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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Joseph Rudolph Wood III, Plaintiff, v. Charles L. Ryan, et. al, Defendants.	Case No: 2:14-cv-01447-NVM-JFM Reply to Response in Opposition to Plaintiff Joseph Rudolph Wood III's Motion for Preliminary Injunction or Temporary Restraining Order **Execution Scheduled for July 23, 2014**

Plaintiff Joseph R. Wood is seeking a narrow ruling from this Court that he, like all citizens, has a First Amendment right of access to non-confidential information relating to the "historically open" execution proceedings.[1] For the reasons stated below, as well as the reasons previously stated, this Court should grant Mr. Wood's motion and issue a preliminary injunction.

[1] *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 875 (9th Cir. 2002); Pl. Wood's Mot. for Prelim. Inj. or TRO (ECF No. 11).

I. Mr. Wood has met the standard for a preliminary injunction

A. Mr. Wood has a demonstrated a likelihood of success on the merits of his First Amendment claim. [2]

1. A prisoner has First Amendment rights.

A prisoner "retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Here, Mr. Wood has demonstrated that he maintains his rights as an "individual citizen" who is thus entitled to participate in an informed manner to the "constitutionally protected discussion of governmental affairs."[3]

To support their argument that Claim 2 is not plausible, Defendants ignore Circuit precedent and instead rely upon out-of-circuit cases involving various types of challenges to the lethal-injection process in different states.[4] Except for *Wellons*,[5] no other federal appellate court decision that Defendants cite has addressed the First Amendment.[6] In that case, the Eleventh Circuit provided no analysis but simply agreed

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[2] In his motion for a preliminary injunction, Mr. Wood explained that not only does he have a First Amendment right to the information, but that based on ADC's history, there are additional reasons (e.g., due-process concerns) that highlight the importance of this information. Mot. at 10. He did not refer to those due-process concerns in his argument. His only claim is a First Amendment claim.

Because Mr. Wood has not raised a due-process claim, he will not respond to that portion of Defendants' Response. Resp. at 11-12. As such, Mr. Wood replies to the arguments advanced by Defendants as to Claim 2.

[3] *Cal. First Amendment Coal.*, 299 F.3d at 875 (internal quotation marks omitted) (quoting *Globe Newspaper Co.*, 475 U.S. at 604-05); *see also* Order, *Schad v. Brewer*, No. 2:13-cv-02001-ROS at *6 n.1 (D. Ariz. Oct. 7, 2103) ("*Schad* Oct. 7 Order").

[4] Resp. in Opp'n to Pl.'s Mot. for TRO of Prelim. Inj. at 5-6 (ECF No. 15)

[5] *Wellons v. Comm'r of Ga. Dep't. of Corr.*, No. 14-12663-P, __ F.3d __, 2014 WL 2748316 (11th Cir. June 17, 2014), cited in Resp. in Opp'n to Pl.'s Mot. for TRO or Prelim. Inj. at 5 (ECF No 15).

[6] *See, e.g.*, *Sepulvado v. Jindal*, 729 F.3d 413, 417 (5th Cir. 2013) (due process); *Sells v. Livingston*, 750 F.3d 478, 481 (5th Cir. 2014) (citation omitted) (Eighth and Fourteenth Amendment); *Williams v. Hobbs*, 658 F.3d 842, 845 (8th Cir. 2011) (ex post facto clause and due process); *In re: Lombardi*, 741 F.3d 888, 891 (8th Cir. 2014) (en banc) (Eighth Amendment and Ex Post Facto claims); *Whitaker v. Livingston*, 732 F.3d 465, 466-67 (5th Cir. 2013) (Eighth and Fourteenth Amendments, Supremacy Clause, and Due

with the district court that "the cases Wellons relies upon turn on the public's, rather than the individual's need to be informed" under the First Amendment. *Id.* at *6. This Court should not follow *Wellons* because, besides being non-binding precedent, it offers no reasoning or analysis for its conclusion.

2. The First Amendment provides for a public right of access to governmental proceedings, including execution proceedings.

"It is well-settled that the First Amendment guarantees the public—and the press—a qualified right of access to governmental proceedings."[7] Mr. Wood is an individual citizen who has a First Amendment right of access to governmental proceedings, including execution proceedings. This right "is premised on the common understanding that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."[8] The right of access to governmental proceedings, including executions, exists because executions have been historically open, and because "public access plays a significant positive role in the functioning of the particular process in question."[9]

Despite the controlling Supreme Court law, as well as this Circuit's precedent,

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Process clause).

Defendants also cite an opinion issued earlier this year by the Georgia Supreme Court. In *Owens v. Hill*, __ S.E.2d __, 2014 WL 2025129 (Ga. May 19, 2014), at issue was Georgia's state statute that makes confidential and prevents disclosure (even under judicial process) of the detailed and specific identifying information. The language of Georgia's statute is more specific and detailed than Arizona's statute. What is more, the *Owens* case relied upon many of the same cases that Defendants rely upon in support of their argument. For reasons discussed *infra*, these cases are not relevant to the narrow issue presented here.

[7] *Cal. First Amendment Coal.*, 299 F.3d at 873 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579 (1980); *Press–Enter. Co. v. Super. Ct.*, 478 U.S. 1, 8–14 (1986) ("*Press–Enter.II*"); *Press–Enter. Co. v. Super. Ct*, 464 U.S. 501, 510–11 (1984) ("*Press–Enter.I*"); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 603–11 (1982)).

[8] *Id.* at 875 (quoting *Globe Newspaper Co. v. Super. Ct.*, 475 U.S. 596, 604 (1982)) (alteration in original) (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1996) (internal quotation marks omitted).

[9] *Id.* (quoting *Press-Enter. v. Super. Ct.*, 478 U.S. 1, 8-9 (1986)) (citing *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982)) (internal quotation marks omitted).

Defendants assert that Mr. Wood has no First Amendment right to access the limited governmental information he seeks, and that he thus has no likelihood of success on the merits of Claim 2. They do that by relying on cases that either predate the relevant Supreme Court cases (*e.g.*, *Richmond Newspapers*), or stand only for the unremarkable proposition that the First Amendment does not provide a right of access to *non-public* information. The Court, however, never suggested that there is no right of access to *any* governmental information. Indeed, in a "watershed" case,[10] the Court specifically held that there *is* a right to access governmental information. "The right of access to places" traditionally open to the public . . . may be seen as assured by the amalgam of the First Amendment guarantees of speech and press."[11]

Mr. Wood asks only for information related to governmental actions in the sphere of executions—proceedings that the Ninth Circuit has held have been "[h]istorically[] open to all comers[,]" and have been "fully open events in the United States as well."[12] Defendants have no answer to the controlling precedent in this Circuit, *California First Amendment Coalition*, which itself flows from *Press-Enterprises*. As the Ninth Circuit explains, its holding comes directly from *Press-Enterprises*: "two complementary considerations inform our determination that the public has a First Amendment right of access to governmental proceedings in general and executions in California in particular: (1) whether the place and process have historically been open to the press and general public[ ] and (2) whether public access plays a significant positive role in the functioning of the particular process in question."[13]

Rather than addressing the controlling precedent, Defendants only cite cases that cannot defeat Mr. Wood's legitimate request for information related to historically

[10] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 582 (1980) (Stevens, J. concurring).

[11] *Id.* at 577.

[12] *Cal. First Amendment Coal.*, 299 F.3d at 875.

[13] *Id.* (quoting *Press-Enter. II*, 478 U.S. at 8-9) (internal quotation marks omitted) (alteration in original).

public proceedings. Those cases support the basic proposition that *nonpublic* information is not available under a First Amendment claim. The distinction between publically available information and nonpublically information is critical.

First, Defendants rely on *Houchins*,[14] a case that predates *Richmond Newspapers* by two years, which is not relevant here. *Houchins* dealt with a situation in which members of the press asked for nonpublic information that was available through alternative (though potentially less convenient) ways of getting the information it requested. The information that Mr. Wood requests is part of "historically open" execution proceedings; moreover, because Defendants have sole control of this public-proceedings information, that information is not available through any other means.

Defendant's other cited cases are equally inapposite. Two cases of the cases dealt with national-security information; two dealt with statutory restrictions on nonpublic information; and five cases are either tangentially related to the First Amendment, or are not related to the First Amendment at all.

In the national-security arena, courts have unsurprisingly found that the information at issue is nonpublic and has been historically unavailable. *McGehee* dealt with a CIA agent who wished to publish classified information.[15] In that case, the agent had signed a required secrecy agreement that he alleged was unconstitutional. [16] The court analyzed the CIA's classification in the context of nonpublic national security information, and compared the agent's rights with those of an ordinary citizen making a freedom-of-information (FOIA) request for similar information.[17] In *Center for National Security Studies*,[18] the plaintiffs sought personal information about the people

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[14] *Houchins v. KQED*, 438 U.S. 1 (1978), cited in Resp. at 6, 8.

[15] *McGehee v. Casey*, 718 F.2d 1137 (D.C. Cir 1983), cited in Resp. at 7.

[16] *McGehee*, 718 F.2d at 1139.

[17] *Id.* at 1147-48.

[18] *Ctr. for Nat'l Sec. Studies v. U.S. Dep't. of Justice*, 331 F.3d 918, 920 (D.C. Cir. 2003), cited in Resp. at 7.

detained "in the wake of the September 11 terrorist attacks."[19] Like the court in *McGehee*, the court held that under the First Amendment right of access, the government did not need to "disclose information compiled during the exercise of quintessential executive power—the investigation and prevention of terrorism."[20]

Defendants also cite cases that involve statutory protection of historically nonpublic information. In *Los Angeles Police Department v. United Reporting Publishing Corporation*, the Supreme Court decided the matter and based its decision on a facial challenge to a state statute, and left open the possibility that other types of challenges could be addressed if they were later properly presented and preserved.[21] Similarly, in *United States v. Miami University*, the court held that "the First Amendment does not confer a public right of access to university disciplinary records" because those records are protected from public disclosure under the Family Educational Rights and Privacy Act.[22]

The other five cases that Defendants cite are not directly relevant to the First Amendment. Defendants use two cases to assert that the First Amendment does not "requir[e] a government official who is an 'unwilling speaker' to impart information."[23] *See Kline v. Republic of El Salvador*, 603 F.Supp. 1313, 1319 (D.D.C. 1985) (explaining that federal defendants sued in their official capacity had immunity from tort liability and were accordingly not required to make information available); *see also Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 761-62 (1976) (holding that statute could not restrain commercial speech of pharmacists who were willing speakers). But those cases are inapposite to the issue here.

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[19] *Id.*

[20] *Id.* at 935.

[21] *L.A. Police Dep't. v. United Reporting Pub'g Corp.*, 528 U.S. 32, 40-41 (1999), cited in Resp. at 8.

[22] *United States v. Miami University*, 91 F.Supp.2d 1132, 1154 (S.D. Ohio 2000), cited in Resp. at 8.

[23] Resp. at 8.

The other three cases relied upon by Defendants are unrelated to each other and to this case. *McBurney* dealt with a FOIA request asserted under a "privileges and immunities" claim.[24] *Weatherford* was a due-process case under *Brady*, and therefore does not implicate the First Amendment.[25] In *Entler*, an unpublished decision, the court made a conclusory statement about *Houchins* but did not explain any of the facts, much less how those facts related to the First Amendment.[26]

Accordingly, Defendants have failed to show why Mr. Wood, who bases his claim on Supreme Court and controlling Circuit precedent, is not likely to succeed on the merits of his claim.

B. Mr. Wood can demonstrate irreparable harm, the balance of equities tips in his favor, and an injunction in this case is in the public interest

Defendants recognize that Mr. Wood has an interest in being executed in a constitutional manner, but that he will not suffer irreparable harm because his claim fails on the merits.[27] As already discussed, Mr. Wood disagrees, and for the reasons urged in his motion, he will suffer irreparable harm if an injunction is not issued.

Defendants argue that because there have been more than twenty years since Mr. Wood was sentenced to death, that any additional delay in carrying out his sentence urges against an injunction.[28] But, as discussed in section III, *infra*, Mr. Wood has not caused any delay in bring this claim. The balance of equities tip in his favor.

Defendants assert that an injunction is not in the public interest because Mr. Wood failed to present plausible constitutional questions.[29] For the reasons stated in Mr.

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[24] *McBurney v. Young*, 133 S.Ct. 1709, 1713 (2013), cited in Resp. at 6-7.

[25] *Weatherford v. Bursey* 429 U.S. 545 (1977), cited in Resp. at 7.

[26] *Entler v. McKenna*, 487 Fed.Appx. 417, 418 (9th Cir. 2012), cited in Resp. at 7.

[27] Resp. at 13.

[28] *Id.* at 13-14.

[29] *Id.* at 14.

Wood's motion, and because no public interest would be injured by the granting of preliminary relief,[30] the public interest weighs in favor of granting an injunction.

II. Defendants previously disclosed information about the source of the drugs.

Defendants assert that *all* previous disclosures related to the information Mr. Wood now seeks was "in response to court order."[31] This, however, is not accurate. Defendants provided photographs of the execution drugs (which included the drug manufacturer, national drug code, and lot numbers) in discovery during litigation in the *West* case.[32] These photographs were neither marked confidential nor ordered by this Court to be produced publically.[33]

As Defendants' notice of disclosure in *West* indicates, Defendants ensured that certain discovery was marked as confidential; those documents were therefore provided pursuant to the protective order in place in that case. The protective order in *West* defined confidential information as "information sufficient to determine 'the identity of executioners and other persons who participate or perform ancillary functions in an execution,' as that information is defined and protected under A.R.S. 13-704(c)."[34] But when Defendants had the opportunity to assert that drug-related information was confidential under the statute, they did not. They have offered no compelling reason why this information must be kept confidential.[35]

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[30] *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (considering "whether there exists some critical public interest that would be injured by the grant of preliminary relief").

[31] Resp. at 10.

[32] *West v. Brewer*, No. 11-cv-1409-NJW. (D.Ariz. 2011), attached as Ex. J to Exs. To Mot.

[33] Exs. To Mot. at Ex. J (Notice of Service of Def's Rule 26 Disclosures) (ECF No. 11-1).

[34] *See West v. Brewer*, No. 11-cv-1409-NJW, Protective Order at 1, ECF No. 36 (D. Ariz. filed Aug. 10, 2011), attached as Ex. L.

[35] Defendants rely on a block quote of portion of Chief Judge Kozinski's dissental in *Landrigan v. Brewer*, and adopt it as a policy reason for Arizona's confidentiality statute. (*Brewer*, 625 F.3d 1132, 1140 (9th Cir. 2010) (Kozinski, C.J. dissenting from denial of rehearing en banc). But Defendants cite no legislative history surrounding

Moreover, in *Schad*, this Court ordered Defendants to turn over similar information that is now at issue here.[36] Defendants did so and did not appeal the district court's order.

III. Mr. Wood has not been dilatory in seeking injunctive relief

It was not clear on April 22 that Defendants were set on using the two-drug midazolam/hydromorphone combination. Relying upon correspondence from Defendant Ryan dated April 22, 2014, Defendants state that Mr. Wood has known for more than two months that midazolam and hydromorphone were the drugs that would be used to carry out his scheduled execution.[37] They blame Mr. Wood for waiting until three weeks before his scheduled execution to seek equitable relief from this Court.[38]

Defendants rely upon one sentence from Defendant Ryan's letter, which states that the two-drug protocol will be used. Defendants, however, ignore the next sentence: "In the event [the Arizona Department of Corrections] ADC is able to procure Pentobarbital, ADC will provide notice of its intent to use that drug in accordance with Department Order 710, Attachment D at (C)(1)."[39] Department Order 710 gives the ADC Director the discretion to decide "which lethal chemical(s) will be used for the scheduled execution."[40] The Department Order instructs that the Director's "decision

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Arizona's statute including any policy reasons supporting its enactment—because none exists. Speculation by a federal appellate judge as to why a state adopted a law cannot be used in support of "the policy reason behind Arizona's statute." Resp. at 10. An observation that "Arizona has a legitimate interest in avoiding a public attack on its private drug manufacturing sources", *id.* at 11, cannot withstand First Amendment analysis. The State of Arizona does not have nor has it articulated, a reason or an interest in protecting a private corporation. Moreover, Defendants offer no authority for their interpretation of the statute; even considering the statute on its face, "[p]rinciples of statutory construction do not support construing the language in such a broad manner." Order granting Prelim. Inj., *Schad v. Brewer* No. 2:13-cv-02001-ROS (D.Ariz. Oct. 4, 2013).

[36] *Id.* at 16.

[37] Resp. at 14 (citing Exs. To Mot. at Ex. A).

[38] *Id.*

[39] Exs. To Mot. at Ex. A.

[40] *Id.* at Ex. I, at Attach. D § C(1)).

will be provided to the inmate in writing 20 calendar days prior to the scheduled execution date." (*Id.*) Defendant Ryan provided this information in a letter dated June 25, addressed and delivered to Mr. Wood. (Letter from Charles Ryan, Director, Arizona Department of Corrections, to Joseph Rudolph Wood (June 25, 2014), attached as Ex. M.[41]

In this letter addressed to Mr. Wood, Defendant Ryan expressly states that "the purpose of this correspondence is to notify you that the two-drug protocol using Midazolam and Hydromorphone will be used to carry out the execution scheduled for July 23, 2014." (*Id.*) Unlike the April 22 letter addressed to counsel for Mr. Wood, the June 25 letter did not state that Defendants were still attempting to procure pentobarbital. Mr. Wood brought filed his motion for preliminary injunction within six days of his receiving the notice required under Department Order 710. Given these circumstances, Mr. Wood did not "delay[] unnecessarily in bringing the claim."[42]

Respectfully submitted this 8th day of July, 2014.

Jon M. Sands
Federal Public Defender
District of Arizona
Dale A. Baich
Robin C. Konrad

s/ Dale A. Baich
Counsel for Plaintiff Joseph R. Wood III

[41] A copy of this letter was not provided to undersigned counsel by Defendant Ryan; undersigned counsel received a copy of the letter from Mr. Wood's appointed attorney, Julie Hall, on June 28, which was the same day she received it. (*See id.* at 2.)

[42] *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

Certificate of Service

I hereby certify that on July 8, 2014 , I electronically filed the foregoing Reply to Response in Opposition to Plaintiff Joseph Rudolph Wood III's Motion for Preliminary Injunction or Temporary Restraining Order with the Clerk's Office by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Chelsea Hanson
Legal Assistant
Capital Habeas Unit

Exhibit L

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Thomas Paul West, et al., Plaintiffs, vs. Janice K. Brewer, et al., Defendants.	No. CV-11-01409-PHX-NVW **PROTECTIVE ORDER**

IT IS HEREBY ORDERED that any depositions of medical team members or special operations team members will take place pursuant to the following Protective Order:

1. "Confidential Information"

1.1 As used throughout this Protective Order, the phrase "Confidential Information" shall mean information sufficient to determine "the identity of executioners and other persons who participate or perform ancillary functions in an execution," as that information is defined and protected under A.R.S. 13-704(c).

1.2 Counsel for defendants shall be responsible for designating as Confidential any such information contained in the Deposition transcripts.

1.3 Confidential Information will be designated by counsel for defendants by submitting to counsel plaintiffs, within ten (10) days following the Deposition in which

such information was disclosed, a proposed redacted copy of any pages of the Deposition transcript containing such information. Nothwithstanding this requirement, the failure to designate Confidential Information shall not be deemed a waiver of the protections of the Protective Order. However, those individuals authorized to review the Deposition transcripts under this Protective Order (as described below, in paragraph 4) shall not be liable for inadvertent disclosure of Confidential Information if such information has not been properly designated.

1.4 If, after counsel for plaintiffs receive information designated pursuant to the provisions of paragraph 1.3 of this Protective Order, it appears to counsel for plaintiffs that any proposed redacted information is not, in fact, Confidential Information, plaintiffs' counsel shall first notify counsel of record for defendants in writing. If the parties are unable to reach an agreement as to whether the information should be treated as Confidential under the terms of this Protective Order, plaintiffs' counsel may then or thereafter submit the matter for decision by the Court. Counsel for defendants shall bear the burden of proving that the designated information constitutes Confidential Information. Plaintiffs, however, shall not be obligated to challenge the propriety of any designation by Defendants, and a failure to do so shall not constitute a waiver or in any way preclude a subsequent challenge of the propriety of such designations.

2. Names of Deponents

The names of the medical team members and special operations members shall not be revealed in connection with the litigation of this lawsuit to anyone other than counsel for defendants, counsel for plaintiffs, one (1) staff investigator and one (1) paralegal employed by the Federal Public Defender's office. Counsel for defendants and counsel for plaintiffs will agree upon a generic identifier to be used when referring to or addressing the aforementioned individuals. Such identifier will include only the person's title, such as "medical team leader" or "IV team member #1."

3. Videotapes of Depositions

The Depositions may be videotaped. No videotape may be disseminated in any form, although the videotapes may be used by counsel at trial.

3.1 Initially, the videotapes of the depositions will be given only to counsel for defendants, who shall maintain custody of the video tapes until such time as the parties enter into a separate agreement or pre-trial order governing the use of the videotapes by counsel for plaintiffs in pre-trial preparations and during trial.

3.2 Upon conclusion of the litigation of this case, including any appeals, any videotapes will be returned to counsel for defendants or destroyed.

4. Transcripts of the Depositions

Transcripts of the Depositions will not be made available to plaintiffs Gregory Dickens, Charles M. Hedlund, Robert Wayne Murray, Theodore Washington, and Todd Smith. Nor will plaintiffs' counsel disclose to plaintiffs Confidential Information. Confidential Information obtained in the Depositions will not be disclosed to anyone other than counsel for the parties and counsel's employees, only insofar as is necessary for purposes of this litigation. Confidential Information will only be shared with outside consultants and experts retained by the parties to assist counsel specifically for the purposed of this litigation, to the extent necessary for such experts to prepare a written opinion, prepare to testify, or to assist counsel.

5. Filing of Documents Containing Confidential Information with the Court

Counsel for either plaintiffs or defendants may file with the Court documents containing Confidential Information.

5.1 Any document filed with the Court that contains Confidential Information shall be filed under seal. Such documents may be filed using the ECF system without filing a separate motion to file under seal, so long as the inclusion of Confidential Information is the only reason for filing the document under seal. If the filing party seeks to seal the document on other grounds, a separate motion to seal must be filed.

5.2 All documents containing Confidential Information (including copies of Deposition transcripts) that are filed with the Court pursuant to paragraph 5.1 may also be filed with the Court in redacted form without the need to file a separate motion to file under seal. Such redacted versions of filings shall include the word "[Redacted]" in the title of the filed document, and will be filed publicly.

DATED this 10th day of August, 2011.

Neil V. Wake
United States District Judge

Exhibit M

Arizona Department of Corrections

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

JANICE K. BREWER
GOVERNOR

CHARLES L. RYAN
DIRECTOR

June 25, 2014

Inmate Joseph Rudolph Wood
ADC #086279
ASPC-Eyman/Browning Unit
P.O. Box 3500
Florence, AZ 85132-3500

Mr. Wood:

The purpose of this correspondence is to notify you that the two-drug protocol using Midazolam and Hydromorphone will be used to carry out the execution scheduled for July 23, 2014. The two-drug protocol is outlined in Department Order 710 Attachment D, Chemical Chart C.

I also want to confirm that visitation with two of your attorneys of record may occur between 7:00 a.m. and 9:00 a.m. on the morning of the execution.

Additionally, you may choose to make a final statement that is reasonable in length and does not contain vulgar language or intentionally offensive statements directed at the witnesses. The microphone will remain on during your statement. It will be turned off, however, in the event you use vulgarity or make intentionally offensive statements.

As a final matter, I want to inform you that closed-circuit monitors in the designated witness room will allow witnesses to observe the IV team's assessment of the IV sites and the insertion of the primary and the secondary IV catheters. A microphone will also be turned on during this process. After the IV catheters have been inserted, the microphone will be turned off. When the execution is ordered to proceed, the microphone will be turned on, the curtain will be opened, and the closed-circuit monitors will be turned off. The Warden will read the Warrant of Execution and you will have an opportunity to make a final statement before the execution is completed.

Regards,

Charles L. Ryan
Director

CLR/dn/hp

cc: Julie Hall, Attorney for Inmate Joseph Wood
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office
Matthew Binford, Assistant Attorney General
Joe Sciarrotta, General Counsel, Office of the Governor
Jeff Hood, Deputy Director
Dawn Northup, General Counsel
Carson McWilliams, Interim Division Director, Offender Operations
Ron Credio, Warden, ASPC-Eyman
Lance Hetmer, Warden, ASPC-Florence
Donna Hallam, Arizona Supreme Court
Kristine Fox, Capital Case Staff Attorney, U.S. District Court