to the right.

Charles L. Ryan
Director

CLR/dn/kp

cc: Jeff Hood, Deputy Director
Robert Patton, Division Director, Prison Operations
Dawn Northup, General Counsel
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office

Exhibit C

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

Jon M. Sands
Federal Public Defender

direct line: 602-382-2816
email: dale_baich@fd.org

August 6, 2013

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

Dear Director Ryan:

Thank you for your recent response to my letter regarding the name of the drug that the Arizona Department of Corrections (ADC) intends to use for Robert Glen Jones Jr.'s and Edward Schad's potential executions. I am writing to follow up on some of the unresolved issues from my original letter.

You stated in your response that "ADC intends to use unexpired, domestically obtained Pentobarbital" for the executions of Messrs. Jones and Schad. However, you did not provide me with the name of the manufacturer, the source of the pentobarbital, and the expiration date of the drug. For instance, if Hospira was the manufacturer for Lundbeck, and the brand name of the drug was Nembutal,¹ Messrs. Jones and Schad would know that the pentobarbital was FDA-approved.²

If ADC intends to use a substance that is not FDA-approved, please provide the source of that drug, the manufacturer, and the expiration date. In addition, if ADC intends to use a compounded substance, please identify the name of the pharmacist or other personnel

¹ On August 1, 2013, the State of Florida disclosed that it acquired Nembutal manufactured by Hospira for Lundbeck on June 9 and 15, 2011, that has expiration dates of September 30 and November 30, 2013. See Dep't of Corr. Answer to Interrogatory, *Ferguson v. Palmer*, No. 3:12-cv-0136-UAMH-JBT (M.D. Fla., Aug. 1, 2013) (ECF No. 52).

² You stated that FDA approval of the drugs used to carry out execution makes a difference. "If it was not FDA approved, then we may not [] acquire[] that." See Dep. of Charles Ryan, at 208:15-21, Oct. 14, 2011, *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.).

Director Charles Ryan
August 6, 2013
Page 2

who will provide the compounded substance, as well as the source(s) of the ingredients that the compounder uses.

As you know, pentobarbital is a Schedule II drug. Accordingly, please provide me with the credentials of each IV Team member with respect to any Drug Enforcement Agency (DEA) registrations that authorize IV Team members to handle controlled substances.

Again, I appreciate your attention to these questions. Your prompt response will be greatly appreciated.

Sincerely,



Dale A. Baich
Supervisor
Capital Habeas Unit

DAB/clh

cc: Tim Gabrielsen
Denise I. Young
Kelley J. Henry
Jeff Hood, Deputy Director
Robert Patton, Division Director, Prison Operations
Dawn Northup, General Counsel
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office

Exhibit D

Arizona Department of Corrections



JANICE K. BREWER
GOVERNOR

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



CHARLES L. RYAN
DIRECTOR

August 16, 2013

Dale Baich, Supervisor
Capital Habeas Unit
Office of the Federal Public Defender
850 W. Adams Street, Suite 201
Phoenix, AZ 85007

Dear Mr. Baich:

In response to your letter of August 6, 2013, requesting the name of the manufacturer and the source of the drug the Arizona Department of Corrections ("ADC") intends to use for the executions of inmates Robert Jones (#070566) and Edward Schad (#040496), that information is confidential and is not subject to disclosure under A.R.S. § 13-757(C). As I reiterated in my letter of July 30, 2013, ADC intends to use the one-drug protocol set forth in Chart A, Attachment D of Department Order ("DO") 710. The protocol to be used for the anticipated executions of inmates Jones and Schad has not changed since ADC published changes to DO 710 in September, 2012. As you know, these changes ultimately led to the Plaintiffs in *Towery v. Brewer*, CV-00245-NVW entering a stipulated dismissal of their Complaint, challenging the constitutionality of Arizona's execution protocol. Similarly, the credentials of the IV team remain the same and are clearly stated in DO 710, Section 1.2.5.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Ryan".

Charles L. Ryan
Director

CLR/DN/kp

cc: Jeff Hood, Deputy Director
Robert Patton, Division Director, Prison Operations
Dawn Northup, General Counsel
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office
CLR83336473

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AUG 19 2013
FEDERAL PUBLIC DEFENDER
CAPITAL HABEAS UNIT

Exhibit E

Arizona Department of Corrections



JANICE K. BREWER
GOVERNOR

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



CHARLES L. RYAN
DIRECTOR

Sent Via E-mail

September 25, 2013

Kelly Flood
Staff Attorney
ACLU of Arizona
P.O. Box 17148
Phoenix, AZ 85011

Re: Public Records Request

Dear Ms. Flood:

Thank you for clarifying your September 17, 2013 public records request. ADC disagrees with your assertion that any portion of the Federal District Court's decision in *Landrigan v. Brewer*, 2010 WL 4269559, D. Ariz. (2010), remains intact following the United States Supreme Court's decision in *Brewer v. Landrigan* ___ U.S. ___, 131 S. Ct. 445 (2010), vacating that decision. Federal law does not compel the ADC to disclose information that is deemed confidential by state statute.

Attached is an additional, redacted record responsive to your request. The information that has been redacted is confidential pursuant to A.R.S. § 13-757(C). The attached record, together with the records previously sent on September 20, 2013, are the complete records in ADC's possession that are responsive to your public records request.

Sincerely,

A handwritten signature in black ink, appearing to read "Dawn Northup".

Dawn Northup
General Counsel

cc: Director Charles Ryan
Jeff Hood, Deputy Director
Robert Patton, Division Director, Prison Operations
Jeff Zick, Assistant Attorney General
Jon Anderson, Assistant Attorney General

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Registration first.
Page 1

*** TOTE# [REDACTED]
ARIZONA STATE PRISON - [REDACTED]
DATE- [REDACTED]/2011
RX-711 OTC-711
CUST PO [REDACTED]

Container Num [REDACTED]
INV 6134728

[REDACTED]/11 RX
NEBUTAL SOD. 50
MG/ML 50ML C2
10 1 MD
NDC [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NEBUTAL	NEBUTAL	NEBUTAL	NEBUTAL	NEBUTAL	NEBUTAL
[REDACTED] 11					
I# [REDACTED]					
1 50 MG					
10	10	10	10	10	10
90077	90077	90077	90077	90077	90077

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NEBUTAL	NEBUTAL	NEBUTAL	NEBUTAL
[REDACTED] 11	[REDACTED] 11	[REDACTED] 11	[REDACTED] 11
I# [REDACTED]	I# [REDACTED]	I# [REDACTED]	I# [REDACTED]
1 50 MG	1 50 MG	1 50 MG	1 50 MG
10	10	10	10
90077	90077	90077	90077

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------	------------	------------

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------	------------	------------

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------	------------	------------

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------	------------	------------

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
------------	------------	------------	------------	------------	------------

Cust#

INBENVOO
Nembutal Sodium Solution
(pentobarbital sodium injection, USP)
For only

DO NOT USE IF MATERIAL HAS BEEN OPENED

DESCRIPTION
The Nembutal Sodium Solution is a sterile, nonpyrogenic, isotonic, clear, colorless to light yellow solution containing pentobarbital sodium. The Nembutal Sodium Solution is a Schedule II controlled substance under the Federal Controlled Substances Act (21 CFR 1306.01 and 1306.02).

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INDICATIONS AND USAGE
Nembutal Sodium Solution is indicated for the induction and maintenance of general anesthesia in patients who are to undergo surgery or other procedures requiring general anesthesia. Nembutal Sodium Solution is also indicated for the treatment of severe anxiety and insomnia.

CONTRAINDICATIONS
Nembutal Sodium Solution is contraindicated in patients with known hypersensitivity to pentobarbital sodium or any of the other ingredients in Nembutal Sodium Solution. Nembutal Sodium Solution is also contraindicated in patients with severe respiratory depression, severe hypotension, or severe hepatic or renal impairment.

WARNINGS
Nembutal Sodium Solution is a Schedule II controlled substance and has a high potential for abuse. Abuse of Nembutal Sodium Solution can lead to physical and psychological dependence, tolerance, and withdrawal symptoms. Nembutal Sodium Solution should be used with caution in patients with a history of alcoholism, epilepsy, or other conditions that may be exacerbated by the drug. Nembutal Sodium Solution should be used with caution in patients who are taking other central nervous system depressants, such as alcohol, benzodiazepines, or opioids.

ADVERSE REACTIONS
The most common adverse reactions associated with Nembutal Sodium Solution are respiratory depression, hypotension, and sedation. Other adverse reactions include nausea, vomiting, and dizziness. In severe cases, Nembutal Sodium Solution can cause respiratory arrest, cardiac arrest, and death.

DRUG INTERACTIONS
Nembutal Sodium Solution may interact with other central nervous system depressants, such as alcohol, benzodiazepines, and opioids. These interactions can lead to additive effects, resulting in increased sedation, respiratory depression, and hypotension. Nembutal Sodium Solution may also interact with certain medications, such as antacids, which can affect the absorption of the drug.

USE IN SPECIFIC POPULATIONS
Pregnancy: Nembutal Sodium Solution is classified as a Schedule II controlled substance and is not recommended for use during pregnancy. Use of Nembutal Sodium Solution during pregnancy can lead to fetal harm, including congenital anomalies and stillbirth.

Lactation: Nembutal Sodium Solution is excreted in breast milk. Use of Nembutal Sodium Solution during lactation can lead to sedation and respiratory depression in the infant.

Elderly and Frail Patients: Nembutal Sodium Solution should be used with caution in elderly and frail patients, as they may be more susceptible to the drug's effects, including respiratory depression and hypotension.

Renal Impairment: Nembutal Sodium Solution should be used with caution in patients with renal impairment, as the drug is excreted in the urine. Dose adjustments may be necessary in these patients.

Hepatic Impairment: Nembutal Sodium Solution should be used with caution in patients with hepatic impairment, as the drug is metabolized in the liver. Dose adjustments may be necessary in these patients.

Labor and Delivery

Approximate doses of barbiturates during labor and delivery are listed below. Administration of these drugs should be controlled by the obstetrician or anesthesiologist. Administration of these drugs should be controlled by the obstetrician or anesthesiologist. Administration of these drugs should be controlled by the obstetrician or anesthesiologist.

Caution should be exercised when administering a hypnotic to a patient who has received small amounts of barbiturates during labor.

Patients should be warned that barbiturates are habit-forming and that prolonged use may lead to physical dependence. Withdrawal symptoms may occur if the drug is discontinued abruptly.

Barbiturates should be used with caution in patients with a history of depression.

ADVERSE REACTIONS:
The most common adverse reactions reported are drowsiness, depression, and respiratory depression. Other adverse reactions include hypotension, hypoxia, and respiratory depression.

Less than 1% of patients have reported allergic reactions to barbiturates. Allergic reactions may include rash, hives, and anaphylaxis.

Barbiturates should be used with caution in patients with a history of depression. Depression may be exacerbated by the use of barbiturates.

DRUG ABUSE AND DEPENDENCE:
Barbiturates are habit-forming and may lead to physical dependence. Withdrawal symptoms may occur if the drug is discontinued abruptly.

Barbiturates should be used with caution in patients with a history of depression. Depression may be exacerbated by the use of barbiturates.

Symptoms of barbiturate overdose include drowsiness, stupor, and respiratory depression. Other symptoms include hypotension, hypoxia, and respiratory depression.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

The symptoms of barbiturate overdose are similar to those of other sedatives. If an individual appears to be intoxicated with alcohol to a degree that is not proportionate to the amount of alcohol in the blood, the use of barbiturates should be avoided.

Concentration	10	15	20	25	30	35	40	45	50
Barbiturate	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Propofol	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Etomidate	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Midazolam	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Propofol	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Etomidate	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Midazolam	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Propofol	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Etomidate	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60
Midazolam	10 to 15	15 to 20	20 to 25	25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 60

Caution should be exercised when administering a hypnotic to a patient who has received small amounts of barbiturates during labor.

- 1. The information is provided by means of the product of the manufacturer or distributor to the user.
- 2. The information is provided by means of the product of the manufacturer or distributor to the user.
- 3. The information is provided by means of the product of the manufacturer or distributor to the user.
- 4. The information is provided by means of the product of the manufacturer or distributor to the user.
- 5. The information is provided by means of the product of the manufacturer or distributor to the user.

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Directions and Administration
 Directions of use should be read carefully. The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user.

Warnings
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Precautions
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Contraindications
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Adverse Reactions
 The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user.

How Supplied
 The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user.

Other information
 The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user. The information is provided by means of the product of the manufacturer or distributor to the user.

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
Edward Harold Schad, Jr.

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kelley Henry, Federal Public Defenders Office, 810 Broadway, Suite 200, Nashville, TN 37203

DEFENDANTS
Janice K. Brewer, Governor of Arizona, Charles L. Ryan, Director, Arizona Department of Corrections, Ron Credio, Warden, ADOC - Eyman, Lance Hetmer, Warden, ADOC - Florence

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)

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

1 Original Proceeding 2 Removed from State Court 3 Reremanded 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:
First Amendment- Right of access to governmental proceedings

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 97-cv-2577-PHX-ROS

DATE 10/02/2013 SIGNATURE OF ATTORNEY OF RECORD
Kelley J. Henry

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE