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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Edward Harold Schad, Jr.,

Plaintiff,

-vs-

Robert Glen Jones, Jr.,

Intervenor,

-vs-

Janice K. Brewer, et al.,

Defendants.

CV 13-02001-PHX-ROS

**REPLY TO RESPONSE TO  
MOTION TO TRANSFER  
CASE TO JUDGE WAKE**

Defendants hereby reply to Schad and Jones' response to Defendants' Motion to Transfer Case to Judge Wake. In view of the tight time constraints, Defendants will be brief.

First, the request is hardly unwarranted, in light of this Court's prior transfer of a similar Section 1983 case to Judge Wake just last year. Schad and Jones argue this case has no relation to the other cases, but that is not true because underlying this whole line of cases is an attempt to identify

persons and companies so that they can be intimidated into not participating in any way in the judicial process. As Chief Judge Kozinski of the Ninth Circuit commented in an earlier case, *Landrigan v. Brewer*, 652 F.3d 1132 (9<sup>th</sup> Cir. 2010) (denying application for second or successive habeas application, mooted request for a stay):

Because Landrigan did not meet his burden, the state had no duty to come forward with any information. Indeed, Arizona had good reasons not to; just twenty-four hours after the state attorney general conceded that the drug was imported from Great Britain, one journalist suggested the company might be criminally liable under an EU regulation that makes it illegal to “trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment.” See Clive S. Smith, *The British Company Making a Business out of Killing*, *The Guardian* (Oct. 26, 2010, 4:00 p.m.), <http://www.guardian.co.uk/commentisfree/cifamerica/2010/oct/26/jeffrey-landrigan-execution-sodium-thiopental>. Certainly Arizona has a legitimate interest in avoiding a public attack on its private drug manufacturing sources, particularly when Hospira—the only source of sodium thiopental within the United States—hasn’t yet announced when the drug will actually be available for executions or how much it plans to produce. Although the district court may have been annoyed with the state for failing to provide the information Landrigan’s lawyers wanted to see, the fact remains that Landrigan was not entitled to the information because he failed to make a threshold showing that he will suffer harm.

*Id.* at 343 (Kozinski, C.J., dissenting from denial of rehearing *en banc*)

Second, such transfer for judicial economy is especially merited to the last-minute filing by Schad and Jones of their complaints and requests for a Preliminary Injunction. As shown by the correspondence between Mr. Baich and Director Ryan, it was apparent long ago what ADC was going to, and not going to, disclose and yet Schad and Jones waited until 1 week before the execution to file the current Section 1983 action.

Third, L.R. Civ 40(e) provides that, in various circumstances, a Judge of this Court may transfer a case to another Judge with that Judge's consent and with notice to the Chief Judge, the circumstances include: (1) that the transferee Judge previously adjudicated a case that "called for the determination of substantially the same questions of law"; (2) to avoid "substantial duplication of labor if heard by the Transferor Judge;" and (3) for "reasons of judicial economy and the availability of judicial resources." For the reasons stated in Defendants' motion for change of judge, Defendants believe a transfer is merited because the above circumstances pertain to this case, if, of course, Judge Wake consents to the transfer.

DATED this 3<sup>rd</sup> day of October, 2013.

Respectfully submitted,

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I hereby certify that on October 3, 2013, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

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