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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Joseph Rudolph Wood, et al.,

Plaintiffs,

-vs-

Charles L. Ryan, et al.,

Defendants.

CV 14-1447-PHX-NVW-JFM

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER OR A PRELIMINARY INJUNCTION

Based on an alleged First Amendment right to know the source of the drugs to be used in his execution, information about the qualifications of personnel involved in his execution, and information about development of the lethal injection protocol, Plaintiff Joseph Wood moves for a temporary restraining order or preliminary injunction seeking a stay of his execution, scheduled for July 23, 2014. Given the substantial authority rejecting any such right, his claim is not plausible, let alone likely to succeed on the merits. Wood's motion should therefore be denied.

I. LEGAL STANDARDS.

Filing a § 1983 action does not entitle a Plaintiff to an automatic stay of

execution. *Hill v. McDonough*, 547 U.S. 576, 583–84 (2006); *Towery v. Brewer*, 672 F.3d 650, 657 (9th Cir. 2012) (per curiam). A preliminary injunction is "'an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.' *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (emphasis in original). To obtain preliminary injunctive relief, Plaintiff must demonstrate that: "(1) he is likely to succeed on the merits of such a claim; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) that an injunction is in the public interest." *Beaty v. Brewer*, 649 F.3d 1071, 1072 (9th Cir. 2011) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *Lopez*, 680 F.3d at 1072; *West v. Brewer*, 652 F.3d 1060 (9th Cir. 2011). The claim on which Wood bases his motion for temporary restraining order or preliminary injunction does not meet the plausibility standard, let alone the "likely" standard required for a preliminary injunction.

II. PROCEDURAL BACKGROUND.

Wood was convicted of the first-degree murders of his estranged girlfriend Debra Dietz and her father Eugene Dietz and sentenced to death more than 20 years ago. *State v. Wood*, 881 P.2d 1158 (Ariz. 1994). After years of review by state and federal courts, he is scheduled to be executed on Wednesday July 23, 2014 under Arizona's two-drug protocol using Midazolam and Hydromorphone.

On April 22, 2014, Wood was informed that if the Arizona Supreme Court granted the State's pending motion for warrant of execution, the Arizona Department of Corrections ("ADC") "will use Midazolam and Hydromorphone in a two-drug protocol," and that "[i]n the event ADC is able to procure Pentobarbital, ADC will provide notice of its intent to use that drug in accordance with Department Order 710." (Doc. 11, Exhibit A.) On April 30, 2014, Wood requested certain information, including: an explanation of how ADC chose the amounts of

Midazolam and Hydromorphone included in the protocol; the drugs' manufacturer and source, whether they were domestic or foreign, and whether they were FDA approved; and Drug Enforcement Agency ("DEA") registrations for all team members that would handle the drugs. (Doc. 11, Exhibit B, at 2–3.) Defendant Ryan responded on May 6, 2014, that: in deciding what amounts of the drugs to be used in Wood's execution, ADC relied on declarations and sworn testimony from the Ohio Execution Protocol ligation[1]; A.R.S. § 13–757(C) protects the identity of the drugs' source; the drugs were "domestically obtained and are FDA approved"; and the IV team's qualifications had not changed since previous litigation regarding the issue in *Towery v. Brewer*, No. 2:12–CV–00245–NVW. (*Id.* at Exhibit F.)

Wood responded with a request for more information, including: the identity of the manufacturers, lot numbers, expiration dates, and National Drug Codes for the Midazolam and Hydromorphone; the "actual documents" from the Ohio Execution Protocol litigation that ADC relied on in determining the amount of drugs to use; and documentation of the credentials of the medical professional who would participate in the execution. (*Id.* at Exhibit C.) Several days later, Wood wrote to Defendant Ryan again, reiterating his previous requests, and also asking for documentation relating to internal and external communications between other state department of corrections regarding execution protocol topics. (*Id.* at Exhibit E.)

On June 9, 2014, Defendant Ryan responded that: ADC's protocol provides that a central femoral line will not be used unless the person placing it is certified or licensed to do so; certification and licensing of the IV team is verified by the Inspector General's Office; and records relating to ADC's development of the two-

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[1] *In re Ohio Execution Protocol Litigation*, No. 2:11-CV-1016 (S.D. Ohio).

drug Midazolam and Hydromorphone protocol could be found in the transcripts and declarations in the litigation of Ohio's protocol. (*Id.* at Exhibit G.) Attachments to Defendant Ryan's letter included purchase orders and other records related to the drugs redacted to exclude information that would identify the source or manufacturer. (*Id.*)

Wood and the other Plaintiffs filed their Complaint on June 26, 2014, and Wood filed his Motion for Preliminary Injunction or Temporary Restraining Order 6 days later, on July 2, 2014. (Doc. 1, 11.)

III. ARGUMENTS.

Wood asks this Court to grant him a preliminary injunction based on the likelihood that he will succeed on the merits of Claim 2 of the Complaint, which alleges that Defendants have violated his First Amendment right of access to execution-related government information. (Doc. 11, at 9.) He similarly argues that his due process rights have been violated because he requires the information he seeks to determine whether his execution "will likely violate the Constitution." (*Id.* at 10.) For the reasons below, Wood falls far short of making a "clear showing" that he is entitled to the extraordinary and drastic remedy of injunctive relief. *See Mazurek*, 520 U.S. at 972.

A. *Claim 2 is not plausible and therefore presents no likelihood of success on the merits.*

1. There is no First Amendment right to the information Wood seeks.

Wood cannot demonstrate a likelihood of success on the merits of his § 1983 claim because there is no First Amendment right to obtain the information he seeks. Wood asserts that he has a First Amendment right to know:

a. the source(s) and manufacturer(s) of lethal injection drugs to be used in his execution;

b. the National Drug Codes of the lethal injection drugs;

c. the lot numbers of the lethal injection drugs;

d. information detailing the medical, professional, and controlled-substances qualifications and certifications of the personnel who will take part in his lethal injection execution; and

e. documentation detailing the manner in which Defendants developed their lethal injection protocol.

(Doc. 11, at 1–2.) His claim lacks any chance of success because there is no affirmative constitutional duty requiring the government to disclose information within its possession, and individuals have no First Amendment right to receive information within the government's control. *See Albright v. Oliver,* 510 U.S. 266, 271 (1994) (plurality) (citation and internal quotation marks omitted) ("Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred . . . . The first step in any such claim is to identify the specific constitutional right allegedly infringed.").

In the death penalty context, courts across the country have addressed a prisoner's right to obtain information related to his execution and they have consistently found that prisoners have no constitutional right to obtain such information. The Eleventh Circuit recently held that neither the Fifth, Fourteenth, nor First Amendments afford a death row inmate "the broad right" to know the source and manufacturer of lethal injection drugs or the qualifications of the persons who would manufacture the drugs or participate in the lethal injection process. *Wellons v. Comm'r, Ga. Dept. of Corr.*, __ F.3d __, 2014 WL 2748316, at *6 (11th Cir. June 17, 2014) (per curiam). Within the last year, the Fifth Circuit found that Louisiana's refusal to provide details regarding its execution protocol was not a constitutional violation. *Sepulvado v. Jindal*, 729 F.3d 413, 420 (5th Cir. 2013) ("There is no violation of the Due Process Clause from the uncertainty that Louisiana has imposed on Sepulvado by withholding the details of its execution protocol."); *see also Sells v. Livingston*, 750 F.3d 478, 481 (5th Cir 2014) ("the

assertion of a necessity for disclosure does not substitute for the identification of a cognizable liberty interest"). Similarly, the Eighth Circuit has held that a death row inmate's argument grounded in an inability to *discover* potential claims fails to state a plausible due process claim because the inability to discover claims does not constitute a due process violation, *see Williams v. Hobbs*, 658 F.3d 842, 852 (8th Cir. 2011), and that the Eighth Amendment does not entitle a death row inmate to information about the physician, pharmacy, and laboratory involved in the execution process absent plausible allegations of a feasible and more humane alternate method of execution or purposeful design by the State to inflict unnecessary pain. *In re Lombardi*, 741 F.3d 888, 895–96 (8th Cir. 2014) (en banc); *see also Whitaker v. Livingston*, 732 F.3d 465, 467 (5th Cir. 2013) (rejecting Fourteenth Amendment, Supremacy Clause, and access-to-the-courts claims challenging state's failure to disclosure information regarding the method of execution in a timely manner absent a plausible Eighth Amendment claim). And the Georgia Supreme Court recently rejected an inmate's claim under the First Amendment challenging a statute protecting the source of lethal injection drugs, stating that "[t]o the extent that [a death row inmate] s[ought] to turn the First Amendment into an Open Records Act for information relating to executions, his claim clearly fail[ed]." *Owens v. Hill*, __ S.E.2d __, 2014 WL 2025129, at *9 (Ga. May 19, 2014).

These holdings are consistent with the general principle that the First Amendment does not afford the right to information in the government's possession. "The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act." *Houchins v. KQED*, 438 U.S. 1, 15 (1978) (plurality opinion). "Neither the First Amendment nor the Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control." *Id.*; *see also McBurney v. Young*, __ U.S. __, 133 S. Ct. 1709, 1718 (2013) ("This Court has repeatedly made clear that there is no

constitutional right to obtain all the information provided by FOIA laws."). "As a general rule, citizens have no first amendment right of access to traditionally nonpublic government information." *McGehee v. Casey*, 718 F.2d 1137, 1147 (D.C. Cir. 1983); *see also Entler v. McKenna*, 487 Fed.Appx. 417, 418 (9th Cir. 2012) ("The district court properly dismissed Entler's § 1983 claim for alleged interference with his right to access public documents because there is no constitutional right to public disclosure of government documents."). For example, even in a criminal prosecution, there is no general federal constitutional right to discover information. *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977).

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. CONST. amend. I. "The amendment constrains our government from acting in ways which infringe upon our right to free speech; it does not create an affirmative duty upon the government to act." *Gartner v. U.S. Information Agency*, 726 F. Supp. 1183, 1188 (S.D. Iowa 1989). "In accord with its plain language, the First Amendment broadly protects the freedom of individuals and the press to speak or publish. It does not expressly address the right of the public to receive information." *Center for Nat. Sec. Studies v. U.S. Dept. of Justice*, 331 F.3d 918, 934 (D.C. Cir. 2003). "By contrast, it requires some straining of the text to construe the Amendment's explicit preclusion of government interference as conferring upon each citizen a presumptive right of access to any government-held information which may interest him or her." *Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164, 1168 (3d Cir. 1986) (en banc). "It simply does not seem reasonable to suppose that the free speech clause would speak, as it does, solely to government interference if the drafters had thereby intended to create a right to know and a concomitant governmental duty to disclose." *Id.*

Consequently, the Supreme Court "has never intimated a First Amendment guarantee of a right of access to all sources of information within government

control." *Houchins*, 438 U.S. at 9. Nor has the First Amendment ever "been interpreted . . . as requiring a government official who is an 'unwilling speaker' to impart information." *Kline v. Republic of El Salvador*, 603 F. Supp. 1313, 1319 (D. D.C. 1985); *see also Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 756 (1976) ("Freedom of speech presupposes a willing speaker."). The First Amendment right to speak and publish therefore does not include the unrestrained right to gather information from government sources:

> There are few restrictions on action which could not be clothed by ingenious argument in the garb of decreased data flow. For example, the prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information.

Zemel v. Rusk, 381 U.S. 1, 16–17 (1965).

To be clear, "[t]here is no constitutional right to have access to particular government information, or to require openness from the bureaucracy." *Houchins*, 438 U.S. at 14; *see also LAPD v. United Reporting*, 528 U.S. 32, 40 (1999) ("[W]hat we have before us is nothing more than a governmental denial of access to information in its possession. California could decide not to give out arrestee information at all without violating the First Amendment."). "[T]he right to receive information cannot be stretched to the point of creating a First Amendment right allowing the public to compel disclosure of all government-held information. In other words, there is no affirmative constitutional duty requiring the government to disclose non-public information within its possession." *United States v. Miami University*, 91 F. Supp. 2d 1132, 1154 (S.D. Ohio 2000) (emphasis in original).

These authorities overwhelmingly demonstrate that the First Amendment confers on Wood no right to the information he seeks. Wood, however, relies almost exclusively on *California First Amendment Coalition v. Woodford*, 299 F.3d 868 (9th Cir. 2002), to assert that the First Amendment grants him such a

right. (Doc. 11, at 10–12.) Wood misconstrues that case's holding. That case addressed the public's qualified First Amendment right of access to governmental proceedings and held that the public enjoys a First Amendment right to view an execution from the moment the inmate enters the execution chamber. *Id.* at 877. In so holding, the court relied on other cases addressing the public's First Amendment right to view certain government proceedings, such as voir dire, trial testimony of a child victim of a sex offense, criminal trials, pretrial suppression hearings, pretrial release proceedings and documents, transcripts of closed hearings that occurred during jury deliberations, and plea agreements and related documents. *Id.* at 873–74 (citing cases). What that case did *not* address was the right Wood seeks to assert here—a right to information in the government's possession. As applicable here, *California First Amendment Coalition* stands for the proposition that the public enjoys the right to view Wood's execution and nothing more. It recognized no constitutional rights applicable to Wood in this case, and it certainly did not create a constitutional right to know the drug manufacturer or other information about the source of the drugs or information about personnel taking part in the execution process.

Wood also relies on an unpublished order from a different case in this District. (Doc. 11, at 10–12.) But as the Ninth Circuit has stated, "An unpublished disposition is, more or less, a letter from the court to parties familiar with the facts, announcing the result and the essential rationale of the court's decision." *Hart v. Massanari*, 266 F.3d 1155, 1178 (9th Cir. 2001). The order to which Wood cites is not binding, and this Court is free to reject the reasoning in another district court case—especially when the decision in that case is contrary to every Supreme Court decision on point. *See id. at* 1174 (noting that the first district judge to decide an issue within a district or within a circuit does not bind all similarly situated district judges); *see also Southeastern Stud & Components, Inc. v. American Eagle Design Build Studios*, 588 F.3d 963, 967 (8th Cir. 2009); *Starbuck v. City of San*

Francisco, 556 F.2d 450, 457 n.13 (9th Cir. 1977). Moreover, the unpublished order runs contrary to the other decisions confronting this and similar claims. See *Wellons*, 2014 WL 2748316, at *6; *Sells*, 750 F.3d at 481; *Sepulvado*, 729 F.3d at 420; *Williams*, 658 F.3d at 852; *Owens*, 2014 WL 2025129, at *9.

Wood's argument that ADC has disclosed information in the past and it must therefore disclose in the future fails because all previous disclosures were done in response to court order. ADC has never voluntarily disclosed the information he seeks because of legitimate concerns regarding the privacy of suppliers and manufacturers.

Not only has Wood failed to establish a constitutional right in support of this claim, but he has ignored the reasons demonstrating why Arizona's confidentiality statute is critical. The relevant sub-section of A.R.S. § 13-757 provides:

> C. The identity of executioners and other persons who participate or *perform ancillary functions* in an execution and any information *contained in records that would identify those persons* is confidential and is not subject to disclosure pursuant to title 39, chapter 1, article 2. [§ 39-121 et seq. Arizona's public records statutes].

(Emphasis added.) Following this Court's disagreement with the State's position in *Landrigan v. Brewer*, No. CIV-10-2246-PHX-ROS, 2010 WL 4269557 (D. Ariz. Oct. 23, 2010), *aff'd*, 625 F.3d 1144 (Oct. 26, 2010), *vacated*, 131 S. Ct. 445 (Oct. 26 1010), Chief Judge Kozinski, dissenting from the denial of rehearing en banc, identified the policy reason behind Arizona's statute:

> 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.

Landrigan v. Brewer, 625 F.3d 1132, 1143 (9th Cir. 2010) (emphasis added).

The First Amendment does not compel disclosure of the information Wood seeks. If this Court were to adopt Wood's view of the First Amendment, there would be no need for Arizona's public records law or the Freedom of Information Act. Wood's reading of the First Amendment is contrary to every Supreme Court case discussing access to government information, and Wood's view of the First Amendment would seem to require both federal and state governments to turn over any information within their possession. The state officials named as Defendants in the Complaint are not "willing speakers" and they have no constitutional duty to disclose information under the First Amendment. Likewise, Wood has no First Amendment right to receive information within Defendants' control. There is simply no First Amendment right to the information Wood seeks. Accordingly, he cannot demonstrate a likelihood of success on the merits and the motion should be denied.

2. This Court previously rejected Wood's due process claim.

Wood argues that the State has deprived him of his due process rights by denying him information necessary "to determine whether his execution will likely violate the Constitution," which he argues "is especially critical in light of ADC's difficulties in lawfully obtaining lethal-injection drugs." (Doc. 11, at 10.) A

similar claim was rejected by this Court in *West v. Brewer*, No. CV-11-1409-PHX-NVW, 2011 WL 6724628 (D. Ariz. 2011) (*Memo. Dec.*), following discovery and a 3-day trial. *Id*. at *20. There the plaintiffs were also concerned, in part, about non-disclosure of information violating due process and their access to the courts. *Id*. "To establish a due process challenge to executive action, as a threshold question Plaintiffs must show that Defendants' behavior was 'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Id.* (citing cases). The Court concluded that Defendants' conduct under those circumstances was not egregious, "let alone so egregious it shocks the conscience." *Id*. The same is true here. Wood has established no constitutional right to the information he seeks and Defendants have rational reasons, including based on state law and prior experience, to withhold the information. *See Valle v. Singer*, 655 F.3d 1223, 1237 n.13 (11th Cir. 2011) (rejecting the claim that secrecy prevented the death row inmate from litigating his issues).

Moreover, the Fifth Circuit recently concluded that no appellate court has recognized a claim that the Due Process Clause provides a right to even review changes in a State's lethal injection protocol:

> There is no violation of the Due Process Clause from the uncertainty that Louisiana has imposed on Sepulvado by withholding the details of its execution protocol. Perhaps the state's secrecy masks "a substantial risk of serious harm," but it does not create one. Having failed to identify an enforceable right that a preliminary injunction might safeguard, Sepulvado cannot prevail on the merits.

Sepulvado, 729 F.3d 413, 420 (5th Cir. 2013) (footnotes omitted); *see also Williams v. Hobbs*, 658 F.3d 842, 852 (8th Cir. 2011) (holding that prisoners, who argued that the Arkansas Method of Execution Act violated the due process clause because its secrecy denied them "an opportunity to litigate" their claim that the execution protocol violated the Eighth Amendment, failed to state a plausible due process access-to-the-courts claim).

"To establish that [they were] denied meaningful access to the courts, [Plaintiffs] must submit evidence showing that [they] suffered an 'actual injury' as a result of the defendants actions." *West*, 2011 WL 6724628, at *21 (citing *Lewis v. Casey*, 518 U.S. 343, 348 (1996)). For there to be an actual injury with respect to the planned or existing litigation, the State must cause an inability, such as to meet a filing deadline or to present a claim. *Casey*, 518 U.S. at 348. Here, Wood's access to the courts has not been hindered.

B. *Wood cannot show that he is likely to suffer irreparable harm.*

Wood has "a strong interest in being executed in a constitutional manner." *See West*, 652 F.3d at 1060; *Beaty*, 649 F.3d at 1072. But because he has not raised a plausible claim that his First Amendment or due process rights have been violated, much less that his execution will be unconstitutional, he is not likely to suffer irreparable harm. *See Towery*, 672 F.3d at 661 (plaintiffs did not meet standard for preliminary injunction where they did "not raise serious questions of their Eighth and Fourteenth Amendment claims with regard to their executions").

C. *The balance of equities favors Defendants.*

It is not in the public interest to grant an injunction in this case. A stay of execution is an equitable remedy and, as such, "must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts." *Hill*, 547 U.S. at 384 (citing *Nelson*, 541 U.S. at 649–50). Both Plaintiff's state and federal collateral proceedings have run their course in the more than 20 years since he was sentenced to death for the murders he committed. "[F]urther delay from a stay would cause hardship and prejudice to the State and victims, given that the appellate process in this case has already spanned more than two decades." *Bible v. Schriro*, 651 F.3d 1060, 1066 (9th Cir. 2011) (*per curiam*). The State has an interest in seeing that its laws are enforced and in carrying out the executions as scheduled and further delay will not meet that interest. *See Hill*, 547 U.S. at 584 (recognizing that both the State and the victims of crime "have an

important interest in the timely enforcement of a sentence."); *see also* Ariz. Const. art. 2, § 2.1(a)(10) (Arizona crime victims have a constitutional right to "prompt and final" conclusion of the case). Similarly, the uncertainties and expense that come from the delay that often follows death penalty cases, as well as the impact of such delay upon the families of their victims and their communities, will only be compounded by an injunction. This is especially true where, as here, Wood cannot succeed on the merits of his claim.

D. *An injunction is not in the public interest.*

Because Wood fails to present any plausible questions of constitutional magnitude, there has been no showing that he will suffer an unconstitutional execution, and the equities tip in favor of Defendants, an injunction is not in the public interest.

E. *Wood could have requested relief sooner.*

Wood argues that he filed his motion as soon as practicable, 3 business days after ADC provided "official, and ostensibly final, information" about his scheduled execution. (Doc. 11, at 15.) However, Wood has known for over 2 months that Defendants intended to use Midazolam and Hydromorphone in a two-drug protocol for his execution,[2] and for nearly a month that Defendants would not provide the drug, personnel, and protocol-development information he seeks.[3] Yet he has waited until 3 weeks from his scheduled execution to request a preliminary injunction or temporary restraining order. Now he seeks an equitable remedy. *Hill*, 547 U.S. at 584.. A court can consider "the last-minute nature of an

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[2] As demonstrated by Exhibit A to Wood's motion, he was informed on April 22, 2014 that the Arizona Department of Corrections "will use Midazolam and Hydromorphone in a two-drug protocol."

[3] As demonstrated by Exhibits F and G to Wood's motion, Wood received on May 7, 2014, and June 9, 2014, letters from Defendant Ryan informing him what information regarding the drugs, personnel, and protocol would be provided. (See also Doc. 11, at 5–6.)

application to stay execution in deciding whether to grant equitable relief." *Gomez v. United States District Court*, 503 U.S. 653, 654 (1991). There is "a strong equitable presumption against the grant of stay" where the claim could have been raised earlier so a stay would not have been necessary. *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Courts therefore "must consider not only the likelihood of success on the merits and the relative harm to the parties, but also the extent to which the inmate has delayed unnecessarily in bringing the claim." *Id.* at 649–50. That Wood could have brought his claims earlier is yet another consideration weighing against granting Wood's requested preliminary injunction.

CONCLUSION

Defendants request that this Court deny injunctive relief.

RESPECTFULLY SUBMITTED this 7th day of July, 2014.

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I hereby certify that on July 7, 2014, 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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