

1 Craig M. Waugh (Bar No. 026524)
2 Laura Sixkiller (Bar No. 022014)
3 DLA Piper LLP (US)
4 2525 East Camelback Road, Suite 1000
5 Phoenix, Arizona 85016-4232
6 Tel: 480.606.5100
7 Fax: 480.606.5101
8 craig.waugh@us.dlapiper.com
9 laura.sixkiller@us.dlapiper.com
10 DLAPHX@us.dlapiper.com

11 Adam J. Pié (*pro hac vice* forthcoming)
12 Michael Bakhama (*pro hac vice* forthcoming)
13 DLA Piper LLP (US)
14 The Marbury Building
15 6225 Smith Avenue
16 Baltimore, Maryland 21209
17 Tel: 410.580.3000
18 Fax: 410.580.3001
19 adam.pie@us.dlapiper.com
20 michael.bakhama@us.dlapiper.com

Victoria Lopez (Bar No. 330042)
Jared Keenan (Bar No. 027068)
Benjamin L. Rundall (Bar No. 031661)
American Civil Liberties Union Foundation
of Arizona
P.O. Box 17148
Phoenix, Arizona 85011
Tel: 602.650.1854
Fax: 602.650.1376
vlopez@acluaz.org
jkeenana@acluaz.org
brundall@acluaz.org

21 *Attorneys for Plaintiffs*

22 **IN THE SUPERIOR COURT OF ARIZONA**

23 **IN AND FOR THE COUNTY OF MARICOPA**

24 Jewish Community Relations Council of
25 Greater Phoenix; Paul Rockower;
26 Alan Zeichick,

27 Plaintiffs,

28 v.

State of Arizona; Arizona Department of
Corrections, Rehabilitation & Reentry;
Mark Brnovich; David Shinn; John Does
1-10,

Defendants.

CASE NO.: _____

VERIFIED COMPLAINT

(Declaratory Judgment)

(Tier 3 Case)

Plaintiffs Jewish Community Relations Council of Greater Phoenix, Paul Rockower,
and Alan Zeichick bring this Complaint for declaratory and injunctive relief against

1 Defendants State of Arizona, Arizona Department of Corrections, Rehabilitation & Reentry,
2 Mark Brnovich, David Shinn, and John Does 1-10.

3 **INTRODUCTION**

4 1. While views may differ on the proper scope and merits of the death penalty in
5 Arizona, a consensus has long existed under an evolving sense of decency and justice that
6 cyanide gas – the primary method used to exterminate Jewish people and members of other
7 minority groups during the Holocaust in World War II – should no longer be used in this State.
8 In 1992, the Arizona Constitution was amended to add lethal injection and to eliminate lethal
9 gas as a method of capital punishment, permitting its use only as to those sentenced to death
10 for crimes committed before the enactment of the Amendment – and only at their election.

11 2. This case does not challenge the State’s authority to impose capital punishment
12 in certain cases; rather, Plaintiffs seek to prevent the grievous moral and constitutional injury
13 of taxing Arizonans, including victims of the Holocaust, and effectively forcing them to
14 subsidize and relive unnecessarily the same form of cruelty used in World War II atrocities.

15 3. In 1992, the Defendant State of Arizona (“State of Arizona”) executed Don
16 Harding using cyanide gas. According to Jim Belanger, Harding’s attorney who witnessed his
17 client’s execution, Harding’s “face was red and contorted as if he were attempting to fight
18 through tremendous pain. His mouth was pursed shut and his jaw was clenched tight. Don then
19 took several quick gulps of the fumes. . . . Don’s body started convulsing violently and his
20 arms strained against the straps. His face and body turned a deep red and the veins in his temple
21 and neck began to bulge until I thought they might explode. . . . Every few seconds he gulped
22 for air. He was shuddering uncontrollably and his body was wracked with spasms. His head
23 continued to snap back and forth. His hands were tightly clenched. . . . Several more minutes
24 passed before the most violent of Don’s convulsions subsided. Then the muscles along his left
25 arm and back began twitching in a wavelike motion under his skin.” In total, it took almost 11
26 minutes for the gas to kill Harding. Jim Belanger, Opinion, *I watched Don Harding’s execution*
27 *in an Arizona gas chamber. His face still haunts me*, Arizona Central (June 8, 2021), a true
28 and correct copy of which is attached as **Exhibit 1**.

1 4. The next time the State of Arizona executed a prisoner using this method was
2 Walter LaGrand in 1999. This time, the gas took even longer to kill: 18 minutes. An eyewitness
3 reported seeing Walter “coughing violently – three or four loud hacks – and then, in what
4 appeared to be his last moments of consciousness, he made a gagging sound before falling
5 forward.” Patty Machelor, *LaGrand: 18 minutes to die*, Tucson Citizen (Mar. 4, 1999), a true
6 and correct copy of which is attached as **Exhibit 2**.

7 5. Throughout the 1970s and 1980s, eyewitness accounts of cyanide gas executions
8 in other states consistently described the horrors of this method of execution in even more
9 chilling detail. The witnessed horrors included strenuous convulsions, agonizing gasps,
10 agonized shrieking and thrashing, and one individual in so much pain he repeatedly smashed
11 his head into a metal pole.

12 6. For Jewish citizens, and survivors of the Holocaust, this horror is particularly
13 harrowing. When John Steiner, an employee at California’s San Quentin Prison, was asked to
14 serve as a witness for such an execution, he flatly refused. Steiner explained that he had seen
15 enough such “execution[s]” during his time at Auschwitz-Birkenau, where the Nazis murdered
16 his mother and over a million other Jews and others deemed “deviants.” Mr. Steiner explained:
17 “I refused to act as a witness because, among other things, I knew that lethal gas is an
18 excruciatingly painful method of execution. Witnessing a person being gassed to death would
19 bring back horrendous memories of the hideous fate suffered by millions, which included my
20 family, extended relatives, and friends. Even without witnessing the execution, being at San
21 Quentin brought back all the memories, including the ghastly odors of the death camp
22 Auschwitz-Birkenau.” Declaration of John M. Steiner, Ph. D., *Fierro v. Gomez*, a true and
23 correct copy of which is attached as **Exhibit 3**.

24 7. The State of Arizona is preparing to use this horrific method of execution once
25 again using taxpayer funds collected from Arizonans, including approximately 80 Holocaust
26 survivors who currently call our State their home. Many of these survivors are horrified at
27 being taxed to implement the same machinery of cruelty that was used to murder their loved
28 ones. The American Jewish Committee, one of the nation’s oldest Jewish advocacy groups,

1 has said: “Arizona’s decision to employ Zyklon B gas as a means of execution defies belief. .
2 . . Whether or not one supports the death penalty as a general matter, there is general agreement
3 in American society that a gas devised as a pesticide, and used to eliminate Jews, has no place
4 in the administration of criminal justice.” American Jewish Committee, *AJC Decries Arizona*
5 *Plan to Use Zyklon B for Prisoner Executions*, Press Release (June 7, 2021), a true and correct
6 copy of which is attached as **Exhibit 4**.

7 8. Now, 30 years after the State of Arizona first acknowledged the horrors of lethal
8 gas as a method of execution and eliminated it in all but a narrow set of cases, the question of
9 lethal gas is not one of mere policy—it has taken on constitutional dimensions. The chilling
10 eyewitness descriptions of this grisly method of execution leaves no room for doubt that it is
11 a paradigmatically cruel and unusual form of punishment. The scientific understanding of its
12 physiological effects has evolved; the history of its use in Arizona and elsewhere has become
13 scarred with horrifying mishaps and unnecessary human suffering; federal courts have
14 properly struck down its use as cruel and unusual punishment under the Eighth and Fourteenth
15 Amendments to the United States Constitution; and other states have abandoned its use
16 altogether.

17 9. The State of Arizona has a long history of support for its Jewish citizens, as
18 evidenced most recently when Governor Ducey signed into law a new bill requiring that
19 Arizona students in grades 7-12 receive education regarding the Holocaust. Governor Ducey
20 has cited a rise in antisemitism as a reason Holocaust education is necessary.

21 10. In addition to the 80 or more Holocaust survivors living in Arizona, many more
22 survivors throughout the country are among our last living witnesses to the horrors associated
23 with death by cyanide gas. Their loved ones were killed in gruesome fashion by one of the
24 most heinous regimes in history, using the very method on which the State now spends
25 taxpayer money in preparation to execute those sentenced to death.

26 11. The inescapable association of cyanide gas with the Holocaust and Nazi
27 Germany, and in particular the large-scale retreat from its use by other states as well as in
28 Arizona, stands as a powerful testament to its status in 2021 as a “cruel and unusual” form of

1 punishment. In light of all these factors, the time is long overdue for Arizona’s courts to strike
2 down the remaining, narrow vestiges of the use of cyanide gas for execution. The State
3 expressed its rejection of cyanide gas executions decades ago, and thus no persuasive State
4 interest exists to continue this outdated, barbaric, and emotionally charged reminder of one of
5 our world’s darkest chapters.

6 12. Plaintiffs therefore respectfully request that this Court declare the use of cyanide
7 gas as a form of execution to be cruel and unusual punishment as applied under Article 2,
8 section 15 of the Arizona Constitution and issue a permanent injunction barring Defendants
9 from expending any further taxpayer funds to further its use of cyanide gas for executions.

10 **PARTIES**

11 13. Plaintiff Jewish Community Relations Council (“JCRC”) of Greater Phoenix is
12 an Arizona nonprofit corporation serving as an advocate for Jewish residents and taxpayers in
13 Arizona, particularly in the Greater Phoenix area. The JCRC fosters education, dialogue, and
14 advocacy within and outside the Jewish community, providing a collective voice in advancing
15 the causes of Justice, Compassion and Equity. The JCRC is located at 12701 North Scottsdale
16 Road #203, Scottsdale, Arizona 85254.

17 14. Plaintiff Paul Rockower, a taxpaying resident of Arizona, is the Executive
18 Director of the JCRC of Greater Phoenix. Mr. Rockower resides in Phoenix, Arizona.

19 15. Plaintiff Alan Zeichick, a taxpaying resident of Arizona, is a member of the
20 Board of Directors of the JCRC of Greater Phoenix. Mr. Zeichick resides in Phoenix, Arizona.

21 16. Because this Complaint seeks to challenge the constitutionality of Arizona’s
22 lethal gas regulations, Plaintiffs bring this action against the State of Arizona and its agents
23 responsible for operating Arizona’s lethal gas program. Pursuant to A.R.S. § 12-1841, a Notice
24 of Claim of Unconstitutionality along with copies of this Complaint and all contemporaneous
25 filings have been or will be served on the Attorney General, the Speaker of the House of
26 Representatives, and the President of the Senate.

27 17. Defendant Arizona Department of Corrections, Rehabilitation & Reentry
28 (the “ADCRR”) is an executive agency of the State of Arizona and is responsible for

1 administering the execution of the death penalty subject to a death warrant issued by the
2 Arizona Supreme Court. The ADCRR is further responsible for purchasing the materials
3 necessary to conduct an execution by lethal gas and for operating and maintaining Arizona’s
4 gas chamber. The ADCRR is headquartered at 1601 W. Jefferson, Phoenix, Arizona 85007.

5 18. Defendant Mark Brnovich is the current Attorney General for the State of
6 Arizona. As this Complaint seeks a declaratory judgment rejecting statutes authorizing the use
7 of cyanide gas as unconstitutional, “the attorney general of the state is [the] proper party
8 defendant in declaratory judgment actions involving the constitutionality of a statute,
9 ordinance, or franchise.” *Ethington v. Wright*, 66 Ariz. 382, 388 (1948).

10 19. Defendant David Shinn is the current Director of the ADCRR. Director Shinn is
11 responsible for overseeing the ADCRR, including the administration of the execution of the
12 death penalty subject to a death warrant issued by the Arizona Supreme Court.

13 20. Defendants John Does 1-10 are employees of ADCRR who, in the course of
14 their employment at the ADCRR, oversee or engage in activities in furtherance of the
15 Defendants lethal gas operations. The identities of Defendants John Does 1-10 are not yet
16 known to Plaintiffs. Plaintiffs reserve the right to amend this Complaint as those entities are
17 identified in discovery.

18 STANDING, JURISDICTION, AND VENUE

19 21. Plaintiffs seek a declaratory judgment and injunctive relief to prevent
20 Defendants from engaging in the unconstitutional practice of cyanide gas executions.

21 22. “The question of standing in Arizona does not raise constitutional concerns
22 because, unlike the U.S. Constitution, Arizona’s constitution contains no case or controversy
23 requirement.” *Karbal v. Ariz. Dep’t of Revenue*, 215 Ariz. 114, 116, ¶ 7 (App. 2007).
24 Standing in Arizona presents a prudential consideration centered on judicial restraint—not a
25 jurisdictional issue. *Biggs v. Cooper ex rel. Cty. of Maricopa*, 236 Ariz. 415, 418, ¶ 8
26 (2014). *See also Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Arizona*, 148
27 Ariz. 1, 6 (1985) (“We impose that restraint to insure that our courts do not issue mere advisory
28

1 opinions, that the case is not moot and that the issues will be fully developed by true
2 adversaries.”).

3 23. Standing requires petitioners to “show a particularized injury to
4 themselves.” *Bennett v. Brownlow*, 211 Ariz. 193, 196, ¶ 17 (2005). As relevant here,
5 taxpayers have standing “in an appropriate action to question illegal expenditures made or
6 threatened by a public agency,” *Smith v. Graham Cty. Cmty. Coll. Dist.*, 123 Ariz. 431, 432
7 (App. 1979), and “to challenge a legislative act that expend[s] monies *for an unconstitutional*
8 *purpose*,” *Bennett v. Napolitano*, 206 Ariz. 520, 527, ¶ 30 (2003) (emphasis original). This
9 right is “based upon the taxpayers’ equitable ownership of such funds and their liability to
10 replenish the public treasury for the deficiency which would be caused by the
11 misappropriation.” *Ethington*, 66 Ariz. at 386.

12 24. As taxpaying residents of Arizona, and a non-profit organization that represents
13 Arizona taxpayers with a particular interest in this issue, Plaintiffs have standing to pursue
14 declaratory and injunctive relief to prevent the unconstitutional expenditure of taxpayer funds.
15 Moreover, Plaintiffs collectively have suffered a particularized injury, as their own tax dollars
16 were used, and potentially will continue to be used, to finance Defendants’ lethal gas program,
17 including the use of the same cyanide gas used by Nazi Germany to kill millions of Jews.

18 25. The Arizona statute, A.R.S. § 13-757(B), authorizing the use of lethal gas in
19 executions, is unconstitutional as applied under the Arizona Constitution. Ariz. Const. art. 2,
20 § 15. It sanctions and authorizes cruel and unusual punishment as applied through the
21 enactment of a particularly painful and barbaric form of execution. Ariz. Const. art. 2, §
22 15. Likewise, the portion of Article 22, section 22 of the Arizona Constitution that authorizes
23 the use of lethal gas in executions must yield to the prohibition against the infliction of cruel
24 and unusual punishment. The Ninth Circuit twice recognized the use of cyanide gas in this
25 manner as unconstitutional 25 years ago in *Fierro v. Gomez*, 77 F.3d 301 (9th Cir.
26 1996), *vacated as moot in light of Cal. Penal Code Section 3604 by Gomez v. Fierro*, 519 U.S.
27 918 (1996) (mem.); *LaGrand v. Stewart*, 173 F.3d 1144, 1149 (9th Cir. 1999) *vacated as*
28 *waived by petitioner by Stewart v. LaGrand*, 526 U.S. 115, 119 (1999).

1 drop sodium cyanide into a pot of sulfuric acid under the chair, releasing deadly hydrogen
2 cyanide gas into the air. While it remains to be determined whether the ADCRR has succeeded
3 in procuring the sodium cyanide called for under its protocol (*infra* ¶ 35), Arizona’s operative
4 execution protocol contemplates using the same gas as deployed in Nazi Germany to carry out
5 the Holocaust.

6 **B. The State Must Spend Taxpayer Funds on its Cyanide Gas Protocol Every**
7 **Time it Seeks to Execute a Defendant Sentenced to Death Prior to**
8 **November 23, 1992**

9 33. Defendants are currently seeking warrants to execute two of the 17 criminal
10 defendants sentenced to death before November 23, 1992: Frank Atwood and Clarence Dixon.

11 34. As recently disclosed ADCRR records demonstrate, in preparation for seeking
12 warrants of execution against Mr. Atwood and Mr. Dixon, ADCRR has spent taxpayer funds
13 to refurbish the gas chamber and purchase the lethal gas compound.

14 35. First, in early December 2020, ADCRR spent taxpayer funds on the chemical
15 ingredients required to create cyanide gas. On December 8, 2020, ADCRR purchased a
16 Potassium Cyanide Brick for \$1,529.50. On December 11, 2020, ADCRR purchased Sodium
17 Hydroxide, Sulfuric Acid, and non-regulated Phenolphthalein Sigma Aldrich for \$687.11.
18 Lethal gas purchases and invoices, a true and correct copy of which is attached as **Exhibit 5**.¹

19 36. On December 17, 2020, ADCRR conducted an inspection of the gas chamber
20 located inside the Central Unit at ASPC-Florence Complex. The assessment consisted of a
21 physical inspection of all sealing surfaces and the condition of all rubber seals, the exercise of
22 all the levers and the corresponding actuating parts, the exercise of all valves, and the flow test
23 of the plumbing. The inspection included a physical inspection of the chamber for corrosion,

24
25 ¹ In response to the Guardian’s Arizona Public Records Law request, the ADCRR produced a
26 collection of documents related to Arizona’s lethal gas program. Those documents included
27 invoices for the chemicals needed to create the lethal gas and the inspection and repair records
28 for the lethal gas chamber. Copies of those documents are available at
<https://www.documentcloud.org/documents/20791805-arizona-lethal-gas-and-lethal-injection-documents-may-2021>.

1 seal integrity, and operational functionality. ADCRR, *Rehabilitation and Reentry*
2 *Memorandum*, (Dec. 17, 2020), a true and correct copy of which is attached as **Exhibit 6**.

3 37. Some of ADCRR’s testing of the gas chamber was alarmingly simplistic,
4 including using a candle to test that the room was “air tight [sic].” Specifically, employees of
5 ADCRR held a flame of the candle up to the sealed windows and door. If the candle’s flame
6 remained steady and did not flicker, the chamber was deemed to be sufficiently airtight. *Id.*

7 38. The December 17, 2020 inspection found several deficiencies in Defendants’
8 gas chamber, including significant concerns with the rubber seals throughout the vessels
9 because of their age, slow drainage and overflowing, and an inoperable exhaust fan in the
10 chemical mixing room. *Id.*

11 39. As a result of the inspection, ADCRR engaged a company to refurbish and
12 recertify the gas chamber for operational readiness, address the drainage system issues, and
13 install a high volume (CFM) fan in the chemical mixing room. Although the costs for all these
14 refurbishments have yet to be publicly disclosed, taxpayer funds were expended to pay the
15 cost of testing and refurbishments to the gas chamber. *Id.*

16 40. ADCRR has admitted that it approved the purchase of lethal gas ingredients
17 along with the costs of the inspection and refurbishment of the gas chamber so that the State
18 would be “prepared to perform its legal obligation and commence the execution process as
19 part of the legally imposed sentence, regardless of method selected.” Meryl Kornfield, *Arizona*
20 *plans to execute prisoners with a lethal gas the Nazis used at Auschwitz*, *The Washington Post*
21 (June 1, 2021), a true and correct copy of which is attached hereto as **Exhibit 7**.

22 41. Therefore, every time Defendants seek to put to death one of the 17 people
23 eligible to elect lethal gas as the manner of execution, Defendants will be required to repeat
24 this process. This process must be completed before anyone has even made an election on
25 method, meaning that regardless of whether any of the remaining individuals eligible to elect
26 lethal gas does so, additional Arizona taxpayer funds will be spent to further Defendants’
27 cyanide gas protocol.

28 ///

1 **C. In a Rush to Prepare Defendants’ Gas Chamber for Use, ADCRR**
2 **Purchased the Wrong Chemicals Required Under Their Own Internal**
3 **Protocol**

4 42. ADCRR’s gas chamber protocol details how an execution by lethal gas must be
5 performed. *See* ADCRR Department Order (“DO”) 710, Revised March 10, 2021, a true and
6 correct copy of which is attached as **Exhibit 8**.

7 43. ADCRR DO 710 explicitly states that the chemical gas components for a lethal
8 gas execution are sodium cyanide, phenolphthalein solution, and sulfuric acid.

9 44. Rather than purchase sodium cyanide, ADCRR purchased potassium cyanide for
10 use in the gas chamber.

11 45. The use of a different form of cyanide is not a minor detail. As both the World
12 Health Organization and National Research Council detail, the substances have different
13 structures, molecular weights, and properties that, if not appropriately accounted for, could
14 change the resulting byproduct of the chemical reaction dictated in Arizona’s protocol. *See*
15 World Health Organization, *Cyanide in Drinking-water: Background document for*
16 *development of WHO Guidelines for Drinking-water Quality* (2009) (available at
17 [https://www.who.int/docs/default-source/wash-documents/wash-chemicals/cyanide-](https://www.who.int/docs/default-source/wash-documents/wash-chemicals/cyanide-background-document.pdf?sfvrsn=29c5b9f4_4)
18 [background-document.pdf?sfvrsn=29c5b9f4_4](https://www.who.int/docs/default-source/wash-documents/wash-chemicals/cyanide-background-document.pdf?sfvrsn=29c5b9f4_4)); National Research Council, *Prudent*
19 *Practices in the Laboratory: Handling and Disposal of Chemicals*, Appendix B excerpts at
20 394-95 (1995) (available at <https://www.nap.edu/read/4911/chapter/14#267>).

21 46. The failure to account for these differences in types of cyanide could alter the
22 lethal gas composition and possibly result in additional complications, thus exacerbating the
23 cruel and unusual aspects of this form of execution.

24 **II. The Movement Away From Lethal Gas, Making it an Unusual Form of**
25 **Punishment**

26 **A. Arizona, Consistent With Other States, Has Wisely Moved Away From the**
27 **Death Penalty by Lethal Gas**

28 47. In 1992, Arizona voters overwhelmingly voted against the use of lethal gas.
Specifically, in 1992 the Arizona legislature referred to the voters a constitutional amendment

1 (Proposition 103) changing the approved method of execution from lethal gas to lethal
2 injection. The only exception concerned those convicted of crimes committed prior to
3 November 1992, who retain the option to elect lethal gas. A.R.S. § 13-757(B).

4 48. Proponents of the Amendment on the legislative counsel argued almost 30 years
5 ago that the “[t]he passage of Proposition 103 would provide for a more humane manner by
6 which condemned prisoners are put to death. A civilized society should not inflict unnecessary
7 suffering on any person, even those persons who are condemned to die. Execution by lethal
8 injection would result in a much quicker, less dramatic and less painful death.” Arizona Sec’y
9 of State, *State of Arizona 1992 Ballot Propositions Guide*, at 16-17, (available at
10 <https://www.azsos.gov/sites/default/files/pubpam92.pdf>) (last visited February 10, 2022). A
11 survey of Arizona voters at that time agreed with proponents, as 70% of them believed that
12 lethal injection was the most humane form of execution as opposed to only 8% favoring lethal
13 gas. *Death Penalty Statewide Poll*, Arizona Republic (March 26-29, 1992), a true and correct
14 copy of which is attached as **Exhibit 9**.

15 49. Even then-Attorney General Grant Woods, a strong supporter of the death
16 penalty, advocated in favor of moving away from lethal gas. After the execution of Donald
17 Harding, Attorney General Woods explained that he supported the move away from lethal gas,
18 noting that he did not “know who came up with this concept of a gas chamber in the first place.
19 Maybe that was innovative a while ago, but it’s not today.” Michael Murphy, *Woods says he*
20 *didn’t see finger gesture*, The Phoenix Gazette (April 7, 1992), a true and correct copy of
21 which is attached as **Exhibit 10**.

22 50. Arizonans overwhelmingly voted in favor of the Amendment, with over 76%
23 voting to replace lethal gas with lethal injection.

24 **B. In Practice, States Across the Country Have Largely Abandoned Lethal**
25 **Gas**

26 51. Since the United States Supreme Court lifted the national moratorium on capital
27 punishment in *Gregg v. Georgia*, 428 U.S. 153, 187 (1976), states have rarely utilized lethal
28 gas in executions.

1 52. According to the Death Penalty Information Center, since 1976, states have
2 executed 1,542 people. A vast majority of those executions (1,362) occurred through lethal
3 injection. The second most utilized form of execution during that period was electrocution
4 (163).

5 53. Of the over 1,500 executions since 1976, only 11 used lethal gas. The executions
6 occurred in only 5 states, and two of them – North Carolina and Nevada - have since eliminated
7 lethal gas. N.C. Gen. Stat. § 15-187, 1983 Nev. Stat., ch. 601, § 1, at 1937.

8 54. No state has executed a person using lethal gas after the State of Arizona
9 executed Walter LaGrand in 1999.

10 **C. Over the Past 50 Years, More and More States Have Eliminated the**
11 **Practice of Execution by Lethal Gas**

12 55. New Mexico was the first state to reject the gas chamber statutorily for lethal
13 injection when it enacted its *Post-Furman* capital punishment reform in 1979. N.M. Stat. Ann.
14 § 31-14-11.

15 56. Nevada, Mississippi, and North Carolina followed suit in 1983. Nev. Rev. Stat.
16 Ann. § 176.355; Miss. Code Ann. § 99-19-51 and Senate Bill No. 2185; N.C. Gen. Stat. § 15-
17 187. North Carolina amended its execution statute to give those sentenced to death the choice
18 to die in the gas chamber or by lethal injection, and then revised the statute again in 1998 to
19 remove the option of lethal gas entirely. N.C. Gen. Stat. § 15-187.

20 57. Oregon abandoned lethal gas for lethal injection in 1984. Or. Sec’y of State,
21 GENERAL ELECTION VOTERS’ PAMPHLET 28–33 (1984); 226 Or. Rev. Stat. § 137.473).

22 58. Colorado eliminated the gas chamber in 1988 when it adopted lethal injection.
23 Colo. Rev. Stat. 16-11-401 (1991); *see also* Colo. Rev. Stat. § 16-11-901 (repealing the death
24 penalty in its entirety).

25 59. Maryland also replaced the gas chamber with lethal injection in 1994. Md. Code
26 Ann. art. 27, § 627 (1994) (repealed 2002); *see also* Md. Code Ann., Crim. Law § 2-303(1)
27 (LexisNexis 2002 & Supp. 2007); 2013 Md. Laws, Ch. 156, Sec. 1, eff. 10/1/2013 (repealing
28 the death penalty in its entirety).

1 **D. To Date, Only Seven States Have Statutes Authorizing the Use of Lethal**
2 **Gas, Almost Always Subject to Significant Restrictions**

3 60. Seven states currently still have statutory language authorizing lethal gas in some
4 respects: Alabama, Arizona, California, Oklahoma, Mississippi, Missouri, and Wyoming. Ala.
5 Code § 15-18-82.1(a); A.R.S. § 13-757; Cal. Pen. Code § 3604(b); Okla. Stat. tit. 22, § 1014;
6 Miss. Code § 99-19-51; Mo. Rev. Stat. § 546.720; Wyo. Stat. § 7-13-904.

7 61. Three of those seven states *only* authorize lethal gas if lethal injection is found
8 unconstitutional. Wyo. Stat. § 7-13-904 (b), Okla. Stat. tit. 22, § 1014(B), Miss. Code § 99-
9 19-51(2). In practice, therefore, only four states currently authorize the use of lethal gas.

10 62. Three of those four remaining states (including Arizona) designate lethal
11 injection as the default method of execution, with lethal gas available only at the election of
12 the condemned (and, as in Arizona, this option may be available to only a subset of death row
13 prisoners). Ala. Code § 15-18-82.1(a); A.R.S. § 13-757(B); Cal. Pen. Code § 3604(b). Only
14 Missouri currently authorizes the state to use lethal gas or lethal injection without any
15 qualifications. Mo. Rev. Stat. § 546.720.

16 63. Even in those states that still authorize lethal gas, the use of cyanide has largely
17 been abandoned. Since the national moratorium on capital punishment ended in 1976,
18 Wyoming, Oklahoma, Alabama, and Missouri have not used lethal gas in executions.

19 64. Three other states that currently authorize lethal gas have in practice abandoned
20 the cyanide gas method used by Arizona. Alabama, Oklahoma, and Mississippi authorize the
21 use of nitrogen hypoxia as a substitute. Okla. Stat. tit. 22, § 1014(B); Ala. Code § 15-18-
22 82.1(a); Miss. Code § 99-19-51(2).

23 **III. The Medical Community’s Understanding of Lethal Gas**

24 **A. The Medical Community’s Understanding of the Effects of Lethal Gas on a**
25 **Human Demonstrates that the Practice is Cruel and Unusual Under**
26 **Arizona’s Constitution**

27 65. Contrary to the original belief by early proponents of the gas chamber, death by
28 lethal gas has proven to be neither quick nor painless.

28 ///

1 66. In 1994, the Northern District of California held an extensive trial on whether
2 executions by cyanide gas inflict torturous pain and suffering. *Fierro v. Gomez*, 865 F. Supp.
3 1387, 1404 (N.D. Cal. 1994). The Court heard eight days of evidence, with 10 testifying
4 witnesses including six expert witnesses, 44 witnesses testifying through declarations or
5 affidavits, and 78 exhibits totaling over 4,000 pages. The Court entered a detailed factual order
6 concluding that the executions violated the analogous provisions of the U.S. Constitution
7 prohibiting cruel and unusual punishment.²

8 67. Notably, the State of Arizona conceded the detailed testimony and findings of
9 the intense pain and suffering inflicted on individuals executed with cyanide gas in *LaGrand*
10 *v. Stewart*, 173 F.3d 1144, 1149 (9th Cir. 1999) (“Counsel for the State has candidly admitted
11 that if the question of Arizona’s use of lethal gas went to trial, the record would be no different
12 than it was in *Fierro*.”).

13 68. Individuals who are put to death in the gas chamber do not become immediately
14 unconscious upon the first breath of lethal gas but rather can remain conscious for multiple
15 minutes. *Fierro*, 865 F. Supp. at 1404.

16 69. During this time, individuals suffer intense, visceral pain, primarily due to
17 hypoxia or a lack of oxygen to the cells. The hypoxic state can continue for several minutes
18 after the cyanide gas is released in the execution chamber. While conscious, the person may
19 suffer extreme pain throughout their arms, shoulders, back, and chest. The experience, often
20 referred to as “air hunger,” is comparable to a major heart attack or being held under water. *Id.*

21
22
23 ² The order was upheld initially on appeal by the Ninth Circuit. *Fierro*, 77 F.3d 301, 309 (9th
24 Cir. 1996). The California legislature subsequently amended its death penalty statute during
25 the pending appeal. After the amendment, the United States Supreme Court granted certiorari
26 and vacated and remanded on the sole ground that the challenged statute had been amended in
27 the interim. *Gomez v. Fierro*, 519 U.S. 918 (1996). On remand, the Ninth Circuit vacated its
28 prior opinion because the prisoners did not elect (as permitted by the amended statute) lethal
gas, and thus lacked standing to challenge its constitutionality. *Fierro v. Terhune*, 147 F.3d
1158 (9th Cir. 1998). No federal court has reached the merits of a constitutional gas challenge
since the initial *Fierro* decisions.

1 70. Other possible effects of the cyanide gas include tetany, an extremely painful
2 contraction of the muscles, and painful build-up of lactic acid and adrenaline. Cyanide-induced
3 cellular suffocation causes further profound mental agony including anxiety, panic, terror, and
4 pain. *Id.*

5 71. Inhalation of the gas itself is also painful and causes burning and constriction of
6 the throat and air passageways. As a result, a person could suffer a range of afflictions
7 including nausea, dizziness, rapid and dramatic mood changes, and increased physical
8 agitation. *Id.*

9 72. As another court explained, “the national trend had more recently moved away
10 from lethal gas because it was thought to kill by asphyxiation and that the suffocation or
11 strangulation accompanying the asphyxiation could cause extreme pain for as long as twelve
12 minutes.” *Evans v. State*, 396 Md. 256, 342 (2006).

13 **IV. Eyewitness Testimony Corroborates Medical Testimony**

14 73. Eyewitness accounts of prior lethal gas executions, both in Arizona and across
15 the nation, demonstrate that the use of lethal gas is cruel.

16 74. Since 1976, Arizona has only held two lethal gas executions, Donald Harding in
17 1992 and Walter LaGrand in 1999, both using cyanide gas. Eyewitness reports from both
18 executions describe the process as gruesome and inhumane. Such eyewitness accounts are also
19 frequently reported in the news, where the public in Arizona and elsewhere is confronted with
20 considering and experiencing vicariously the horrors of this method of death.

21 **A. The Execution of Donald Harding**

22 75. In 1992, the State of Arizona executed Donald Harding using cyanide gas.
23 Multiple eyewitnesses described in gruesome and painful detail his death, which took
24 approximately eleven minutes to complete.

25 76. For example, Jim Belanger, Harding’s attorney, witnessed his client’s death in
26 1992. Mr. Belanger described Harding’s “face was red and contorted as if he were attempting
27 to fight through tremendous pain. His mouth was pursed shut and his jaw was clenched tight.
28 Don then took several quick gulps of the fumes.” Jim Belanger, Opinion, *I watched Don*

1 *Harding's execution in an Arizona gas chamber. His face still haunts me, Arizona Central*
2 (June 8, 2021) (Ex. 1).

3 77. Mr. Belanger reported that "Don's body started convulsing violently and his
4 arms strained against the straps. His face and body turned a deep red and the veins in his temple
5 and neck began to bulge until I thought they might explode." *Id.*

6 78. Mr. Belanger observed that "[e]very few seconds he gulped for air. He was
7 shuddering uncontrollably and his body was wracked with spasms. His head continued to snap
8 back and forth. His hands were tightly clenched." *Id.*

9 79. Mr. Belanger noted that "[s]everal more minutes passed before the most violent
10 of Don's convulsions subsided. Then the muscles along his left arm and back began twitching
11 in a wavelike motion under his skin." *Id.*

12 80. Mr. Belanger concluded his observations with these haunting remarks in a sworn
13 affidavit:

14 During the entire time I was in the room, until the execution was over, my
15 knees were shaking so badly I thought I might fall down. At least two times
16 I had to lean against the wall that was immediately behind me. My heart
17 continued to race until I was out of the witness room. At one point I thought
18 I might throw up. I wept. ...

19 Nothing in my life prepared me for the horror of Don being ritualistically and
20 methodically stripped of his humanity and then watching him being tortured
21 to death. I will never forget the look on his face when he turned to me several
22 seconds after first having inhaled the fumes. It is an image of atrocity that
23 will haunt me for the rest of my life. Don Harding's death was slow, painful,
24 degrading, and inhumane. He [sic] would not tolerate such cruelty even to
25 put an animal to death. He literally choked and convulsed to death in front
26 of my eyes. I felt embarrassed and humiliated for having witnessed the gross
27 brutalization of another human being. God willing, something such as this
28 will never happen again.

29 Declaration of James J. Belanger, *Fierro v. Gomez*, a true and correct copy of which is attached
30 as **Exhibit 11**.

31 81. Other witnesses corroborate Mr. Belanger's account. Carla McClain testified in
32 *Fierro v. Gomez* that Mr. Harding immediately and continuously "groaned loudly and began

1 to choke to death.” Declaration of Carla McClain, *Fierro v. Gomez*, a true and correct copy of
2 which is attached as **Exhibit 12**; *see also* Declaration of Donna Hamm, *Fierro v. Gomez*
3 (describing Harding making “a low, guttural sound of sheer torment”), a true and correct copy
4 of which is attached as **Exhibit 13**.

5 82. Ms. McClain further testified that Harding’s “body turned bright red, almost
6 purple as he clenched and convulsed in obvious pain.” Declaration of Carla McClain, *Fierro*
7 *v. Gomez* (Ex. 12).

8 83. Similarly, then-Attorney General Woods described the execution as “a terrible
9 thing to witness” and lamented that it “took so long.” The experience “solidified” his opinion
10 that the State should abandon lethal gas. Michael Murphy, *Woods says he didn’t see finger*
11 *gesture*, The Phoenix Gazette (April 7, 1992) (Ex. 10).

12 **B. The Execution of Walter LaGrand**

13 84. In 1999, the State of Arizona performed its last execution to date via lethal gas
14 when ADCRR executed Walter LaGrand. According to eyewitness accounts, Mr. LaGrand’s
15 execution was even more excruciating than Harding’s.

16 85. Patty Machelor, a reporter for the Tucson Citizen, witnessed Mr. LaGrand’s
17 execution in 1999.

18 86. Ms. Machelor described Mr. LaGrand’s lethal gas execution as “agonizing
19 choking and gagging continued over several minutes.” Patty Machelor, *LaGrand: 18 minutes*
20 *to die*, Tucson Citizen (Mar. 4, 1999) (Ex. 2).

21 87. Ms. Machelor stated that, shortly after the vapor rose, Mr. LaGrand began
22 “coughing violently – three or four loud hacks – and then, in what appeared to be his last
23 moments of consciousness, he made a gagging sound before falling forward.” *Id.*

24 88. After he fell forward, Mr. LaGrand’s body continued to twitch for several
25 minutes afterward. *Id.*

26 89. In total, it took approximately 18 minutes for Mr. LaGrand to die, seven minutes
27 longer than Don Harding’s execution in 1992. *Id.*

1 **C. The Horrific Executions of Harding and LaGrand Were Not Isolated**
2 **Incidents**

3 90. In October 1979, the State of Nevada executed Jesse Bishop using cyanide gas.
4 Tad Dunbar, a reporter, observed Mr. Bishop “immediately gasped and convulsed strenuously.
5 His body stiffened and his head lurched back. His eyes widened, and he strained as much as
6 the straps would allow. He unquestionably appeared to be in pain. I noticed that he had urinated
7 on himself. . . . He alternately strained and then relaxed against the straps for about ten
8 minutes.” Declaration of Tad Dunbar, *Fierro v. Gomez*, a true and correct copy of which is
9 attached as **Exhibit 14**.

10 91. Four years later, the State of Mississippi executed Jimmy Lee Gray using
11 cyanide gas. Dennis Balske testified that “[o]nce the gas reached Mr. Gray’s face he began to
12 thrash around in his chair. . . . The chilling sound of his head desperately smashing against the
13 pole reverberated through the area over and over again. About the seventh time he pounded
14 his head against the pipe, his desperation was so great that the six-sided glass chamber seemed
15 to shake with the impact. He slumped and lay still for a few moments, then tensed up and
16 resumed his struggling, again smashing his head against the pole. Mr. Gray struggled for air
17 while his body contorted and twisted.” Declaration of Dennis N. Balske, *Fierro v. Gomez*, a
18 true and correct copy of which is attached as **Exhibit 15**; *see also* Declaration of Dan A.
19 Lohwasser, *Fierro v. Gomez* (“He looked like he was being strangled to death. It was obvious
20 that Mr. Gray was in excruciating pain.”), a true and correct copy of which is attached as
21 **Exhibit 16**.

22 92. In May 1987, Mississippi executed Connie Ray Evans in the gas chamber.
23 Robert Marshall testified that it took thirteen minutes for Mr. Evans to die. Mr. Marshall
24 testified that he “heard a ‘thump’ and gas began to rise from below Mr. Evans’ chair. He then
25 let out the first of several loud agonizing gasps. I saw the muscles tightening and bulging on
26 his neck. His forced breathing and tensed body exhibited excruciating pain. He lost control of
27 his bodily functions. Saliva drooled from his mouth, running down his chin, and hanging in a
28 long rope from his chin. . . . It took the cyanide gas thirteen minutes to kill Mr. Evans, the

1 longest and most horrific thirteen minutes of my life.” Declaration of Robert R. Marshall,
2 *Fierro v. Gomez*, a true and correct copy of which is attached as **Exhibit 17**.

3 93. In June 1989, Leo Edwards died in Mississippi’s gas chamber after what
4 Kenneth Rose described as fourteen minutes of agony. Mr. Rose testified that “[w]hen [the
5 gas] reached [Edwards] face, he gasped, then started banging his head and throwing himself
6 back and forth in the chair. His body strained so desperately against the straps that I was afraid
7 they would cut him. He then let out a shriek of terror, the first of many. It was the sound of
8 pure torment. My heart raced as I tried to control my own reaction to the torture I was
9 witnessing . . . The shrieking and thrashing lasted for several minutes; he remained alive for
10 some time after that.” Declaration of Kenneth Rose, *Fierro v. Gomez*, a true and correct copy
11 of which is attached as **Exhibit 18**.

12 **V. Lethal Gas Executions Raise Painful Memories of the Holocaust**

13 **A. The Use of Lethal Gas Chambers is Particularly Offensive to Holocaust** 14 **Survivors and Their Descendants, Many of Whom Have Made Arizona** 15 **Their Home**

16 94. The use of hydrogen cyanide, also known as Zyklon B, during the Holocaust is
17 well documented.

18 95. While initially used for sanitation and pest control, in 1941 Zyklon B was used
19 in the Nazi concentration camps, first experimentally and then routinely, as an agent of mass
20 annihilation. Jewish Virtual Library, *Gassing Victims in the Holocaust: Zyklon-B* (available at
21 <https://www.jewishvirtuallibrary.org/background-and-overview-of-gassing-victims>) (last
22 visited February 10, 2022).

23 96. At its height, an average of 6,000 Jews were killed each day using Zyklon B at
24 the Auschwitz II killing center, according to the U.S. Holocaust Memorial Museum.

25 97. The developers of Zyklon B described the horrifying potential of the substance:
26 as “Hydrogen cyanide HCN, prussic acid, is a chemical compound in the form of a powerfully
27 poisonous, volatile colorless liquid with the odor of bitter almonds. Prussic acid is considered
28 a battlefield poison agent. Its action depends on the restraint of cellular respiration as a result
of neutralizing the respiratory enzymes. Prussic acid passes through the mucous membranes

1 and the skin, but principally through the lungs, into the blood. It blocks the process by which
2 oxygen is released from red blood corpuscles and the result is a sort of internal asphyxiation.
3 This is accompanied by symptoms of injury to the respiratory system, combined with a feeling
4 of fear, dizziness and vomiting.” *Id.*

5 **B. Holocaust Survivors Have Testified to Their Horror at the Use of Cyanide**
6 **Gas as a Form of Execution**

7 98. Gloria Lyon testified that although “[i]nnocent Holocaust Victims can never be
8 compared with convicted murders[.] . . . [a]s a person who saw the daily horror of mass
9 extermination by gas, I know that execution by gas is torture and it can never be anything
10 less.” Declaration of Gloria H. Lyons, *Fierro v. Gomez*, a true and correct copy of which is
11 attached as **Exhibit 19**.

12 99. John Steiner testified of his experiences with both the gas chamber at Auschwitz-
13 Birkenau and at California’s San Quentin Prison. During his employment at San Quentin, he
14 was asked to serve as a witness to a lethal gas execution: “I refused to act as a witness because,
15 among other things, I knew that lethal gas is an excruciatingly painful method of execution.
16 Witnessing a person being gassed to death would bring back horrendous memories of the
17 hideous fate suffered by millions, which included my family, extended relatives, and friends.
18 Even without witnessing the execution, being at San Quentin brought back all the memories,
19 including the ghastly odors of the death camp Auschwitz-Birkenau.” Declaration of John
20 Steiner, *Fierro v. Gomez* (Ex. 3).

21 **C. The Horror Expressed in *Fierro* is Certainly Felt No Less Deeply in Arizona**

22 100. Arizona is the home to approximately 80 Holocaust survivors, with 55 survivors
23 in the metro Phoenix area alone, who came to the United States seeking to escape their
24 traumatic experiences in the war. Jessica Goodman, *Arizona is the home to at least 80*
25 *remaining Holocaust survivors*, Arizona Family (Apr. 8, 2021) (available at
26 [https://www.azfamily.com/news/arizona-is-the-home-to-at-least-80-remaining-holocaust-](https://www.azfamily.com/news/arizona-is-the-home-to-at-least-80-remaining-holocaust-survivors/article_c657643a-88b4-11eb-97e0-e3cca1b5d3d3.html)
27 [survivors/article_c657643a-88b4-11eb-97e0-e3cca1b5d3d3.html](https://www.azfamily.com/news/arizona-is-the-home-to-at-least-80-remaining-holocaust-survivors/article_c657643a-88b4-11eb-97e0-e3cca1b5d3d3.html)).

1 101. News of Defendants’ revival of the gas chamber has horrified Jewish residents
2 and advocacy groups.

3 102. Plaintiffs JCRC, Mr. Rockower and Mr. Zeichick are deeply troubled by the
4 State of Arizona’s potential use of hydrogen cyanide as a means of execution, and the provision
5 of taxpayer funds to support this horrific practice. Inspired by Jewish values, Plaintiffs are
6 committed to building a cohesive and collaborative community built on trust, respectful
7 dialogue and understanding among all peoples. State-sponsored killing of a human being
8 through a practice known to cause pain and suffering undermines Plaintiffs’ efforts and is an
9 affront to Jewish values. Plaintiffs find it shocking that the State of Arizona chose to use the
10 very same chemical compound that was used by the Nazis in Auschwitz and other
11 extermination camps to murder more than one million people. Plaintiffs observe that nearly
12 the entire civilized world, including most of the United States, has abandoned this barbaric
13 practice, and strongly believe execution by hydrogen cyanide to be both cruel and unusual.

14 103. Janice Friebaum, vice president of the Phoenix Holocaust Association, whose
15 family members were murdered at the Nazi death camp of Treblinka, explained that
16 “[u]niformly, Holocaust survivors and their descendants are nothing short of horrified of this
17 form of execution being utilized” and believe that the use of lethal gas by the State of Arizona
18 is “tantamount to giving posthumous approval to the evils conducted by the Nazis. We’re
19 basically saying what the Nazis did was OK.” Erik Ortiz, *Jewish groups condemn Arizona’s*
20 *potential use of gas executions*, NBC News (June 14, 2021) (available at
21 [https://www.nbcnews.com/news/us-news/jewish-groups-condemn-arizona-s-potential-use-](https://www.nbcnews.com/news/us-news/jewish-groups-condemn-arizona-s-potential-use-gas-executions-n1270585)
22 [gas-executions-n1270585](https://www.nbcnews.com/news/us-news/jewish-groups-condemn-arizona-s-potential-use-gas-executions-n1270585)).

23 104. The American Jewish Committee, one of the nation’s oldest Jewish advocacy
24 groups, has said that it is especially troubled by the State’s purchase of materials to make
25 hydrogen cyanide gas, which was part of a pesticide known as Zyklon B that the Nazis used
26 in Auschwitz and other extermination camps. As the American Jewish Committee explained,
27 “Arizona’s decision to employ Zyklon B gas as a means of execution defies belief. . . . Whether
28 or not one supports the death penalty as a general matter, there is general agreement in

1 American society that a gas devised as a pesticide, and used to eliminate Jews, has no place in
2 the administration of criminal justice.” American Jewish Committee, *AJC Decries Arizona*
3 *Plan to Use Zyklon B for Prisoner Executions*, Press Release (June 7, 2021) (Ex. 4).

4 CAUSES OF ACTION

5 **Count I – Declaratory Judgment and Injunctive Relief, Violation of the Prohibition** 6 **against cruel and unusual punishment, Article 2, section 15 of the Arizona Constitution**

7 105. Plaintiffs incorporate the allegations in Paragraphs 1-104 as if fully stated herein.

8 106. Arizona’s Uniform Declaratory Judgment Act provides that any person “whose
9 rights, status or other legal relations are affected by a statute, municipal ordinance, contract or
10 franchise, may have determined any question of construction or validity arising under the
11 instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status
12 or other legal relations thereunder.” A.R.S. § 12-1832.

13 107. One may seek declaratory relief “as soon as a justiciable controversy exists.”
14 *Rogers v. Bd. of Regents of Univ. of Ariz.*, 233 Ariz. 262, 267, ¶ 17 (App. 2013) (internal
15 quotation and citation omitted). A justiciable controversy exists when there is an “assertion of
16 a right, status or legal relation in which the plaintiff has a definite interest and a denial of it by
17 the opposing party.” *Samaritan Health Servs. v. City of Glendale*, 148 Ariz. 394, 395 (App.
18 1986).

19 108. The prohibition against cruel and unusual punishment contained in Article 2,
20 section 15 of the Arizona Constitution is interpreted consistently with the Eighth Amendment
21 of the U.S. Constitution. *State v. Davis*, 206 Ariz. 377, 380-81, ¶¶ 12-13 (2003).

22 109. The method of punishment is deemed unconstitutional if the manner of
23 execution creates a “‘substantial risk of serious harm’ and . . . serious pain and suffering” that
24 would qualify as ‘cruel and unusual punishment’ under the Eighth Amendment,” *Cook v. State*,
25 230 Ariz. 185, 188, ¶ 8 (App. 2012) (citation omitted), or violates “broad and idealistic
26 concepts of dignity, civilized standards, humanity, and decency.” *Weatherford ex rel. Michael*
27 *L. v. State*, 206 Ariz. 529, 534, ¶ 13 (2003) (citation omitted).

1 110. Defendants’ use of lethal gas, particularly cyanide gas, as a means of capital
2 punishment violates all core tenants of Article 2, section 15 of the Arizona Constitution’s
3 prohibition against cruel and unusual punishment.³ Specifically, Defendants’ lethal gas
4 protocol is unconstitutional as applied in its use of cyanide gas.

5 111. First, the use of cyanide gas as a means of capital punishment creates a
6 “substantial risk of serious harm,” including “serious pain and suffering.” *Cook*, 230 Ariz. at
7 188, ¶ 8. As the testimony and findings in *Fierro v. Gomez* prove – and many additional,
8 similar witness accounts – lethal gas, and specifically cyanide gas, exposes individuals to
9 several minutes of excruciating pain while conscious, comparable to being held under water.
10 Beyond the physical pain a person exposed to cyanide gas endures, they are subject to
11 substantial mental torture as cyanide-induced cellular suffocation causes anxiety, panic, terror,
12 and mental anguish. The pain and torture inflicted on individuals has been repeatedly
13 corroborated by eyewitness testimony observing lethal gas executions in Arizona and across
14 the country.

15 112. The State of Arizona conceded more than 20 years ago that *Fierro*’s detailed
16 testimony and findings of the intense pain and suffering inflicted on individuals executed
17 through lethal gas would be the same under Arizona’s protocol. *LaGrand*, 173 F.3d at 1149
18 (“Counsel for the State has candidly admitted that if the question of Arizona’s use of lethal gas
19 went to trial, the record would be no different than it was in *Fierro*.”).

20 113. Second, the use of cyanide gas as a means of capital punishment violates “broad
21 and idealistic concepts of dignity, civilized standards, humanity, and decency.” *Weatherford*,
22 206 Ariz. at 534, ¶ 13. As the legislative record has demonstrated, states across the country,
23 including Arizona, have moved away from lethal gas and in particular cyanide gas. To date,
24 only one state authorizes the use of lethal gas without the election of the defendant. Moreover,
25 no state has used lethal gas as a method of execution in over two decades.

26
27 ³ As Article 2, section 15 of the Arizona Constitution is interpreted consistently with and bound
28 by the Eighth Amendment prohibition against cruel and unusual punishment, all of Arizona’s
death penalty provisions, including Article 22, section 22 of the Arizona Constitution, must
yield to the scope of Article 2, section 15.

1 114. In amending its Constitution, Arizona citizens overwhelmingly approved the
2 replacement of lethal gas as a form of capital punishment and sought to limit its use as much
3 as possible. In light of the established medical and eyewitness testimony, and the collective
4 movement away from lethal gas, Article 2, section 15 of the Arizona Constitution’s prohibition
5 against cruel and unusual punishment – which is consistent with the U.S. Constitutional
6 prohibition on cruel and unusual punishment – must prevail over any limited, conflicting
7 authority contained in Article 22, section 22.

8 115. The codification of a lethal gas exception in the Arizona Constitution does not
9 prevent this Court from striking the current lethal gas regulations as unconstitutional as applied
10 through the ADCRR’s cyanide gas protocol. The Arizona Supreme Court has previously
11 struck down Arizona constitutional provisions that violate federal constitutional rights and, *a*
12 *fortiori*, it can strike down a protocol provision within the ordinary discretion of an
13 administrative agency such as the ADCRR. *See Simpson v. Miller*, 241 Ariz. 341, 349-50
14 (2017); *State v. Wein*, 244 Ariz. 22, 31 (2018).

15 116. Plaintiffs have a definite and irreparable injury in the continuation of lethal gas
16 as a means of capital punishment in this State. As those sentenced to death prior to November
17 23, 1992 have the option to elect lethal gas, every time a warrant of execution is sought for
18 one of them the State will be required to expend additional taxpayer funds to inspect its gas
19 chamber and purchase the lethal gas ingredients required under ADCRR regulations, which
20 currently designates sodium cyanide although ADCRR has recently procured *potassium*
21 cyanide by mistake. This must be done regardless of whether someone will elect lethal gas or
22 lethal injection.

23 117. The expenditure of Arizona taxpayer funds to promote the availability of death
24 by cyanide gas is grossly offensive to Plaintiffs, Arizona’s Jewish Citizens, those Holocaust
25 survivors who now reside in Arizona, and many other citizens of Arizona and the United
26 States. The State of Arizona’s continued authorization of the use of the same lethal gas used
27 by Nazi Germany forces upon its citizens a painful reminder of the torture and heinous murders
28 inflicted on Jewish people and other ethnic, racial, and social groups during the Holocaust.

1 118. Because Arizona’s system requires an individual to elect lethal gas, no person
2 sentenced to death may challenge the constitutionality of lethal gas. *See LaGrand*, 526 U.S. at
3 119 (holding that the defendant, by electing lethal gas over lethal injection, “has waived his
4 claim that execution by lethal gas is unconstitutional.”); *Fierro v. Terhune*, 147 F.3d at 1160
5 (remanding to district court with order to vacate the injunction on ripeness grounds because
6 criminal defendants had not “elect[ed] to have their death sentences imposed by lethal gas.”).
7 Those sentenced to death in Arizona thus are caught in a horrific Catch-22 that prevents this
8 important constitutional issue from being addressed in that context.

9 119. Plaintiffs, however, present a justiciable controversy, as Defendants have
10 already spent taxpayer funds in furtherance of an unconstitutional form of punishment.
11 Plaintiffs likewise will repeatedly suffer injury through the improper additional expenditure of
12 their taxpayer funds on cyanide gas ingredients and gas chamber testing and refurbishments
13 each time the State seeks to execute someone sentenced to death prior to November 23, 1992.

14 120. Plaintiffs are likely to succeed on the merits. At least two courts have previously
15 held that the use of cyanide gas is unconstitutional, including one concerning Arizona’s lethal
16 gas protocol. Since those decisions, states, including Arizona, have overwhelmingly moved
17 away from the use of cyanide gas, as no state has executed a defendant using any form of lethal
18 gas, including cyanide gas, in over two decades.

19 121. Plaintiffs have suffered an irreparable injury. Plaintiffs’ tax dollars have been
20 spent, and will continue to be spent, on a practice that is not only grotesquely offensive to
21 Plaintiffs, Jewish citizens, and Holocaust survivors living in Arizona; but violates the Arizona
22 Constitution’s prohibition against cruel and unusual punishment found in Article 2, section 15.

23 122. Because Defendants will be required to expend funds every time Defendants
24 seek a warrant of execution against someone sentenced to death prior to November 23, 1992,
25 Defendants’ injurious acts will be continuing in nature.

26 123. Plaintiffs anticipate that additional taxpayer funds will be spent on this practice
27 in the near future in light of Defendant Brnovich’s proclamation that his office will do
28 “everything we can, and do everything I can to ensure that every 21 of those individuals have

1 exhausted their appeals ends up getting the death penalty before I leave office. [sic]” Craig
2 Smith, *AZ Attorney General oversees return to executions*, KGUN 9 News, (last updated Mar.
3 27, 2021) (available at [https://www.kgun9.com/news/local-news/az-attorney-general-](https://www.kgun9.com/news/local-news/az-attorney-general-oversees-return-to-executions)
4 [oversees-return-to-executions](https://www.kgun9.com/news/local-news/az-attorney-general-oversees-return-to-executions)).

5 124. Because the use of cyanide gas is unconstitutional, no other remedy, including
6 monetary damages, is adequate to compensate for Plaintiffs’ injury other than injunctive relief
7 striking all cyanide gas statutes and regulations as unconstitutional and enjoining Defendants
8 from spending any taxpayer funds on cyanide gas activities.

9 125. The equities in this case strongly favor Plaintiffs’ cause. As the State itself
10 passed regulations restricting the use of lethal gas to a limited number of individuals and
11 Defendants still have other means to pursue capital punishment against those individuals,
12 Defendants’ hardships from an injunction would be negligible if not non-existent. Arizona will
13 benefit from the elimination of the last vestiges of this outdated and horrible method of
14 execution. Without an injunction, Plaintiffs’ tax dollars will continue to be used to finance a
15 practice that is unconstitutional and grotesquely offensive to Plaintiffs, Jewish citizens,
16 Holocaust survivors living in Arizona, and many others. This injury will recur every time
17 Defendants seek a warrant of execution against someone sentenced to death prior to November
18 23, 1992.

19 126. Finally, the public interest would be served, not disserved, by a permanent
20 injunction in this case. Striking down cyanide gas will not prevent Defendants from pursuing
21 the death penalty, it will only end the use of an unconstitutional and rare means of doing so.
22 Given that the practice has overwhelmingly fallen out of favor, both in Arizona and across the
23 country, and Arizona overwhelmingly voted to eliminate lethal gas prospectively in 1992, the
24 public interest favors the granting of this injunction.

25 127. Plaintiffs accordingly ask this Court to declare that:

- 26 a. The use of cyanide gas violates the prohibition against cruel and unusual
27 punishment in Article 2, section 15 of the Arizona Constitution and is
28 therefore unconstitutional;

1 Dated: February 15, 2022

2
3 By: /s/ *Craig M. Waugh*

4 Craig M. Waugh (Bar No. 026524)
5 Laura Sixkiller (Bar No. 022014)
6 DLA Piper LLP (US)
7 2525 East Camelback Road, Suite 1000
8 Phoenix, Arizona 85016-4232
9 Tel: 480.606.5100
10 Fax: 480.606.5101
11 craig.waugh@us.dlapiper.com
12 laura.sixkiller@us.dlapiper.com
13 DLAPHX@us.dlapiper.com

14 -and-

15 Adam J. Pié (*pro hac vice* forthcoming)
16 Michael Bakhama (*pro hac vice* forthcoming)
17 DLA Piper LLP (US)
18 The Marbury Building
19 6225 Smith Avenue
20 Baltimore, Maryland 21209
21 Tel: 410.580.3000
22 Fax: 410.580.3001
23 adam.pie@us.dlapiper.com
24 michael.bakhama@us.dlapiper.com

25 -and-

26 Victoria Lopez (Bar No. 330042)
27 Jared Keenan (Bar No. 027068)
28 Benjamin L. Rundall (Bar No. 031661)
American Civil Liberties Union of Arizona
P.O. Box 17148
Phoenix, Arizona 85011
Tel: 602.650.1854
Fax: 602.650.1376
vlopez@acluaz.org
jkeenanacluaz.org

Attorneys for Plaintiffs

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VERIFICATION

I, Tim Eckstein, state that:

I have read the foregoing Verified Complaint, know the contents thereof, and verify under penalty of perjury that the information contained therein is true and correct to the best of my knowledge.

Executed on February 15, 2022

**Jewish Community Relations Council
of Greater Phoenix**

/s/ Tim Eckstein

By: Tim Eckstein
Its: Chairman of the Board
Jewish Community Relations Council of
Greater Phoenix

EXHIBIT 1

OP ED | Opinion *This piece expresses the views of its author(s), separate from those of this publication.*

I watched Don Harding's execution in an Arizona gas chamber. His face still haunts me

Opinion: I will never forget the look on his face when he turned to me shortly after inhaling the fumes. It's an image of atrocity that will haunt me for the rest of my life.

Jim Belanger Opinion contributor

Published 6:00 a.m. MT June 8, 2021 | Updated 3:24 p.m. MT June 17, 2021

Arizona's announcement that it plans to resume using lethal gas to execute prisoners has forced me to revisit one of the worst experiences of my life.

On April 6, 1992, I witnessed the execution of my client, Don Harding, in Arizona's gas chamber. His death was slow, painful, degrading and inhumane. It is mind-numbing to think that Arizona is resuming this barbaric practice.

Don Harding's execution is seared into my memory. Shortly before midnight on April 5, 1992, my fellow witnesses and I were ushered into a chapel near the gas chamber and told to draw numbers. My pick – number one – meant I would enter the witness room first. I stood on the far left side of the small room facing a window with closed blinds.

After we were told the U.S. Supreme Court had denied Don's final appeals and the execution would proceed, a prison official raised the blinds.

He looked at me in pain and horror

Don was already strapped in a chair facing away from the witness room. His arms and legs were tightly strapped to the chair. He was stripped virtually naked, wearing only a pair of white, diaper-like undershorts, and had an electric monitor attached to his chest.

The indignity of these circumstances turned my stomach. From where I was standing, I could see over Don's left shoulder, and he could see me when he turned his head.

At a signal from a prison official, I heard a thumping noise. Almost immediately I saw white fumes begin to rise from a metal box on the floor towards Don's head. The fumes moved more quickly than I expected and as they enveloped Don's head, he eventually took a quick breath.

Another view: Don Harding killed my husband. His execution was a relief

A few seconds later, he looked in my direction. His face was red and contorted as if he were attempting to fight through tremendous pain. His mouth was pursed shut and his jaw was clenched tight. Don then took several quick gulps of the fumes.

Don's body started convulsing violently and his arms strained against the straps. His face and body turned a deep red and the veins in his temple and neck began to bulge until I thought they might explode.

Every few seconds he gulped for air. He was shuddering uncontrollably and his body was wracked with spasms. His head continued to snap back and forth. His hands were tightly clenched.

Gas chamber may be legal, but it's immoral

Several more minutes passed before the most violent of Don's convulsions subsided. Then the muscles along his left arm and back began twitching in a wavelike motion under his skin. Spittle drooled from his mouth. I couldn't believe that it was lasting so long. My knees shook so badly I thought I might collapse. Twice, I had to lean against the wall behind me. My heart raced and I thought I would vomit. I wept.

It took 10 minutes and 31 seconds for Don Harding to die. For at least eight of those minutes, he was writhing in agony. I will never forget the look on his face when he turned to me soon after inhaling the fumes. It is an image of atrocity that will haunt me for the rest of my life.

Nearly 30 years later, I can still see Don's face.

Arizona now wants to resume this horrid method of execution, using a gas disturbingly like the one the Nazis deployed to murder millions in the Holocaust. Some survivors of the Holocaust are speaking out against this shocking decision.

State officials claim gas is a lawful method of execution despite the risks of a tortuous death. It may be "lawful," but it is immoral and wrong. And it begs the question of what is lawful.

Every death penalty case involves a terrible and tragic crime, a victim or victims lost to violent death, and grieving family members left behind. But whether and how we choose to carry out

executions says more about us than about the condemned prisoner.

We should not allow Arizona to carry out the nihilistic and barbaric atrocity of a gassing.

Jim Belanger is a defense lawyer in Tempe. He has represented more than 30 men who faced the death penalty. Don Harding was his only client to have been executed. Reach him at j.belanger9384@gmail.com.

EXHIBIT 2

Tucson Citizen

LaGrand: 18 minutes to die

by Patty Machelor on Mar 04, 1999, under Tucson and Arizona

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- The victim's family members watch as the killer chokes on cyanide.

PATTY MACHELOR Citizen Staff Writer

The agonizing choking and gagging continued over several minutes.

Finally, shrouded in poisonous gas, Walter LaGrand slumped forward.

The 37-year-old killer had breathed his last breath.

Arizona's first gas chamber execution in seven years took 18 minutes before the condemned man's heart flat-lined at 9:30 last night.

That's seven minutes more than it took death row inmate Don Harding to die by cyanide poisoning on April 6, 1992.

Harding's gruesome death prompted a change in law to allow inmates who committed murder before 1992 to chose between the gas chamber and lethal injection.

Walter and Karl LaGrand – two half-brothers on death row since 1984 for stabbing a Marana bank manager 23 times in a robbery attempt before slitting his throat because he didn't know the safe combination – chose gas.

Karl LaGrand, 35, changed his mind at the last moment and was executed last week by the less-painful lethal injection.

Gov. Hull extended the same option to Walter LaGrand, but a 3 p.m. Friday deadline for such a request came and went – as did the traditional last-minute flurry of appeals for a stay of execution.

With LaGrand's death, the question now is whether legislators will allow the remaining 30 or so death-row inmates to make such a choice of death and spectacle.

The LaGrand executions were objected to by Germany, where the brothers were born. Their deaths drew heavy media coverage in Europe.

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"We have our laws, they have their laws," said Gov. Jane Hull. "We have respect for theirs. I hope they would have respect for our laws. Our state has capital punishment."

More than 30 people including news reporters and family members of the victim witnessed last night's execution.

As they moved into the room, witnesses faced a three-windowed capsule with blinds hiding the man who sat within it, awaiting his death.

A blue curtain sectioned off the injection chamber.

Creaking could be heard from behind the window, perhaps as LaGrand was fastened into the chair with a black harness, which was all that kept him from falling forward minutes later.

A Department of Corrections officer called over her radio, "Witnesses are staged."

The blinds were then raised, revealing the back of a man with thick, curly, dark hair clad in blue prison garb, which blended softly with the light yellow paint inside the chamber.

LaGrand's face could not be seen except by a very few, perhaps offering the convicted killer a final shred of dignity.

He offered a final statement with a surprisingly steady voice as he asked for forgiveness and told surviving stabbing victim Dawn Lopez and relatives of slain bank manager Kenneth Hartsock that he hopes they "find peace."

"I just want to say sorry to the Hartsock family. First time I really got to see that picture," he said, apparently referring to a photo of the victim being held up by Kathy Hartsock, the victim's daughter.

"I am truly sorry. I hope you find peace. I want to thank Helen (Hartsock's sister) for forgiving us. I want to say to her kids and to Lopez, Dawn Lopez, I hope you find peace."

Moments later, the execution proceeded as cyanide pellets were dropped into the acid below the chair.

The witness room fell silent as a mist of gas rose, much like steam in a shower, and Walter LaGrand became enveloped in a cloud of cyanide vapor.

He began coughing violently – three or four loud hacks – and then, in what appeared to be his last moments of consciousness, he made a gagging sound before falling forward at about 9:15 p.m.

The method of death is comparable to having a heart attack, according to prison officials.

LaGrand had not been told by prison officials what death by lethal gas would be like, said Charles Ryan, deputy director of prison operations.

Minutes passed as LaGrand's back rose and fell with shallow breaths and his head twitched.

In the witness room, the only sound was the continuing hum of the light overhead.

Lopez, the bank clerk who survived the stabbing attack by the LaGrands, began to quietly weep. Moments later, she was escorted from the room by Deputy Pima County Attorney David White.

A few minutes later, at about 9:18, Walter LaGrand's right arm again twitched.

Kathy Hartsock then left the room, which had become uncomfortably warm.

DOC spokeswoman Camilla Strongin said from where she stood, she could see that LaGrand turned only once – apparently to see the photo Kathy Hartsock held of her father.

But shortly after, as the gas began to rise, Strongin noticed that LaGrand kept his eyes closed.

His hands, however, were red and clenched.

The LaGrands both chose to die by lethal gas weeks ago in order to appeal on grounds the method was a cruel and unusual punishment.

The tactic bought Karl LaGrand a few extra hours of life when the 9th U.S. Circuit Court of Appeals issued a stay, before the U.S. Supreme Court shot down the ruling without comment.

Changing his mind on the method of execution, Karl LaGrand died by lethal injection at 8 p.m. Feb. 24.

The German government, which banned the death penalty after World War II, tried to intervene and save the brothers but failed in attempting to have state officials await an investigation by the World Court.

Delays for Walter LaGrand began yesterday when the 9th U.S. Circuit Court of Appeals granted an injunction over the method of execution Walter LaGrand was facing.

At about 7:30, the U.S. Supreme Court lifted the injunction and issued a ruling that when Walter LaGrand chose gas over lethal injection, he waived his right to appeal the method as being unconstitutionally cruel and unusual punishment.

LaGrand's hope was also that the World Court would be able to intervene in his execution.

Hull on Tuesday ignored a clemency board's 2-1 recommendation that she issue a 60-day reprieve.

Hull met with Lopez and also with German Ambassador Jurgen Chrobog before deciding to go forward with the execution as scheduled.

Alexander Privitera, a German and bureau chief of the Washington, D.C., ProSieben television, said the German government was "too little, too late" in its attempt to save Karl LaGrand.

But he said he was shocked by the "immense arrogance" of Arizona Attorney General Janet Napolitano and Hull in "ignoring international law" and not granting a stay for the World Court to investigate the Walter LaGrand

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case.

Hull noted that the World Court has no legal authority to stop Arizona from executing a prisoner.

Edward Levy, chairman of the Arizona Executive Board of Clemency, and member Kathryn Brown voted Tuesday to grant Walter LaGrand a 60-day reprieve.

Fellow member Edith Richardson opposed the request.

Napolitano defended the state's position.

"I think that the United States cares about international law, but in this case it was too late," she said at a press conference, when questioned by Privitera.

She also refused to disclose her feelings about death by the gas chamber.

"It was the punishment he chose, and it was administered in this case. It was an execution. It's the law, and we carry out the law," she said.

WALTER LaGRAND'S FINAL STATEMENT

"I just want to say sorry to the Hartsock family. First time I really got to see that picture (possibly referring to a photo of Kenneth Hartsock being held by his daughter). I am truly sorry. I hope you find peace. I want to thank Helen (Hartsock's sister) for forgiving us. I want to say to her kids and to Lopez, Dawn Lopez, I hope you find peace. To all my loved ones, I hope they find peace. To all of you out here today, I forgive you. I hope I can be forgiven in my next life. That's all I have to say."

PHOTO CAPTIONS: Photos by MARY CHIND/Tucson Citizen

Monsignor Edward J. Ryle reads to other protesters outside the Arizona State Prison Complex-Florence yesterday. Walter LaGrand was executed inside despite the protests outside the prison.

Several people from Tucson drove to Florence to protest the gas chamber execution of Walter LaGrand.

Our Digital Archive

This blog page archives the entire digital archive of the Tucson Citizen from 1993 to 2009. It was gleaned from a database that was not intended to be displayed as a public web archive. Therefore, some of the text in some stories displays a little oddly. Also, this database did not contain any links to photos, so though the archive contains numerous captions for photos, there are no links to any of those photos.

There are more than 230,000 articles in this archive.

In TucsonCitizen.com Morgue, Part 1, we have preserved the Tucson Citizen newspaper's web archive from 2006 to 2009. To view those stories (all of which are duplicated here) go to [Morgue Part 1](#)

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EXHIBIT 3

DECLARATION OF JOHN M. STEINER, Ph.D.

I, John M. Steiner, declare under penalty of perjury:

1. I am a resident of Marin County, California, where I have lived since 1968. I am a Senior Professor of Sociology at Sonoma State University, and Director of the Sonoma State University Holocaust Studies Center. I received my Ph.D. Magna Cum Laude from the University of Freiburg, Germany in sociology with minors in psychology and psychopathology. Since receiving my Ph.D., I have held positions at the University of California at Berkeley, at the State Mental Hospital in Fulton, Missouri, at San Quentin, and at the Wright Patterson Air Force Base in Dayton, Ohio as a researcher in social psychology. I have been twice awarded both Fulbright and Alexander Von Humboldt research scholarships.

2. I was born in Prague, Czechoslovakia in 1925. I was a young adult when my immediate and extended family were captured and shipped to the concentration camp at Theresienstadt. My father, my aunt, and I are the only members of the family who survived the Nazi extermination camps. The rest of my family, the friends I grew up with in Prague, community leaders, and the many people I met while in the death camps were all killed. Some were gassed to death, some were shot, some were hanged, and

others starved to death or were killed by other means.

3. I was a prisoner in Nazi concentration camps, slave labor camps, ghettos and death camps, including Theresienstadt, Blechhammer, Auschwitz-Birkenau, Reichenbach, and Dachau. My mother was gassed at Auschwitz-Birkenau, however, the exact details of her death have been kept from us.

4. In the winter of 1945, along with hundreds of others, I was forced on a death march out of Blechhammer to the concentration camp at Reichenbach. I saw hundreds of people die from exposure and exhaustion, and others who were shot to death by rear guards. We were forced to march down roads lined with the dead and the dying. My feet became frostbitten -- my toes were totally rotten, forcing me actually to remove large chunks of flesh, and the bones were exposed. I had almost given up. I was unable to walk and knew that this would certainly mean being shot to death, like so many others had been. A small group of us were singled out by the guards and beaten and forced into a horse drawn carriage which took us to the concentration camp Reichenbach. For reasons unknown to me, we were not left to die but were instead transported to that camp.

5. From Reichenbach, we were transported by box cars to Dachau. Approximately one hundred of us were dumped into each of these cars, literally on top of one another. Those on the bottom

were suffocated to death by the many bodies piled on top of them. The corpses were ordered to remain packed in the box cars, bloated and rotting. We were forced to remain inside, with more and more people being shot, suffocated, and beaten to death. I cannot convey in words the horror and odor of these box cars.

6. A pyramid of dead bodies grew in the center of the box car where I was trapped. To keep myself from being beaten and pushed to death, I had to crawl onto this pyramid of corpses and hold my position by clinging to one beneath me.

7. For over a year, I was a prisoner in Auschwitz-Birkenau, one of the death camps that used gas chambers to exterminate more than 1.4 million Jews, Gypsies, social and political "deviants", as well as Russian prisoners of war and diseased. While there, I tried to deny what was happening around me for as long as I could, refusing to believe that it was true. Although I saw it every day, I could not accept the reality. When the SS guards would come and round up the people to be gassed, many of us refused to acknowledge what we could not accept. Then one morning, Hans Fischer, my childhood friend from Prague and a brilliant jazz pianist, was taken along with the entire transport with which he had arrived to the gas chamber. He was removed from the barracks and I never saw him again. Soon afterwards, Hans Fischer's father, a renown psychiatrist from Prague, told me that his son had been gassed, and it was at that moment that I

began to accept the reality and the extent of this mass extermination. That was the end of my denial. I've had recurring nightmares about the gassing of Hans Fischer, my mother, and others being taken away, and about the torture and anguish they suffered.

8. Many of those who were gassed, including Hans Fischer and his entire transport, were given two days notice to prepare. This waiting time is one of the most agonizing times for all concerned. Being told that you are about to be gassed, and awaiting and contemplating a painful execution is one of the most cruel and dreadful forms of torture which can be imposed on anyone. Alexander Leipen, a friend of mine and prisoner who was also in the selected transport with Hans Fischer, escaped into a frenzy of writing mathematical formulas during these two days. He tried to remove himself from the unbearable reality by performing and resolving complex mathematical equations. I know of the indescribable pain extermination by gas causes because I and others in the death camps experienced this form of torture each day we survived.

9. At Auschwitz-Birkenau, the sick and the weak were always the most likely to be selected for extermination. I was terrified that Dr. Joseph Mengele would make selections for gassing at a time when I was ill with pneumonia, pleurisy, and later with icterus, and confined in the infirmary barrack. It

was only through constant vigilance and the aid of others that I was able to avoid selection and death until the end of 1944.

10. Having survived the extermination camps, I came to the United States in 1953. In 1956, I enrolled at the University of California at Berkeley as a doctoral candidate in sociology. In 1957, as a part of my studies, I took a position with the California Department of Corrections as a correctional counselor in the psychiatric section at San Quentin, where I worked from 1957 until 1959. During my employment at San Quentin, I was asked to serve as a witness to an execution by lethal gas, which I refused.

11. I refused to act as a witness because, among other things, I knew that lethal gas is an excruciatingly painful method of execution. Witnessing a person being gassed to death would bring back horrendous memories of the hideous fate suffered by millions, which included my family, extended relatives, and friends. Even without witnessing the execution, being at San Quentin brought back all of the memories, including the ghastly odors of the death camp Auschwitz-Birkenau. Eventually, I had to leave my work at the prison. Being reminded of the horror of the death camps solidified my belief that I could not work in an institution that was executing people by the use of lethal gas.

12. It is my constant hope and endeavor that we, as

civilized people, can learn and have learned from these experiences. The pending execution of Robert Harris, however, not only undermines this hope, but is also indicative that we have learned very little from the Holocaust. The cruelty inherent in forcing the condemned to wait for their deaths in the gas chamber along with the actual pain suffered during the execution is a vivid reminder of the infamous Nazi gas chambers. While it may be improper to compare the millions of innocent Holocaust victims with convicted death row inmates, there is one thing they have in common -- namely, violent death by lethal gas. No human being, even if found guilty of murder and condemned to death, should be made to suffer the agonizing death caused by lethal gas, a notion which is posited on the questionable ideology advocating the law of retribution (lex talionis). The horror that I witnessed by exposing human beings to lethal gas has left an indelible memory of indescribable cruelty in my mind. It is the intentional infliction of pain and that strips us all of our human dignity and moral consciousness.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Signed this ^h day of April, 1992.



JOHN M. STEINER, Ph.D.

EXHIBIT 4

AJC Decries Arizona Plan to Use Zyklon B for Prisoner Executions



June 7, 2021

American Jewish Committee (AJC) is firmly denouncing Arizona's widely reported plan to use a Holocaust era poisonous gas to execute prisoners. No one in Arizona has been executed since 1999, but the state's attorney recently requested that two of the 115 inmates on death row be executed, and a chamber where Zyklon B will be used has been prepared.

The full AJC statement follows:

"Arizona's decision to employ Zyklon B gas as a means of execution defies belief. While there can be no doubt about its effectiveness – the Nazis used it to kill millions of innocent Jews – it is that very effectiveness as an instrument of genocide that makes it utterly inappropriate for use by a civilized state in a proceeding sanctioned by the state and its judiciary.

"So long as the death penalty is legally acceptable, one must be prepared to accept some level of cruelty in the process. But there is something profoundly wrong when a state is so anxious to execute people, who in any event can be incapacitated by incarcerating them forever, that it is

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“Whether or not one supports the death penalty as a general matter, there is general agreement in American society that a gas devised as a pesticide, and used to eliminate Jews, has no place in the administration of criminal justice.”

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Video: Ten Moments of AJC Impact from 2021

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No, thanks

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EXHIBIT 5

B/L DATE
12/8/2020

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AZ Department of Corrections
PRISON OPERATIONS
1645 West Jefferson, MC 321
Phoenix AZ, CA 85007

DATE
12/8/2020

QUANTITY ORDERED	QUANTITY SHIPPED	PACKAGING	H M	DESCRIPTION
2	2	1#BOTTLE	X	UN1680, POTASSIUM CYANIDE, SOLID 6.1, PGI, POTASSIUM CYANIDE BRICK CHEMICALLY PURE 1 LB. BOTTLE 2 LB

TOTAL COD AMOUNT \$1,529.50
DUE:

Invoice Date
12/17/2020

Sold To:

Ship To:

AZ Department of Corrections
PRISON OPERATIONS
1645 West Jefferson, MC 321
Phoenix AZ, CA 85007

RECEIVED
DEC 21 2020
Prison Operations
Business Office

Ship Date	Ship Via	Freight Terms	Payment Terms		
12/16/2020			COD		
			Order Date 12/8/2020		
QTY Shipped	Packaging	Total Quantity	Product	Unit Price	Amount
2	1 # BOTTLE	2 #	POTASSIUM CYANIDE BRICK CHEMICALLY PURE 1 L	700.0000 / #	1,400.00
			Merchandise SubTotal		1,400.00
			Tax		129.50
			Total Invoice		1,529.50

B/L DATE
12/11/2020

DATE
12/11/2020

QUANTITY ORDERED	QUANTITY SHIPPED
2	2
2	2

DESCRIPTION
UN1823, SODIUM HYDROXIDE, SOLID 8, PGII, SODIUM HYDROXIDE AR PELLETS SIGMA ALDRICH ACS REAGENT 500 GRAM BTL 1000 G [REDACTED]
DS UN1830, SULFURIC ACID 8, PGII, SULFURIC ACID #9681 BAKER ANALYZED REAGENT 2.5 L 5 L

B/L DATE
12/11/2020

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AZ Department of Corrections
PRISON OPERATIONS
1645 West Jefferson, MC 321
Phoenix AZ, CA 85007

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INV. #

CUST. ACCT. NO. SALES AG. OPERATOR REG. NO. SHIP VIA TERMS 24 HOUR EMERGENCY NUMBER

DATE
12/11/2020

QUANTITY ORDERED	QUANTITY SHIPPED
2	2

DESCRIPTION
CHEMICALS, N.O.S NON-REGULATED PHENOLPHTHALEIN SIGMA ALDRICH 100 GRAM 200 G
Total Weights:
TOTAL COD AMOUNT \$687.11
DUE:

Invoice Date
12/17/2020
Due Date
12/22/2020

Sold To:

Ship To:

AZ Department of Corrections
 PRISON OPERATIONS
 1645 West Jefferson, MC 321
 Phoenix AZ, CA 85007

RECEIVED
 DEC 21 2020
 Prison Operations
 Business Office

Ship Date	Ship Via	Freight Terms	Payment Terms	
12/16/2020	OTHER		COD	
		Order Date		
		12/11/2020		
QTY Shipped	Total Quantity	Product	Unit Price	Amount
2	2 E	PHENOLPHTHALEIN SIGMA ALDRICH 100 GRAM [REDACTED]	90.0000 / E	180.00
2	2 E	SULFURIC ACID #9681 BAKER ANALYZED REAGE [REDACTED]	101.8600 / E	203.72
2	2 E	SODIUM HYDROXIDE AR PELLETS SIGMA ALDRICH ACS REAGENT 500 GRAM BTL [REDACTED]	62.2600 / E	124.52
Merchandise SubTotal				508.24
Tax				47.01
Freight Charges				131.86
Total Invoice				687.11

ARIZONA DEPARTMENT OF CORRECTIONS

Request for Purchase / Purchase Order

Purchase Order Number [REDACTED]

RFP Number	Activity Manager and Date* [REDACTED]	AZ Contract Number
Budget Unit DCA-Agency Support	Budget Group Authority and [REDACTED]	Purchasing and Date*
Date Prepared 12/17/2020	Index	PCA
Requestor and Phone*	Compt Obj	Vendor Number and Mail Code [REDACTED]

Vendor ADCRR - Revolving Fund Central Office Phone Number [REDACTED]	Ship To 1601 W Jefferson St Phoenix, AZ 85007 Attn and M/C	Bill To Attn: Financial Services 1645 W Jefferson St Phoenix, AZ 85007 Customer Number
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Line No.	Qty	Unit	Commodity No.	Description	Unit Price	Extended Price
1	1	LS		Reimburse Central Office revolving fund for RFP numbers [REDACTED] and [REDACTED] using below chart of account elements: Function [REDACTED] Object: [REDACTED] [REDACTED]	\$2,216.61	\$2,216.61

Delivery Required	Terms**	FOB	Subtotal	\$2,216.61
Received and Date* - I certify this order received except as noted above.			Tax	0
			Freight	0
			Total	\$2,216.61

* Requires signature
 -- Signature must be on file with Financial Services Bureau as authorized to sign RFP
 + Signature must be on file with the Financial Services Bureau as authorized to sign encumbrances/purchase orders
 ** See reverse side for State of Arizona Purchase Order Terms and Conditions

Authorized Agent and Date*+ [REDACTED]

Arizona Department of Corrections, Rehabilitation and Reentry
Request for Purchase/Purchase Order

Purchase Order No.: [REDACTED]

RFP No.: [REDACTED]	Activity: [REDACTED]	AZ Contract No.:
Budget Unit: Prison Operations	Budget Code: [REDACTED]	Purchasing/Date*:
Date Prepared: November 30, 2020	Index: [REDACTED]	Accounting/Date*:
Requested by/Phone*: [REDACTED]	Compt Obj: [REDACTED]	Vendor No./MC:

Vendor: [REDACTED]	Ship to:	Bill to: AZ Department of Corrections Prison Operations 1645 West Jefferson, MC 321 Phoenix, Arizona 85007
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Line No.	Qty	Unit	Commodity No.	Description	Unit Price	Extended Price
1	2	bottles		Potassium Cyanide - 1 lb bottles Potassium Cyanide Brick Chemically Pure 1 lb. bottle	700.00	\$1,400.00

Delivery Required: _____ Terms** NET 30 FOB: DESTINATION

Received/Date*: _____

Subtotal	\$1,400.00
Tax	\$129.50
Freight	
Total	\$1,529.50

*Requires signature
-Signature must be on file with Fin Svcs Bu as authorized to sign RFP
+Signature must be on file with the Fin Svcs Bu as authorized to sign encumbrances/purchase orders
**See reverse side for State of Arizona Purchase Order Terms and Conditions
Distribution: White to Vendor, Yellow to Accounting, Pink to Business Office, Green to Receiver, Blue to Purchasing

Authorized Agent/Date* +
[REDACTED]

Arizona Department of Corrections, Rehabilitation and Reentry
Request for Purchase/Purchase Order

Purchase Order No.: [REDACTED]

RFP No.: [REDACTED]	[REDACTED]	AZ Contract No.:
Budget Unit:	[REDACTED]	Purchasing/Date*:
Date Prepared:	December 9, 2020	Accounting/Date*:
Requested by/Phone*:	[REDACTED]	Vendor No./MC:

Vendor:	Ship to:	Bill to:
[REDACTED]		AZ Department of Corrections Prison Operations 1645 West Jefferson, MC 321 Phoenix, Arizona 85007

Line No.	Qty	Unit	Commodity No.	Description	Unit Price	Extended Price
1	2	each	[REDACTED]	Phenolphthalein powder (100 gram)	90.00	\$180.00
2	2	each	[REDACTED]	Sulfuric Acid 96-98% Reagent (2.5L)	101.86	\$203.72
3	2	each		Sodium Hydroxide (Caustic Soda pellets) (500 gram)	62.26	\$124.52
				Freight for Sulfuric Acid		\$131.86

Delivery Required:	Terms**:	NET 30	FOB:	DESTINATION	Subtotal	\$640.10
Received/Date*:					Tax 9.25%	\$47.01
					Freight	
					Total	\$687.11

*Requires signature
 -Signature must be on file with Fin Svcs Bu as authorized to sign RFP
 +Signature must be on file with the Fin Svcs Bu as authorized to sign encumbrances/purchase orders
 **See reverse side for State of Arizona Purchase Order Terms and Conditions
 Distribution: White to Vendor, Yellow to Accounting, Pink to Business Office, Green to Receiver, Blue to Purchasing

Authorized Agent/Date*+
 [REDACTED]

STATE OF ARIZONA REMITTANCE ADVICE

WARRANT NO

[REDACTED]

AGY: DCA

AGENCY CONTACT: ACCOUNTING MANAGER

[REDACTED]

INVOICE NO.	INVOICE DT.	INVOICE DESCRIPTION	DOCUMENT/LINE NO.	INVOICE AMT.	DISCOUNT AMT.	NET AMT.
		[REDACTED]	[REDACTED]	\$2,216.61		

IF REMITTANCE ADVICE ABOVE IS BLANK, SEE [HTTP://WWW.VENPAY.GAO.AZDOA.GOV/](http://www.venpay.gao.azdoa.gov/) FOR FURTHER DETAILS.

EVER WONDER WHERE YOUR PAYMENT FROM THE STATE IS? OR, WHICH STATE AGENCY PAID YOU THROUGH DIRECT DEPOSIT/ACH? VISIT OUR VENDOR PAYMENT WEBSITE, [HTTP://WWW.VENPAY.GAO.AZDOA.GOV/](http://www.venpay.gao.azdoa.gov/).

VENDOR NAME: [REDACTED]

ISSUE DATE:

WARRANT AMOUNT:

VENDOR ID: [REDACTED]

12/18/2020

\$2,216.61

FOLD OR SEPARATE AT COLORED LINE BELOW

JCRC000027

EXHIBIT 6

[REDACTED]

December 16, 2020

[REDACTED]
Arizona Department of Corrections
Prison Operations
1601 West Jefferson Street
Phoenix, AZ 85007

Reference: Letter of Certification – Pressure Vessel
[REDACTED]

Dear [REDACTED]

[REDACTED] was onsite in Florence, Arizona, on December 2 and 3, 2020, for the purpose of inspecting and re-certification of your pressure vessel. All inspections were performed in accordance with original inspection guidelines. During inspection, [REDACTED] performed the following operations:

- Removed all windows along with all frames, gaskets, and nuts.
- Removed all old gaskets and seals: hatch door, #2 air inlet, #10 gaskets and pot seal, #10 Pot Vent By-pass.
- Cleaned, Scraped, Wire Brushed and Prepared all sealing surfaces on vessel, windows, studs, flanges, window frames, acid pot cone, and both sides of sealing surface of chamber floor.
- Had a few window studs welded back on to vessel by DOC.
- Wire wheeled and wiped off all visual surface rust and corrosion on any surface, frame, and seal groove.
- Replaced all seals and gaskets: windows, hatch door, #2 air inlet, #10 gaskets and pot seal, #10 Pot Vent by-pass.
- Inspected gas pot seal for proper seal and closure.
- Tightened all studs, nuts and bolts evenly for proper crush on all gasket and sealing surfaces.
- Checked all above and below ground plumbing for leaks or issues by running a maximum capacity wet test.
- Adjusted door and hinge camber for proper seal on hatch gasket.
- Inspected all levers, valves, pins and clips.
- Repaired Manometer hose and sealed mounting screw.
- Double checked all work and operations before testing with DOC and verified there were no air leaks at time of service.

Upon completion of the above-mentioned work, [REDACTED] certifies your pressure vessel is ready for use. We also strongly recommend annual inspection by [REDACTED] personnel of your pressure vessel to ensure proper function.

We appreciate the opportunity to work with you and please let us know if we can be of further assistance.

Sincerely,
[REDACTED]

JCRC000028

ARIZONA DEPARTMENT OF CORRECTIONS

REHABILITATION AND REENTRY

MEMORANDUM

To:

[REDACTED]

[REDACTED]

From:

[REDACTED]

Date: December 17, 2020

Subject: ASPC-Florence Gas Chamber

Background:

The Gas Chamber is located inside Central Unit at ASPC-Florence Complex. It was manufactured by [REDACTED] based out of [REDACTED] in 1949. An assessment of its operability was conducted earlier in August of this year.

The assessment consisted of conducting a physical inspection of the all sealing surfaces and the condition of all the rubber seals, the exercise of all the levers, and the corresponding actuating parts, and the exercise of all valves and the flow test of the plumbing.

Operating Principle

The gas chamber is a negative pressure vessel that operates by generating a chemical reaction between potassium cyanide and sulfuric acid to release hydrogen cyanide gas into the chamber.

Negative pressure is required during this chemical reaction to ensure that the lethal gas is contained within the vessel to prevent accidental exposure of the chemical and chamber operators.

Assessment

On August 23, 2020, an operational assessment of the ASPC-Florence Gas Chamber was conducted. The inspection consisted of a physical inspection of the chamber for corrosion, seal integrity, and operational functionality.

The chamber was also tested for air tightness. It was able to develop a negative pressure environment inside the vessel in approximately (15) fifteen minutes.

The levers to operate the chamber were exercised and inspected to ensure functionality. Based on this inspection, all levers and their corresponding actuating parts appeared to be operational. However, the levers were hard to move and required to be lubricated due to their inactivity. They are also lacking visible labeling to indicate if they are in the open and closed position.

Although the chamber was able to achieve negative pressure, there were significant concerns with the rubber seals throughout the vessels because of their age.

A five minute flush as recommended by the manufacturer was conducted. This was required to check for flow of the plumbing lines. The chamber was unable to pass this test. Slow drainage and overflowing was observed.

The exhaust fan in the chemical mixing room was also inoperable.

Action Items

- A. Engage [REDACTED] to obtain a quote to refurbish and recertify the gas chamber for operational readiness.
- B. Engage the local facility maintenance to address line "slow drainage issue" with the drainage system.
- C. Label all levers and valves associated with the operation of the chamber.
- D. Install a high volume (CFM) fan in the chemical mixing room.

- E. Develop a checklist and policy attachment to Department Order 710 outlining the correct procedure when using this vessel.

Action Item Update

- A. On December 2, 2020, [REDACTED] began the refurbishing process of the ASPC-Florence Gas Chamber. The scope of this was to bring the vessel to original specification standards. The process entailed the dismantling, inspection, removal and replacement of all the seals and gaskets (windows, chamber door, acid pot vent and bypass, air inlet valve gaskets, manometer tubing).

All these components are all critical to the pressurization and safe operation of the vessel.

During the removal of the chamber windows, (4) four window studs were determined to missing. These were fabricated according to the (o.e.m.) original equipment manufacturing specifications and welded in place.

All the sealing surfaces were thoroughly cleaned to promote maximum adhesion promote a level sealing surface for the new seals.

On December 3, 2020, the [REDACTED] personnel completed the refurbishing process. An operational functionality test of the chamber was conducted. The test consisted of using water at the correct volumes to simulate the operation of the chamber. The functionality test was able to process and drain all the liquid without overflowing.

However slow drainage and gurgling observed in the gas pot leading to the outlet valve. According to the contractors, they believe that the problem is caused by a faulty designed p-trap. They recommended the replacement of this component.

A candle test then executed by the [REDACTED] personnel. The purpose of this test is to validate the air tightness of the chamber. Prior to the administration of this test, the chamber was sealed and pressurized.

Internal negative pressure took less than (1) one minute to achieve compared to 15 minutes previously.

The candle test then administered. This was done by passing the flame of the candle slowly, and in close proximity to areas that have a sealing surface (ie. door, windows, or any approved intrusions into the vessel) and observing if there are any deflections to the flame. There was no observed deflection of the flame which is indicative of an air tight environment.

The ability of the chamber to evacuate gas inside chamber was also verified. This was executed to ensure the fan was operational and vent stack was free from any obstructions. To administer this test, a single high volume smoke grenade was deployed inside the chamber. The door to the chamber was immediately closed upon the deployment along with all other corresponding valves that contribute to the pressurization and air tightness of the chamber.

The chamber fan was activated and the exhaust damper was placed in the open position. There were no obstructions or functionality issues observed. The chamber was able to evacuate large volumes rapidly.

██████████ staff verbally indicated that the vessel is operationally ready.

STATUS: CLOSED

- B. On December 19, 202 ADCRR Physical Plant staff replace the P-trap the acid pot (gas generator). This was fabricated from stainless steel at the recommendation of the contractor because of its intended duty in a corrosive environment. The replacement of this section has addressed the overflow and slow drainage of the liquid in the gas generator pot. Verification of this was conducted by continuously flushing water down for 20 minutes. There was no overflowing or slow draining observed. This closes this action item. The chamber is now able to meet the required five minute flush test.

STATUS: CLOSED

- C. The labelling of all the chamber levers and valves has been completed. All labelling and numbering now corresponds to the manufacturer numbering based on the original manufacturer diagram.

STATUS: CLOSED

- D. The exhaust fan in the chemical room has been repaired by ACCRR Physical Plant.

STATUS: CLOSED

- E. Attachment E of Department Order 710 (Executions) has been drafted and reviewed by ADCRR General Counsel and the Arizona Attorney General.

A Step by step Operational Checklist for operating the gas chamber has been completed.

STATUS: CLOSED

ATTACHMENT INDEX

A. [REDACTED] Refurbishing Timeline

B. Parts Certificate of Conformity

- Acid Pot Gasket
- Air Valve Gasket
- Acid Valve Gasket
- Window Gasket
- Vent Gasket

C. Gas Chamber Diagram

- Lever & Valve Functions

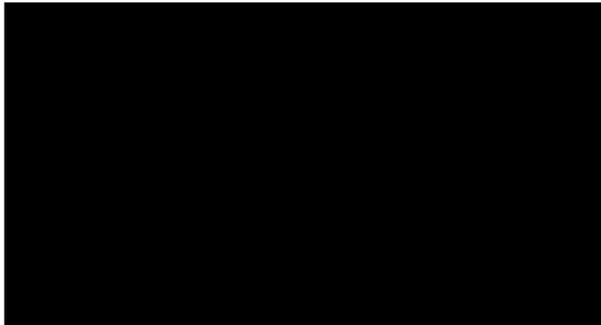
D. DO 710 Attachment xx

E. Gas Chamber Operational Checklist

DATE	ASPC-Florence Gas Chamber
12/3/20	Housing Unit 9
TIME	CONTRACTOR ACTION
0800	Inventoried contractor tools per inventory – all present
0810	Contractors begin inspecting equipment being serviced today
0830	Vacuum test conducted by contractors
0920	Contractor removing window #2
0928	Contractor removing door seal (1 seal)
0948	Contractor removing air valve lever seal (3 rings)
0950	Window #2 removal completed by contractor
1020	Contractor removing window #1
1028	Contractor removes manometer
1050	Contractor removing nuts on windows 3, 4 & 5
1148	Window #1 removal completed by contractor
1200	Contractors depart for parts pickup
1500	Contractor preparing seal surfaces for windows 1 & 2
1545	Window #5 is removed completely by contractor
1600	Window #4 is removed completely by contractor
1610	Window #3 is removed completely by contractor
1615	Contractor preparing seal surfaces on windows 3, 4 & 5
1615	Contractor also preparing seal surfaces on chamber door
1700	Contractor preparing seal for door installation
1715	Contractor placing seals on window glass 1, 2, 3, 4 & 5
1830	Contractor placing seal in door frame

1920	Seal placement in door completed
DATE	ASPC-Florence Gas Chamber
12/4/20	Housing Unit 9
0800	CONTRACTOR ACTION TAKEN
0815	Resumed contractor security; all tools accounted for
0850	Contractor begins replacing old seals on windows 1 & 2
0915	Contractor preparing windows 3, 4 & 5 for new seals
1100	Contractor prepping chamber window frames 1, 2, 3, 4 & 5
1150	Contractor begins removal of mixing vat #10
1200	Mixing vat removal complete; gasket removed
1230	Contractor prepping mixing vat gasket surfaces
1250	Contractor placing seals on mixing vat
1320	Contractor places ammonia bottle bushings in ammonia bottle mounts (x2)
1350	Mixing vat vent pipe remove by contractor and seal surfaces cleaned
1450	Chamber vent pipe seal replaced and pipe reattached in chamber
1510	Contractor replacing mixing vat cover "O" seal
1530	Contractor replacing seal on 2" under pipe for chamber mixing pot air pipe
1600	Replacing mixing vat to original position with new seals
1615	Mixing vat reinstallation complete
1635	Contractor reinstalling windows 1 & 2
1640	Windows 1 & 2 reinstallation complete
1650	Air valve seal replacement completed (air valve #2)
1655	Door hinges adjusted by contractor to improve chamber door seal

1800	Contractor reinstalling windows 3, 4 & 5
1815	Contractor replaces manometer with new hose
1840	Contractor replaces exhaust fan valve rubber flange
1902	Contractor conducts flame test on chamber seals
1930	Flame test finished – all seals pass; no deflection
1930	Smoke test completed – no obstructions detected in stack



Certificate of Conformance

This is to certify the materials/services supplied were produced in accordance with your Purchase Order, Applicable Drawing, Procedures and Specifications.

CUSTOMER NAME: [REDACTED]

INVOICE NUMBER: [REDACTED]

PURCHASE ORDER: [REDACTED]

[REDACTED]

QUANTITY: 2

PART NUMBER: ACID-POT-GASKET

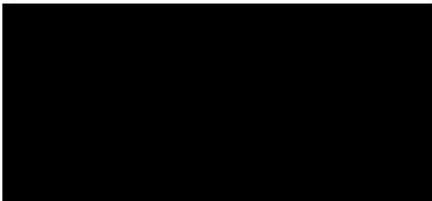
MATERIAL: .25" THK BUNA BLACK 40 DURO

LOT: [REDACTED]

SHELF LIFE: EXP. 4Q35

COUNTRY OF ORIGIN: US

DATE: 10/23/2020





Certificate of Conformance

This is to certify the materials/services supplied were produced in accordance with your Purchase Order,
Applicable Drawing, Procedures and Specifications.

CUSTOMER NAME: 

INVOICE NUMBER: 

PURCHASE ORDER: 


QUANTITY: 4

PART NUMBER: ACID-VALVE-GASKET

MATERIAL: 1.75" THK BUNA BLACK 40 DURO

LOT: 

SHELF LIFE: EXP. 4Q35

COUNTRY OF ORIGIN: US

DATE: 10/23/2020



JCRC000039



Certificate of Conformance

This is to certify the materials/services supplied were produced in accordance with your Purchase Order,
Applicable Drawing, Procedures and Specifications.

CUSTOMER NAME: 

INVOICE NUMBER: 

PURCHASE ORDER: 


QUANTITY: 1

PART NUMBER: AIR-VALVE-GASKET

MATERIAL: .25" THK BUNA BLACK 40 DURO

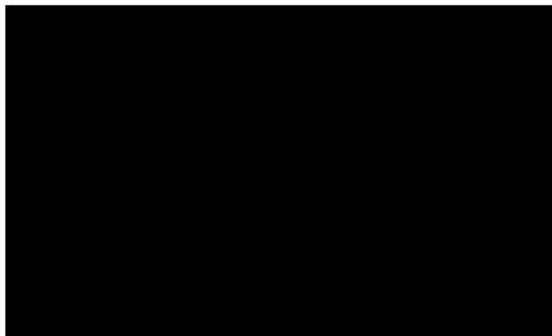
LOT: 

SHELF LIFE: EXP. 4Q35

COUNTRY OF ORIGIN: US

DATE: 10/23/2020





Certificate of Conformance

This is to certify the materials/services supplied were produced in accordance with your Purchase Order,
Applicable Drawing, Procedures and Specifications.

CUSTOMER NAME: 

INVOICE NUMBER: 

PURCHASE ORDER: 


QUANTITY: 10

PART NUMBER: WINDOW-GASKET

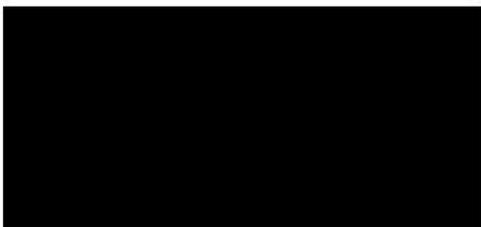
MATERIAL: .25" THK BUNA BLACK 40 DURO

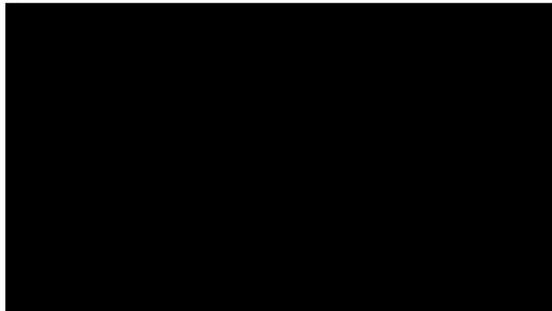
LOT: 

SHELF LIFE: EXP. 4Q35

COUNTRY OF ORIGIN: US

DATE: 10/23/2020





Certificate of Conformance

This is to certify the materials/services supplied were produced in accordance with your Purchase Order,
Applicable Drawing, Procedures and Specifications.

CUSTOMER NAME: 

INVOICE NUMBER: 

PURCHASE ORDER: 


QUANTITY: 3

PART NUMBER: VENT-GASKET

MATERIAL: .25" THK BUNA BLACK 40 DURO

LOT: 

SHELF LIFE: EXP. 4Q35

COUNTRY OF ORIGIN: US

DATE: 10/23/2020

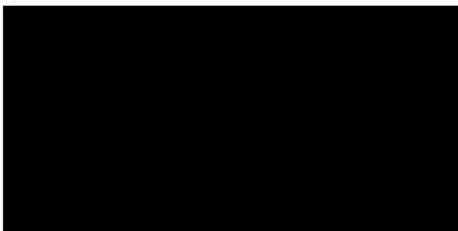


EXHIBIT 7

Arizona plans to execute prisoners with a lethal gas the Nazis used at Auschwitz

By [Meryl Kornfield](#)

June 1, 2021 at 11:35 p.m. EDT



Arizona is taking steps to use hydrogen cyanide, the deadly gas used during the genocide perpetrated by the Nazis at Auschwitz and other extermination camps, to kill inmates on death row.

Corrections officials have refurbished a gas chamber that hasn't been used in more than 20 years and have procured ingredients for the lethal gas, also known as Zyklon B, according to partially redacted documents obtained by [the Guardian](#). Invoices show that the state purchased a brick of potassium cyanide, sodium hydroxide pellets and sulfuric acid, and a report details the considerable efforts taken to deem the gas chamber at a prison in Florence, Ariz., "operationally ready."

Critics of the gas method say that in addition to hydrogen cyanide's infamous use in the mass killings of Jewish people by the Nazis, it has produced some of the most botched, disturbing executions in the United States.

"You have to wonder what Arizona was thinking in believing that in 2021 it is acceptable to execute people in a gas chamber with cyanide gas," Robert Dunham, executive director of the Death Penalty Information Center, told the British outlet. "Did they have anybody study the history of the Holocaust?"

In a statement, the Arizona Department of Corrections, Rehabilitation and Reentry said it was "prepared to perform its legal obligation and commence the execution process as part of the legally imposed sentence, regardless of method selected." The department pointed to the Arizona statute allowing a defendant sentenced to death for a crime committed before November 23, 1992 to choose between lethal injection or lethal gas at least 20 days before the execution date.

There is little medical research about lethal gas's effects on the human body, but executions using gas have taken much longer than other methods, according to Fordham University law professor Deborah Denno.

"It's without question that lethal gas, or at least the lethal gas that Arizona is trying to bring back, is the most gruesome of all these methods we've had in this country," Denno told The Washington Post on Tuesday.

Arizona, one of [27 states](#) where the death penalty remains legal, postponed executions after the [execution of Joseph R. Wood III in 2014](#) by lethal injection, which prompted a review of the death chamber protocols.

Although states' enforcement of capital punishment has dwindled in [recent years](#), the Trump administration [set a record](#) for executions after a 17-year federal hiatus. President Biden has supported eliminating the federal death penalty through legislation. Public support for capital punishment has dwindled, [according to Gallup polls](#).

Arizona's preparation to use lethal gas comes amid a scarcity of execution drugs and as other states have taken a closer

look at [firing squads](#) and other execution methods.

Lethal gas is permitted for executions in six other states: Alabama, California, Mississippi, Missouri, Oklahoma and Wyoming. Oklahoma, Mississippi and Alabama have authorized nitrogen hypoxia, which uses nitrogen to deprive the body of oxygen, despite a small body of scientific research and no previous executions using the method in the United States.

In Arizona, where 115 inmates are on death row, hydrogen cyanide has been deployed before. The state has killed 37 people with lethal gas, most before 1950. Since the U.S. Supreme Court lifted its moratorium on the death penalty in 1976, the state has executed two inmates with gas, most recently in 1999, according to [state records](#).

In those cases, witnesses recounted excruciating deaths.

Convicted murderer Don Eugene Harding, who was put to death in 1992, was red-faced and gasping to breathe, his attorney James J. Belanger detailed in a [written declaration](#). As the white fumes enveloped him, Harding twitched and jerked for minutes, longer than Belanger anticipated, the attorney wrote.

“They were the most excoriatingly painful eight minutes of my life,” Belanger wrote.

The 1999 execution of German national Walter LaGrand, who was convicted of armed robbery, took even longer, a witness noted in an [account](#) published in the Tucson Citizen. LaGrand died 18 minutes after cyanide pellets were dropped into acid below his chair, enveloping him in a mist of deadly vapor that rose, “much like steam in a shower,” the witness wrote.

After LaGrand coughed violently and fell forward, his back continued to rise and fall with shallow breaths and his head twitched for minutes before he was declared dead, according to the account.

LaGrand was the last inmate killed in the gas chamber that officials say has since been restored.

According to the documents obtained by the Guardian, there were “significant concerns” about the rubber seals throughout the vessel because of their age. Tests used water, a smoke grenade and a more primitive review to ensure the chamber was airtight: Workers passed a candle slowly over spaces including doors and windows, watching to see whether the flame flickered.

As the state readies for renewed use of the gas chamber, execution dates have not been set for convicted murderers Clarence Dixon and Frank Atwood. Their attorneys expressed concerns about the little information the state has shared.

“We are deeply concerned that Arizona is even considering a plan to carry out executions using lethal gas,” federal public defender Dale Baich, who represents Dixon, told The Post. “California’s lethal gas protocol was held unconstitutional many years ago, and Arizona should not be taking this gratuitous and dangerous turn to the past.”

“Frank Atwood is prepared to die,” his attorney Joseph Perkovich told the Guardian. “He is a man of Greek Orthodox faith and is preparing for this moment. But he does not want to be tortured and subjected to a botched execution.”

Read more here:

[Virginia moves toward banning capital punishment, in a shift for prolific death penalty state](#)

[Four years after a man’s execution, lawyers say DNA from the murder weapon points to someone else](#)

[Texas fails to allow media to witness an execution for first time in 40 years, blaming miscommunication](#)

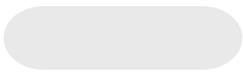
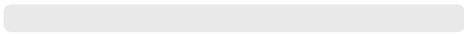
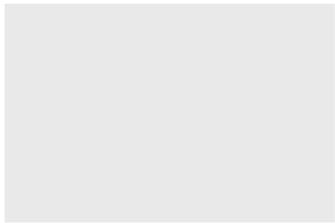


EXHIBIT 8

Gas Chamber Lever & Valve Functions

1. GAS VALVE LEVER

The gas valve lever controls the gas valve pot. This is designated as LEVER #1. This lever controls when the cyanide is mixed with the sulfuric acid. When this lever is in the **closed** position, the gas valve pot should also be closed.

Whenever the chamber is being prepared for use, this lever should always be in the closed position. This will allow the safe placement of the cyanide packets. This prevents the cyanide packets from falling into the gas generator pot causing a premature chemical reaction with the sulfuric acid mixture.

Lever 1 should never be placed in the open position during the chamber use unless ordered by the Warden or Designee.

Gas Chamber Lever & Valve Functions

2. AIR VALVE LEVER

The air valve lever actuates the air valve diaphragm. This is designated as LEVER #2. This lever controls the air valve allows the outside air at atmospheric pressure to enter the chamber. When Lever #2 is in the closed position, outside air cannot enter the chamber.

The air valve should always be in the closed position whenever the chamber is being prepared for use and during use. Closing this valve prevents air from entering the chamber allowing it to develop negative pressure. It also prevents the gas mixture from escaping when the chamber is in operation.

LEVER 2 should never be placed in the open position immediately after the chamber operation unless the chemical neutralization procedures are completed.

Gas Chamber Lever & Valve Functions

3. INLET VALVE

The inlet valve is a gate valve that controls the flow of chemical mixtures into the gas generator pot. This gate valve is designated as VALVE #3. When this valve is in the open position, chemical mixtures are allowed to flow into the gas generator pot.

This valve should only be opened when prompted by the chemical operator(s). The valve should immediately be closed after allowing the passage of mixtures to prevent chemical fumes from escaping the lines back into the chemical room.

4. OUTLET VALVE

The outlet valve is a gate valve that controls the flow of chemical mixtures from the gas pot. This is designated as VALVE #4. It allows the neutralized chemical mixtures to exit the gas generator pot into the sewer system.

The outlet valve should always remain in the closed position when preparing the chamber and during the chamber use. This valve keeps the chemical mixture in the gas generator pot.

5. FAN DAMPER LEVER

This fan damper lever actuates the chamber damper. This lever is designated as LEVER #5. The lever actuates the exhaust damper to allow the gas to evacuate out of the chamber.

This damper lever should always be in the closed position prior to and during the chamber use to develop the required negative pressure inside the chamber. This also prevents the escape of gas from the chamber during chamber operation.

6. Manometer

The U-manometer is an indicator that measures the difference between the atmospheric pressure and the internal chamber pressure. The left side of the manometer indicates the internal chamber pressure. The right side indicates the atmospheric pressure.

The internal chamber pressure should always be lower than the atmospheric pressure during chamber operation. Negative chamber pressure prevents the escape of gas outside during its operation.

7. Manifold Ammonia Valve

The manifold ammonia valve controls the amount of anhydrous ammonia entering the gas chamber plumbing lines. This is designated as **VALVE #7**. This is a variable pressure valve that regulates the release of ammonia to neutralize the chemical mixture and any residue inside the chamber.

This valve should remain closed unless directed otherwise during the decontamination process. The inlet valve (Valve #3) and the air damper valve (Valve #2) should also be closed prior to dispensing the ammonia into the lines.

8. Flush Ammonia Valve

This valve controls the flow of anhydrous ammonia into the mixing pot plumbing line. This control valve is designated as **VALVE #8**. This is a variable pressure valve that regulates the release of ammonia to neutralize any chemical mixture or residue from the mixing pot line leading to the inlet valve.

This valve should remain closed unless directed otherwise during the decontamination process. The inlet valve should be open (Valve #3) and the Red mixing pot valve should be closed when dispensing the anhydrous ammonia into the line.

9. ACID MIXING POT

The acid mixing pot is located in the chemical room. This is an open vessel (sink) where the chemical mixture is staged and mixed prior to use.

10. GAS VALVE POT

The gas valve pot is located directly below the gas chamber chair. This plunger is actuated by Lever #1. When Lever #1 is in the closed, this valve is seated against the lip of the gas pot in the upward position. It allows the safe loading of cyanide.

When Lever #1 is placed in the open position, this valve retracts down allowing the cyanide to enter the gas generator and start the chemical reaction.

DO 710 GAS CHAMBER PROTOCOL

ATTACHMENT E

[Draft – December 15, 2020]

LETHAL GAS

1. **Approximately 10 minutes before the execution, Chemical Operators #1 and #2 shall sequentially pour 6 QUARTS OF DISTILLED WATER and 5 PINTS OF SULPHURIC ACID into the mixing pot (9). THE WATER SHOULD BE Poured FIRST. UPON COMPLETION OF POURING THE WATER, 5 PINTS OF SULFURIC ACID SHOULD BE Poured NEXT. RUBBER GLOVES AND GLASS FUNNEL SHALL BE USED. THE ACID MUST BE Poured SLOWLY TO PREVENT SPLATTERING. This mixture should remain in the mixing pot (9) for approximately 10 minutes so as to attain an adequate mix and maximum temperature. Keep away from acid fumes and possible splatter caused by boiling. This mixture will yield a 41.5% concentration.**
 - **Chemical Operator #1 shall ensure that the mixture shall not pass to the chair receptacle until after the Chamber door is closed and instructions received from the Chamber Operator.**
 - **The Caustic Soda Neutralizing solution shall be prepared by Chemical Operator #2 immediately after the completion of the acid mixture.**
 - **Chemical Operator #2 shall put on rubber gloves and dissolve 1 pound of CAUSTIC SODA into 2½ gallons of water already in a pour-spout can. Once the mixing process is complete, this solution should be kept near the mixing on the floor in close proximity to the mixing pot (9).**
 - **Chemical Operator #2 shall dissolve 30 grains of Phenolptalein Solution in 4 ounces of alcohol. If the solution is pre-mixed, then skip this step.**
 - **Chemical Operator #2 shall relay to the Special Operations Team Leader that the chemical mixing process is complete.**
 - **The Housing Unit 9 Team Leader will notify the Director that the chemical mixing is complete and the chamber is ready.**
 - **The Director will instruct the Housing Unit 9 Team Leader to move the inmate to the chamber.**
2. **The inmate shall be brought into the execution room and placed in the Chamber and strapped in the chair by the Restraint Team. The internal Chamber microphone will be turned on and a microphone will be affixed to the inmate's shirt and also turned on; both microphones shall remain on until the completion of the execution (the microphones will remain on during any last statement by the inmate, but will be turned off in the event the inmate uses vulgarity or makes intentionally offensive statements; if the microphones are turned off, they will be turned back on immediately after the completion of the last statement) to enable the persons in the witness room and the Special Operations Team**

Leader to hear any utterances or noises made by the inmate throughout the procedure. The Special Operations Team Leader will confirm that the microphones are functioning properly and that the inmate can be heard in the operations room and in the witness room.

- a. Closed-circuit monitor(s) will allow witnesses in the designated witness room to observe this process and shall remain on until the completion of the execution. All cameras and monitors shall be placed in such a manner so as to ensure and preserve at all times the anonymity of all personnel involved in the execution process.
3. Chemical Operator #2 shall place 4 petri dishes containing the Phenolptalein Solution inside the chamber so as to be clearly visible to the Chamber Operator. (Location should be at each designated corner of the chamber.)
 4. After the inmate is strapped in the chair, Chemical Operator #2 shall verify that the petri dishes containing Phenolphthalein are still in their proper place.
 5. Chemical Operator #2 shall inspect the GAS VALVE LEVER (1) and GAS VALVE POT (10) to ensure that it is dry and in the Closed position. Once this is confirmed, Chemical Operator #2 shall place the sodium cyanide packets in the GAS VALVE POT (10) under the chair.
 6. Chemical Operator #2 and the Chamber Operator shall close the Chamber door and ensure that it is properly sealed.
 7. The Chamber Operator shall ensure that the fan damper is in the closed position. Once this is confirmed, the chamber fan shall be activated and left on.
 - The manometer H pressure gauge readings on the chamber shall be monitored to determine air tightness of Chamber.
 - The Chamber will be considered air-tight if the manometer gauge to the right has a higher reading than the left.
 - If the readings on both the manometer H gauges remain equal, the Chamber Operator shall notify the Housing Unit 9 Team Leader immediately.
 8. The Chamber Operator shall position himself at the GAS VALVE LEVER (1).
 9. The Chamber Operator shall ensure that the Outlet Valve (4) is closed. This Outlet Valve (4) shall remain closed until the chamber is cleared.
 10. Chemical Operator #2 shall proceed back to the Chemical preparation room.
 11. The Housing Unit 9 Team Leader shall notify the Director that the chamber is ready.
 12. Chemical Operator #1 and the Chamber Operator shall release the mixed acid and water from the mixing pot (9) into the Gas Generator by opening the Acid Mixing Pot Valve (Red lever) and Inlet Valve (3). Chemical Operator #1 shall visually observe the liquid drain from the mixing pot. Once fully drained, Chemical Operator #1 shall close the Acid Mixing Pot Valve and place it in the Closed Position.

13. **Chemical Operator #1 shall notify the Chamber Operator that the acid mixture is fully drained.**
14. **The Chamber Operator shall close the inlet valve (3) and advise the Chemical Operators when complete.**
15. **Chemical Operator #2 shall fill the mixing pot (9) with the Caustic Soda solution.**
16. **The Chamber Operator shall then advise the Housing Unit 9 Team Leader that the Chamber is ready for use.**
17. **The Housing Unit 9 Team Leader shall notify the Director that everything is ready to proceed. The Director shall make the final notifications to the Attorney General.**
18. **The Director shall instruct the Chamber Operator to remove the locking pin of the GAS VALVE LEVER (1) (Sodium Cyanide immersion lever) and open the immersion valve, to drop the pellets into the acid in the gas generator. The Gas Valve Lever (1) shall remain open until the clearing process of chamber is initiated.**
19. **With the Chamber in operation, the Housing Unit 9 Team Leader and the Recorder will observe and record as necessary. A member of the medical team shall monitor the inmate and EKG and shall advise the Director when the inmate has expired, providing the corresponding time of death.**
20. **The Director will announce that the execution has been completed. The Housing Unit 9 Team Leader will instruct the Operators to "Clear the Chamber".**
 - **NOTE: The length of time required should be determined by a member of the medical team and the Housing Unit 9 Team Leader. It is recommended that this period should be no less than 10 minutes.**
21. **When the Housing Unit 9 Team Leader announces "Clear the Chamber", the Chamber Operator shall move the exhaust fan damper lever (5) into the open position.**
22. **The Chamber Operator shall close the GAS VALVE LEVER (1) into the closed position for clearing.**
23. **Chemical Operator #1 and the Chamber Operator shall drain the Caustic Soda Solution into the gas generator. Chemical Operator #1 shall open the Acid Mixing Pot Valve (9). The Chamber Operator shall open the Inlet Valve (3) and allow caustic soda to fully drain into the gas generator.**
24. **Chemical Operator #1 shall monitor the CAUSTIC SODA SOLUTION until the Acid Mixing Pot is fully drained and empty.**
25. **Once the Acid Mixing Pot (9) is empty, Chemical Operator #1 shall close the mixing pot valve (Red Valve) and instruct the Chamber Operator to close the Inlet Valve (3).**
26. **The Chamber Operator shall inform the Chemical Operators once the Inlet Valve (3) is closed.**
27. **The Chemical Operator shall fill the mixing pot with water.**

28. The Chamber Operator shall open the air manifold intake lever (2), which may be opened with graduated steps.
29. The Chamber Operator shall open the Outlet Valve (4), opening the gas generator drain valve first, and then opening the Inlet Valve (3).
30. Once the Inlet and Outlet Valves are fully open, the Chamber Operator shall inform the Chemical Operators to begin flushing.
31. The Chemical Operators shall open the water faucet, allowing additional water to flow into the mixing pot (9).
 - The Chemical Operators shall observe the drainage of water from the mixing pot to ensure that the flushing is proceeding properly. During this period, the Chamber Operator shall perform the following functions:
 - a. The Chamber Operator and Chemical Operator #1 shall fully open the anhydrous ammonia tank valve, then open ammonia control valves (7) and (8) (on the regulators) gradually to reach the saturation to allow the effective neutralization of the residual chemicals in the chamber, gas generator and plumbing. After 30 seconds, both Operators shall close the ammonia tanks in the following sequence: The tank valves shall be closed first, and, after approximately 30 seconds, the regulator valves (7) and (8) shall be closed. This will allow the ammonia to drain from the piping. Anhydrous ammonia valves should be CLOSED OUT AT LEAST THREE MINUTES BEFORE OPENING THE CHAMBER DOOR.
 - b. After the Chamber is completely evacuated of gas and purged of the ammonia fumes, the phenolphthalein in the petri dishes should turn red (pinkish) in color. This color change is an indication that the Chamber door may be safely opened. A member of the medical team and Restraint Team now may enter, using masks for protection from any residual ammonia fumes. The Chamber Operator shall close the air valve lever (2).
 - CAUTION: Although smoke tests suggest that the Chamber is purged in approximately 3 to 5 minutes, it is recommended that the period between opening the exhaust and air inlet valves and opening the Chamber door be about 15 minutes. As a precautionary measure, it is recommended that the Physician and the Restraint Team removing the body wear hydrocyanic acid gas masks or approved respirators and rubber gloves and that the hair of the deceased inmate be ruffled in order to allow any residually trapped gas to escape. Close the Chamber door, but not tightened more than contact with the gasket, and aerate for one hour as a necessary to clear any residual ammonia.
32. The Restraint Team shall hose down all the surfaces and the deceased inmate prior to removal from the chair.

HOUSING UNIT 9 GAS CHAMBER CHECKLIST

1.	Close gas valve lever #1
2.	Close air valve lever #2
3.	Close inlet valve #3
4.	Close outlet valve #4
5.	Close fan damper lever #5
6.	Close mixing pot valve (red).
7.	Approximately 10 minutes before the execution, Chemical Operator #1 and #2 shall sequentially pour 6 QUARTS OF DISTILLED WATER and 5 PINTS OF SULPHURIC ACID into the mixing pot (9). THE WATER SHOULD BE POURED FIRST. UPON COMPLETION OF POURING THE WATER, (5) PINTS OF SULPHURIC ACID SHOULD BE POURED NEXT. RUBBER GLOVES AND GLASS FUNNEL SHALL BE USED.
8.	THE ACID MUST BE POURED SLOWLY TO PREVENT SPLATTERING. This mixture should remain in the mixing pot (9) for approximately 10 minutes.
9.	The Caustic Soda Neutralizing solution shall be prepared by Chemical Operator #2 immediately after the completion of the acid mixture.
10.	Chemical Operator #2 shall dissolve 1 pound of Caustic Soda into 2 ½ gallons of water already in a pour-spout can. Once the mixing process is complete, this solution should be kept near the mixing on the floor in close proximity to the mixing pot (9).
11.	Chemical Operator #2 shall dissolve 30 grains of Phenolptalein Solution in 4 ounces of alcohol. If the solution is pre-mixed, then skip this step.
12.	Chemical Operator #2 shall relay to the Special Operations Team Leader that the chemical mixing is complete.
13.	Chemical Operator #2 shall place 4 petri dishes containing the Phenolptalein Solution inside the chamber so as to be clearly visible by the Chamber Operator. (Location should be at each corner of the chamber).
14.	Chemical Operator #2 shall inspect the GAS VALVE LEVER (1) and POT (10) to ensure it is dry and in the Closed position. Once this is confirmed, Chemical Operator #2 shall place the sodium cyanide packets in the receptacle under the chair (10).

15.	Chemical Operator #2 and the Chamber Operator shall close the chamber door and ensure that it is properly sealed.
16.	Once this is confirmed, the chamber fan shall be activated and left on for 15 minutes.
17.	The manometer H pressure gauge readings on the chamber shall be monitored to determined air tightness of chamber. The chamber will be considered air-tight if the manometer gauge to the right has a higher reading than the left. If the readings on both the manometer H gauges remain equal, the Chamber Operator shall notify the Housing Unit 9 Team Leader immediately.
18.	The Chamber Operator shall position himself at GAS VALVE LEVER (1). The Chamber Operator shall ensure that Check Valve (4) is closed. This valve (4) to remain closed until the chamber is cleared.
19.	Chemical Operator #2 shall proceed back to the chemical preparation room.
20.	The Housing Unit 9 Team Leader shall notify the Director the chamber is ready.
21.	Chemical Operator #1 and the Chamber Operator shall release the mixed acid and water from the mixing pot (9) into the Gas Generator by opening the acid mixing pot valve (Red lever) and acid supply valve (3). Chemical Operator #1 shall visually observe the liquid drain from the mixing pot. Once fully drained, Chemical Operator #1 shall close the Acid Mixing Pot Valve.
22.	Chemical Operator #1 shall notify the Chamber Operator that the acid mixture is fully drained.
23.	The Chamber Operator shall close the inlet valve (3) and advise the Chemical Operators when complete.
24.	Chemical Operator #2 shall fill the mixing pot (9) with the Caustic Soda solution.
25.	The Chamber Operator shall then advise the Housing Unit 9 Team Leader that the chamber is ready.
26.	The Director shall instruct the Chamber Operator to remove the locking pin of the GAS Lever (1) (Sodium Cyanide immersion lever) and open the immersion valve to drop the pellets into the acid in the gas generator. The gas lever (1) shall remain open until the

	clearing process of chamber is initiated.
27.	When the Housing Unit 9 Team Leader announces "Clear the Chamber," the Chamber Operator shall move the exhaust fan damper lever (5) into the open position.
28.	The Chamber Operator shall close the GAS VALVE LEVER (10) with lever (1) into the closed position for clearing. Open mixing pot valve.
29.	The Chamber Operator shall open the inlet valve (3) and allow caustic soda into the gas chamber.
30.	Chemical Operator #1 shall monitor the CAUSTIC SODA SOLUTION until the acid mixing pot is fully drained and empty.
31.	Once the mixing pot is empty, Chemical Operator #1 shall close the mixing pot valve and instruct the Chamber Operator to close the inlet valve (3).
32.	The Chamber Operator shall inform the Chemical Operators once the inlet valve (3) is closed.
33.	The Chemical Operator shall fill the mixing pot with water.
34.	The Chamber Operator shall open the air manifold intake lever (2), which may be opened by graduated steps.
35.	The Chamber Operator shall open the Outlet Valve (4)
36.	The Chamber Operator shall then open the Inlet Valve (3)
37.	Once the inlet and outlet valves are fully open, the Chamber Operator shall inform the Chemical Operators to begin flushing.
38.	The Chemical Operators shall open the water faucet, allowing additional water to flow into the mixing pot (9).
39.	The Chemical Operators shall observe the drainage of water from the mixing pot to ensure that the flushing is proceeding properly.
40.	The Chamber Operator shall fully open the anhydrous ammonia tank valve, then open ammonia control valve (7) (on regulator) to the desired pressure. After proper time, the Operator shall close the ammonia tank in the following sequence. The tank valve shall be closed first, and after approximately 30 seconds, the regulator valve shall be closed (7). This will allow the ammonia to drain from the piping. CLOSE OUT 3 MINUTES BEFORE OPENING THE CHAMBER DOOR.

41.	After the chamber is completely evacuated of gas and purged of the ammonia fumes, the phenolphthalein in the petri dishes should turn red (pinkish) in color. The color change is the indication that the chamber door may be safely opened. After 15 minutes, the Physician and the Restraint Team now may enter, using masks for protection from residual ammonia fumes.
42.	The Chamber Operator shall close the air valve lever (2).
43.	The chamber door, the air intake manifold valve, and the exhaust chamber shall all be left in accordance with the manufacturer's recommendations.

EXHIBIT 9

Compiled and Issued by
Secretary of State
November 23, 1992

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
TOTAL REGISTRATION	28,397	44,985	54,649	24,311	12,883	5,108	6,557	1,147,672	55,009	36,431	375,942	51,143	11,268	70,202	40,392	1,964,949
TOTAL BALLOTS CAST	18,973	34,012	43,501	19,026	10,077	4,111	5,109	890,680	41,732	25,432	287,718	38,230	8,355	60,356	28,964	1,516,276
PERCENT TOTAL VOTES CAST	66.81	75.61	79.60	78.26	78.22	80.48	77.92	77.61	75.86	69.81	76.53	74.75	74.15	85.97	71.71	77.17
PRECINCTS	44	58	69	37	16	11	10	892	60	69	359	53	21	109	35	1,843

PRESIDENTIAL ELECTORS

DEMOCRATIC PARTY

(Bill Clinton, President, Al Gore, Vice President)

Heather L. LaMear)																
Daniel R. Ortega, Jr.)																
Steve Owens)																
Lois E. Pfau)																
Christine Rhodes	)	11,218	12,701	18,888	7,571	3,391	1,695	1,808	285,457	13,255	10,882	128,569	15,468	3,512	18,268	10,367	543,050
Robert A. Strauss)																
Cyvia J. Wohlman)																
Peterson Zah)																

REPUBLICAN PARTY

(George Bush, President, Dan Quayle, Vice President)

Doris H. Berry)																
Roger M. Esplin)																
Bettye Henze)																
Michael E. Morales)																
Frances Rigo	)	4,588	12,202	13,769	5,781	4,169	1,451	1,599	360,049	13,684	7,994	97,036	11,669	3,024	23,419	11,652	572,086
Patricia A. Roberson)																
Vernon L. Springer, III)																
Judy Summers)																

LIBERTARIAN PARTY

(Andre Marrou, President, Nancy Lord, Vice President)

June Pearce Boudette)																
Robert R. Bulechek)																
Lloyd Lawson Clucas)																
Eric J. Ewing)																
Gay Lynn Goetzke	)	94	149	273	98	29	4	31	3,742	280	139	1,268	136	46	322	148	6,759
Kathy L. Harrer)																
Lawrence W. Jerome)																
Don Markowski)																

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
NEW ALLIANCE PARTY ----- (Lenora B. Fulani, President, Maria Elizabeth Munoz, Vice President)																
C. Joseph Betancourt)																
Thomas Elliott)																
Charlene Elizabeth Johnson)																
Carolyn T. Lowery)																
Marie Mogen)	27	22	50	14	5	7	3	555	36	30	108	20	5	25	16	923
Gene Pahnke)																
Thomasita E. Taylor)																
Fonz West)																
INDEPENDENT ----- (Ross Perot, President, James Stockdale, Vice President)																
Eleanor Hanes)																
Steven C. Johnson)																
Edward John Kimmerle)																
Franklin F. Mackenzie)																
John Robert Miller)	1,979	7,857	9,363	4,694	1,860	794	1,488	221,475	12,706	4,787	53,925	9,231	1,447	16,409	5,726	353,741
Walter C. Peters, Jr.)																
Richard E. Rose)																
Mary Louise Stanley)																
NATURAL LAW PARTY ----- (John Hagelin, President, Mike Tompkins, Vice President)																
Janet F. Cohn)																
William C. Fisher, II)																
Deborah J. Goldstein)																
Ted J. Goldstein)																
Thomas J. Growney)	32	103	115	71	27	5	26	1,018	257	71	284	45	29	118	66	2,267
Darleen M. Kasian)																
Evelyn Romaine)																
Karen Shapiro)																
INDEPENDENT ----- (James Bo Gritz, President, Cyril Minett, Vice President)																
Maria-Cristina Chadwick)																
Douglas G. Dever)																
Michael A. Duane)																
Mary G. Gillespie)																
Clare L. Reading)	320	116	160	249	218	6	6	4,534	398	735	291	170	16	852	70	8,141
James L. Reading)																
Richard Hank Rogers)																
Yvonne A. Turley)																
INDEPENDENT - WRITE IN ----- (Lyndon H. LaRouche, Jr., President, James L. Bevel, Vice President)																
Duane A. Brasch)																
John W. Cartwright)																
William R. DesAutel)																
Francis E. Foster)																
L. Ardis Hamer)	0	0	0	0	0	0	0	2	0	0	3	0	1	2	0	8
John B. Kunkel)																
Marian Kriebel Mercado)																
L. Earline Weddle)																

STATE OF ARIZONA OFFICIAL CANVASS - GENERAL ELECTION - November 3, 1992

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
UNITED STATES SENATOR																
(D) Claire Sargent	8,543	10,304	14,414	6,011	2,659	1,375	1,465	234,584	12,513	7,949	95,789	12,011	2,614	17,073	9,017	436,321
(R) John McCain	7,564	19,166	23,766	9,007	4,766	2,086	2,641	443,607	21,190	12,601	153,015	19,095	4,591	32,053	16,247	771,395
(L) Kiana Delamare	324	399	930	260	111	50	49	13,651	600	338	3,779	417	136	1,225	344	22,613
(N) Ed Finkelstein	166	85	210	129	31	10	14	3,998	200	104	807	186	26	241	128	6,335
(I) Evan Mecham	1,469	2,903	2,477	2,939	2,160	436	740	94,808	5,266	3,505	13,802	4,795	402	7,933	1,726	145,361
(I) Robert B. Winn (Write-in)	15	0	0	0	0	0	1	1	2	1	2	1	1	0	2	26
UNITED STATES REPRESENTATIVE IN CONGRESS, District 1																
(D) Sam Coppersmith	----	----	----	----	----	----	----	130,715	----	----	----	----	----	----	----	130,715
(R) John J. Rhodes, III	----	----	----	----	----	----	----	113,613	----	----	----	----	----	----	----	113,613
(NL) * Ted Goldstein	----	----	----	----	----	----	----	10,461	----	----	----	----	----	----	----	10,461
UNITED STATES REPRESENTATIVE IN CONGRESS, District 2																
(D) Ed Pastor	----	----	----	----	----	----	----	37,605	----	----	35,026	87	5,294	----	12,681	90,693
(R) Don Shooter	----	----	----	----	----	----	----	14,858	----	----	10,844	10	2,056	----	13,489	41,257
(L) Dan Detaranto	----	----	----	----	----	----	----	2,294	----	----	2,272	2	219	----	636	5,423
(I) Robert Brown (Write-in)	----	----	----	----	----	----	----	0	----	----	1	0	1	----	3	5
UNITED STATES REPRESENTATIVE IN CONGRESS, District 3																
(D) Roger Hartstone	----	----	4,680	----	----	----	1,567	50,867	13,375	432	----	----	----	17,909	----	88,830
(R) Bob Stump	----	----	7,329	----	----	----	3,023	90,997	22,662	262	----	----	----	34,633	----	158,906
(NL) * Pamela Volponi	----	----	549	----	----	----	142	5,751	1,706	35	----	----	----	2,584	----	10,767
UNITED STATES REPRESENTATIVE IN CONGRESS, District 4																
(D) Walter R. Mybeck, II	----	----	----	----	----	----	----	70,572	----	----	----	----	----	----	----	70,572
(R) Jon Kyl	----	----	----	----	----	----	----	156,330	----	----	----	----	----	----	----	156,330
(L) Tim McDermott	----	----	----	----	----	----	----	11,611	----	----	----	----	----	----	----	11,611
(I) Debbie Collings	----	----	----	----	----	----	----	25,553	----	----	----	----	----	----	----	25,553
UNITED STATES REPRESENTATIVE IN CONGRESS, District 5																
(D) Jim Toevs	----	9,288	----	----	2,540	----	----	----	----	----	62,946	2,482	----	----	----	77,256
(R) Jim Kolbe	----	21,261	----	----	5,751	----	----	----	----	----	140,497	5,358	----	----	----	172,867
(L) Perry Willis	----	1,345	----	----	529	----	----	----	----	----	7,365	451	----	----	----	9,690
UNITED STATES REPRESENTATIVE IN CONGRESS, District 6																
(D) Karan English	11,340	----	17,001	9,253	397	2,097	----	57,308	----	12,009	----	14,846	----	----	----	124,251
(R) Doug Wead	5,728	----	9,714	7,340	44	1,530	----	52,391	----	9,907	----	10,420	----	----	----	97,074
(I) Sarah Stannard	700	----	1,506	1,095	20	122	----	6,938	----	1,107	----	1,559	----	----	----	13,047
STATE MINE INSPECTOR																
(R) Douglas K. Martin	10,143	22,152	23,866	11,225	6,314	2,447	2,922	523,051	22,736	14,865	172,015	22,333	4,871	35,447	18,318	892,705
(L) David L. Kuck	5,263	5,892	9,730	4,121	1,597	688	1,065	153,793	8,292	5,536	52,095	8,098	1,267	11,810	4,696	273,943
CORPORATION COMMISSIONER, Term Ending First Monday in January, 1999																
(D) Renz D. Jennings	11,791	16,275	19,538	9,858	4,346	2,280	2,327	316,370	16,685	13,063	142,304	19,900	3,957	21,573	13,180	613,447
(R) Tom Freestone	4,331	11,848	14,079	5,640	4,283	1,261	1,702	389,863	16,444	8,153	87,533	11,685	2,269	25,598	10,422	595,111
(L) Doyle Vines	1,000	1,853	2,753	1,232	366	129	308	48,839	2,629	1,344	14,201	2,427	649	4,319	1,337	83,386

* Natural Law Party

STATE LEGISLATURE

DISTRICT 1	MOHAVE	YAVAPAI	TOTAL					
STATE SENATOR								
(D) Anne McKinley	8,462	17,662	26,124					
(R) Carol Springer	11,081	23,208	34,289					
STATE REPRESENTATIVE								
(R) Don Aldridge	11,480	23,357	34,837					
(R) Sue Lynch	10,474	27,810	38,284					
(L) Lorene Van Buren	3,645	8,021	11,666					
DISTRICT 2	COCONINO	GILA	MOHAVE	NAVAJO	YAVAPAI	TOTAL		
STATE SENATOR								
(R) John Wettaw	22,541	908	9,530	314	7,354	40,647		
(L) Michael Voth	6,213	326	3,154	77	2,491	12,261		
STATE REPRESENTATIVE								
(D) Ginger Engen	10,245	380	4,567	182	3,641	19,015		
(D) Joe E. Lingerfelt	10,780	285	4,104	141	2,891	18,201		
(R) Joe Hart	8,232	534	6,454	94	4,382	19,696		
(R) John Verkamp	15,128	682	5,385	149	5,394	26,738		
(L) Eric Boudette	1,135	54	433	9	714	2,345		
(L) Clifford "Sunny" Reid, Jr.	1,323	86	462	18	541	2,430		
(IR) * Ben Benton	3,351	143	907	30	1,101	5,532		
DISTRICT 3	APACHE	COCONINO	MOHAVE	NAVAJO	TOTAL			
STATE SENATOR								
(D) James Henderson, Jr.	11,168	8,206	3,580	5,673	28,627			
STATE REPRESENTATIVE								
(D) Benjamin Hanley	6,563	5,385	2,042	3,375	17,365			
(D) Jack C. Jackson	8,969	5,134	2,267	4,347	20,717			
(R) Ben Manuelito, Jr.	2,478	3,102	1,932	1,162	8,674			
DISTRICT 4	APACHE	GILA	GRAHAM	GREENLEE	MARICOPA	NAVAJO	PINAL	TOTAL
STATE SENATOR								
(D) A. V. "Bill" Hardt	3,202	11,650	376	1,636	0	10,817	5,512	33,193
STATE REPRESENTATIVE								
(D) Jack A. Brown	3,046	7,584	286	1,244	0	8,391	3,414	23,965
(D) E. C. "Polly" Rosenbaum	2,404	7,896	288	1,432	0	7,822	4,015	23,857
(R) Vernon M. Stiffler	1,529	5,492	20	354	0	5,371	2,676	15,442
(R) Bennie J. Taylor	1,356	4,138	21	402	0	6,116	2,831	14,864

* Independent Republican
 ** Independent Grassroots

DISTRICT 5	LA PAZ	MOHAVE	YAVAPAI	YUMA	TOTAL
STATE SENATOR					
(D) Thomas B. Daniel	2,126	14	268	12,282	14,690
(R) Jim Buster	2,480	40	495	15,304	18,319
STATE REPRESENTATIVE					
(D) Robert J. "Bob" McLendon	2,526	15	305	16,757	19,603
(D) William T. Riley	1,708	13	220	8,282	10,223
(R) Pat Conner	1,977	33	476	14,837	17,323
(R) La Roy F. Smith, Sr.	1,114	26	267	5,492	6,899
DISTRICT 6	MARICOPA				
STATE SENATOR					
(D) Jaime A. Vasquez	18,595				
(R) John Huppenthal	36,970				
STATE REPRESENTATIVE					
(D) Philip Hettmansperger	11,189				
(D) Marion Muriel Weich	15,476				
(R) Lori S. Daniels	29,500				
(R) Richard Kyle	28,238				
(I) Bill Bruno	5,938				
(IG) ** Mary Jensen	4,660				
DISTRICT 7	GILA	MARICOPA	PINAL	TOTAL	
STATE SENATOR					
(D) Peter Rios	533	4,713	17,026	22,272	
(L) Richard R. Stewart	68	1,365	5,610	7,043	
STATE REPRESENTATIVE					
(D) Robert "Bob" Chastain	462	3,075	11,494	15,031	
(D) Harry R. Clark	453	2,768	11,556	14,777	
(R) Roger Hooper	46	2,483	10,276	12,805	
DISTRICT 8	COCHISE	GRAHAM	GREENLEE	SANTA CRUZ	TOTAL
STATE SENATOR					
(D) Gus Arzberger	17,669	6,710	1,208	1,641	27,228
STATE REPRESENTATIVE					
(D) Paul Newman	11,961	4,074	840	1,300	18,175
(D) Ruben Ortega	14,395	4,876	971	1,364	21,606
(R) Ramiro "Tito" Ross	10,703	3,312	402	721	15,138

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DISTRICT 9	COCHISE	PIMA	SANTA CRUZ	TOTAL

STATE SENATOR				
(D) John Dougherty	2,893	20,191	561	23,645
(R) Keith A. Bee	3,329	23,217	582	27,128
STATE REPRESENTATIVE				
(D) Chuck Core	2,002	16,700	387	19,089
(D) Marion L. Pickens	2,864	17,892	577	21,333
(R) Bill McGibbon	2,781	19,386	541	22,708
(R) Lou-Ann M. Preble	2,684	19,160	407	22,251

DISTRICT 10	PIMA

STATE SENATOR	
(D) Victor Soltero	21,517
(L) Arthur Kerschen	4,736
STATE REPRESENTATIVE	
(D) Carmen Cajero	18,143
(D) Phillip Hubbard	16,022
(L) Thomas F. Lanik	4,100

DISTRICT 11	MARICOPA	PIMA	PINAL	SANTA CRUZ	TOTAL

STATE SENATOR					
(D) Peter Goudinoff	19	16,999	69	1,685	18,772
(R) Frank O. Romero	21	9,477	23	1,762	11,283
(L) Norma Poplin	6	1,551	3	188	1,748
(TFC) * Joe Bernick	4	1,110	4	136	1,254
STATE REPRESENTATIVE					
(D) Jorge Luis Garcia	20	13,209	59	1,693	14,981
(D) Elaine Richardson	18	15,331	61	1,779	17,189
(R) Mike Price	26	8,123	12	1,416	9,577
(G) Carolyn Campbell	6	5,033	2	431	5,472
(L) Arthur Miscione	1	1,256	3	143	1,403

* Time for Change
** Declaration of Independents

DISTRICT 12	PIMA	PINAL	TOTAL

STATE SENATOR			
(R) Ann Day	42,051	751	42,802
(L) Roberta McMillan	9,147	250	9,397
STATE REPRESENTATIVE			
(R) Winifred "Freddy" Hershberger	30,307	499	30,806
(R) Dan Schottel	25,980	478	26,458
(G) David M. Perkins	4,589	97	4,686
(L) Karen Ewing	7,550	225	7,775
(I) Barbara Holtzman	17,845	269	18,114

DISTRICT 13	PIMA

STATE SENATOR	
(D) Eleanor D. Schorr	27,805
(R) Patricia A. "Patti" Noland	28,411
(L) Rachel Aschmann	2,054
STATE REPRESENTATIVE	
(D) George Cunningham	25,450
(D) Andy Nichols	26,573
(R) Patricia A. "Pat" Beatty	20,419
(R) Tony Terry	24,120
(L) Kenneth N. Bykerk	1,542
(L) Michael A. Jones	1,963

DISTRICT 14	PIMA

STATE SENATOR	
(D) Cindy L. Resnick	35,609
(L) Mark A. Voelker	7,402
STATE REPRESENTATIVE	
(D) Herschella Horton	24,130
(D) Ruth Solomon	31,518
(L) Mark Stachyra	5,232
(L) Kimberly Swanson	7,458
(DI) ** June Excell	2,897

DISTRICT 15	MARICOPA	PINAL	TOTAL

STATE SENATOR			
(R) Austin Turner	32,762	482	33,244
(G) Mike McNally	9,221	298	9,519
STATE REPRESENTATIVE			
(D) Jack C. Bramlette	12,738	386	13,124
(D) R. Wes Stephens	15,187	481	15,668
(R) Ned King	24,947	326	25,273
(R) Jerry Overton	24,093	345	24,438

DISTRICT 16	MARICOPA

STATE SENATOR	
(D) Stan Furman	24,385
(R) Bob Hill	20,969
STATE REPRESENTATIVE	
(D) Kate Lehman	20,454
(R) Becky Jordan	24,507
(R) John Kaites	23,363

DISTRICT 17	MARICOPA

STATE SENATOR	
(R) Patricia "Pat" Wright	35,150
(L) Kathy L. Harrer	9,552
STATE REPRESENTATIVE	
(R) Brenda Burns	34,071
(R) Robert "Bob" Burns	28,135

DISTRICT 18	MARICOPA

STATE SENATOR	
(D) Nancy Hill	23,293
(R) Marc Spitzer	25,462
(DI) * Donna Hancock	2,541
STATE REPRESENTATIVE	
(D) Zachary Winograd	15,495
(R) Susan Gerard	28,575
(R) Jane Dee Hull	28,704
(L) Ed Drew	4,225
(DI) * Ernest Hancock	2,571

DISTRICT 19	MARICOPA

STATE SENATOR	
(D) Marlene L. Abbott	18,203
(R) Jan Brewer	33,928
STATE REPRESENTATIVE	
(D) June H. Merrill	19,279
(R) John C. Keegan	27,362
(R) Nancy Wessel	31,389
(L) Clay Adair	4,874

DISTRICT 20	MARICOPA

STATE SENATOR	
(D) Lela Alston	19,313
(R) John Martin Keck	12,138
STATE REPRESENTATIVE	
(D) Linda D. Beezley	14,193
(D) Debbie McCune-Davis	18,030
(R) Robert Blendu	12,755
(R) Jules Dembinski	9,740

DISTRICT 21	MARICOPA	PINAL	TOTAL

STATE SENATOR			
(R) Matt Salmon	33,461	956	34,417
STATE REPRESENTATIVE			
(R) Russell Wesley Bowers	24,790	727	25,517
(R) Leslie Whiting Johnson	27,212	745	27,957

DISTRICT 22	MARICOPA

STATE SENATOR	
(D) Manuel "Lito" Pena	14,892
(N) Greg L. Campbell	4,651
STATE REPRESENTATIVE	
(D) Art Hamilton	13,457
(D) Joe Eddie Lopez	12,209
(L) Tom Paswater	2,418
(N) Marie Mogen	2,061
(N) Fonz West	1,360

DISTRICT 23	MARICOPA

STATE SENATOR	
(D) Sandra Kennedy	16,976
(L) Robert Howarth	2,094
(N) Carolyn T. Lowery	1,324
(I) Bradley Cashman (Write-in)	1
STATE REPRESENTATIVE	
(D) Linda G. Aguirre	13,590
(D) David Armstead	10,025
(N) A. Michael Lowery	2,144

* Declaration of Independents

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DISTRICT 24	MARICOPA

STATE SENATOR	
(R) John Greene	31,306
(L) Marilyn Titschinger	7,623
(I) Tom Beauchamp	9,624
STATE REPRESENTATIVE	
(R) Ernie Baird	24,815
(R) Sue Grace	32,017
(L) Lee Crosby	8,882
(L) Gary Fallon	9,292

DISTRICT 25	MARICOPA

STATE SENATOR	
(D) Chuck Blanchard	26,777
(R) Roger Rudman	15,091
STATE REPRESENTATIVE	
(D) Chris Cumiskey	20,320
(D) Cathy Eden	21,993
(R) Margaret Updike	18,634

DISTRICT 26	MARICOPA

STATE SENATOR	
(D) Paul C. Rodriguez	20,964
(R) Tom Patterson	33,183
STATE REPRESENTATIVE	
(D) Ruth Moyerman	24,412
(D) Edward L. Neman	14,171
(R) Greg Patterson	28,260
(R) Tom Smith	27,747
(L) Godfrey Daniels	3,164

DISTRICT 27	MARICOPA

STATE SENATOR	
(R) Bev Hermon	41,623
(L) Matt Gismondi	9,451
STATE REPRESENTATIVE	
(D) Jim Driscoll	20,063
(D) Frank Long	19,511
(R) Bob Edens	21,484
(R) Gary Richardson	25,969
(L) Matt McNeil	2,524
(I) Manny Wong	5,263

DISTRICT 28	MARICOPA	YAVAPAI	TOTAL

STATE SENATOR			
(R) Ed Phillips	54,195	574	54,769
(L) Gary Sprunk	7,207	212	7,419
STATE REPRESENTATIVE			
(R) Lisa Graham	46,806	590	47,396
(R) David Schweikert	32,852	433	33,285

DISTRICT 29	MARICOPA

STATE SENATOR	
(D) Virginia Claseman	16,305
(R) Lester N. Pearce	21,753
STATE REPRESENTATIVE	
(D) John M. Vidourek	13,233
(R) Pat Blake	22,547
(R) Lela Steffey	21,826
(G) Jesse J. Chanley, Jr.	3,836

DISTRICT 30	MARICOPA

STATE SENATOR	
(D) Christopher J. Wagner	17,369
(R) Larry Chesley	31,892
STATE REPRESENTATIVE	
(D) Eileen Fellner	19,359
(R) Jeff Groscost	25,032
(R) Mark W. Killian	31,550
(L) Robert D. Moore	4,762

CENTRAL ARIZONA WATER CONSERVATION BOARD OF DIRECTORS

MARICOPA COUNTY - Term Expires December 1998 - Elect 5

Marvin A. Andrews	163,037
John Brady	196,988
Grady Gammage, Jr.	249,925
Paul T. Gardner	154,121
Sam Goddard	305,175
Michael G. Kielsky	100,156
Virginia Korte	316,626
Dan Sophy	108,396
Jim Weeks	263,372
William H. "Bill" Wheeler	185,322
Jack Williams	233,674

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
JUSTICE OF THE SUPREME COURT																

Robert J. Corcoran																
Be retained YES	11,300	19,575	23,550	10,087	5,330	2,321	2,534	391,417	19,440	13,789	159,286	20,730	4,554	28,633	16,166	728,712
Be retained NO	4,570	7,393	7,281	4,403	2,014	763	1,187	203,790	10,038	5,485	44,911	8,037	1,584	13,332	5,486	320,274
JUDGES OF THE COURT OF APPEALS - Division 1																

John L. Claborne																
Be retained YES	11,148	----	22,759	----	----	----	2,459	----	19,080	13,210	----	----	----	26,927	15,472	111,055
Be retained NO	4,346	----	7,088	----	----	----	1,142	----	9,848	5,279	----	----	----	12,725	5,113	45,541
Eino M. Jacobson																
Be retained YES	9,471	----	19,845	----	----	----	2,178	----	17,458	11,301	----	----	----	23,918	13,025	97,196
Be retained NO	4,412	----	7,204	----	----	----	1,138	----	9,838	5,205	----	----	----	12,009	5,115	44,921
JUDGES OF THE COURT OF APPEALS - Maricopa County - Division 1																

Susan A. Ehrlich																
Be retained YES	----	----	----	----	----	----	----	385,712	----	----	----	----	----	----	----	385,712
Be retained NO	----	----	----	----	----	----	----	196,089	----	----	----	----	----	----	----	196,089
Jefferson L. Lankford																
Be retained YES	----	----	----	----	----	----	----	341,720	----	----	----	----	----	----	----	341,720
Be retained NO	----	----	----	----	----	----	----	215,276	----	----	----	----	----	----	----	215,276
Ruth V. McGregor																
Be retained YES	----	----	----	----	----	----	----	377,956	----	----	----	----	----	----	----	377,956
Be retained NO	----	----	----	----	----	----	----	195,400	----	----	----	----	----	----	----	195,400
Edward C. Voss																
Be retained YES	----	----	----	----	----	----	----	354,182	----	----	----	----	----	----	----	354,182
Be retained NO	----	----	----	----	----	----	----	213,238	----	----	----	----	----	----	----	213,238
JUDGE OF THE COURT OF APPEALS - Division 2																

James D. Hathaway																
Be retained YES	----	19,109	----	9,757	5,317	2,256	----	----	----	----	----	20,247	5,033	----	----	61,719
Be retained NO	----	7,093	----	4,284	1,966	774	----	----	----	----	----	7,758	1,381	----	----	23,256

SUPERIOR COURT JUDGES

COCONINO - Division 1		MARICOPA - Division 16		MARICOPA - Division 32		MARICOPA - Division 39	
-----		-----		-----		-----	
J. Michael Flournoy	20,934	James E. McDougall		John Foreman		William P. Sargeant, III	
Gerald "Jerry" Nabours	16,929	Be retained YES	343,435	Be retained YES	344,261	Be retained YES	335,434
		Be retained NO	199,886	Be retained NO	200,716	Be retained NO	201,073
Division 3		Division 17		Division 33		Division 46	
-----		-----		-----		-----	
H. Jeffrey Coker	30,596	David L. Roberts		Daniel E. Nastro		Kenneth L. Fields	
		Be retained YES	341,689	Be retained YES	341,687	Be retained YES	330,332
		Be retained NO	201,209	Be retained NO	199,719	Be retained NO	201,786
GILA - Division 1		Division 18		Division 34		Division 47	
-----		-----		-----		-----	
Edward L. "Edd" Dawson	12,594	J. D. Howe		Frank T. Galati		William J. Schafer, III	
		Be retained YES	338,197	Be retained YES	335,069	Be retained YES	332,388
		Be retained NO	203,038	Be retained NO	201,184	Be retained NO	201,984
MARICOPA - Division 2		Division 19		Division 35		Division 48	
-----		-----		-----		-----	
Marilyn A. Riddel		Cheryl K. Hendrix		Ronald S. Reinstein		Pamela J. Franks	
Be retained YES	362,798	Be retained YES	351,494	Be retained YES	342,193	Be retained YES	361,514
Be retained NO	218,232	Be retained NO	206,443	Be retained NO	197,907	Be retained NO	183,275
Division 3		Division 20		Division 36		Division 49	
-----		-----		-----		-----	
Rufus C. Coulter		Peter T. D'Angelo		Ruth H. Hilliard		David R. Cole	
Be retained YES	325,340	Be retained YES	332,856	Be retained YES	362,319	Be retained YES	337,421
Be retained NO	231,554	Be retained NO	212,723	Be retained NO	184,189	Be retained NO	195,172
Division 4		Division 30		Division 37		Division 50	
-----		-----		-----		-----	
C. Kimball Rose		Michael J. O'Melia		Barry C. Schneider		Sherry Hutt	
Be retained YES	370,054	Be retained YES	342,949	Be retained YES	339,276	Be retained YES	352,410
Be retained NO	191,740	Be retained NO	198,313	Be retained NO	196,070	Be retained NO	194,240
Division 8		Division 31		Division 38		Division 51	
-----		-----		-----		-----	
William T. Moroney		Rebecca A. Albrecht		Michael D. Ryan		Robert D. Myers	
Be retained YES	339,670	Be retained YES	367,729	Be retained YES	352,641	Be retained YES	333,078
Be retained NO	205,758	Be retained NO	187,985	Be retained NO	188,617	Be retained NO	207,781

MARICOPA - Division 52

Thomas Dunevant, III

Be retained YES	328,880
Be retained NO	202,703

Division 53

Gregory H. Martin

Be retained YES	337,652
Be retained NO	191,905

Division 54

Paul A. Katz

Be retained YES	334,840
Be retained NO	200,395

Division 55

Steven D. Sheldon

Be retained YES	337,256
Be retained NO	194,390

Division 56

Colin Campbell

Be retained YES	337,408
Be retained NO	195,482

Division 57

Silvia R. Arellano

Be retained YES	341,843
Be retained NO	201,054

Division 58

Lawrence Ohaco Anderson

Be retained YES	338,283
Be retained NO	197,116

NAVAJO - Division 1

David A. Brown	1,376
Dennis I. Davis	3,299
Sanford J. Edelman	771
Charleen H. Greer	3,528
Joseph J. Hessinger	3,760
Dan L. Jones	2,250
Tom Wing	7,923

Division 2

Jay M. Abbey	15,527
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Division 3

Bret Huggins	17,234
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PIMA - Division 3

William L. Scholl

Be retained YES	154,946
Be retained NO	44,968

Division 7

Leslie B. Miller

Be retained YES	151,866
Be retained NO	45,333

Division 9

Michael J. Brown

Be retained YES	151,990
Be retained NO	45,248

Division 11

Bernardo P. Velasco

Be retained YES	149,988
Be retained NO	47,391

PIMA - Division 12

J. Richard Hannah

Be retained YES	152,329
Be retained NO	46,555

Division 16

Thomas Meehan

Be retained YES	163,735
Be retained NO	46,021

Division 17

Margaret M. Houghton

Be retained YES	153,072
Be retained NO	48,064

Division 19

Lawrence Fleischman

Be retained YES	152,111
Be retained NO	45,747

Division 20

Nanette M. Warner

Be retained YES	155,237
Be retained NO	44,053

Division 22

Raner C. Collins

Be retained YES	152,676
Be retained NO	43,613

Division 23

Gordon T. Alley

Be retained YES	152,117
Be retained NO	44,906

PINAL - Division 1

Robert R. Bean	26,548
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Division 2

James E. Don	25,525
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YAVAPAI - Division 4

Raymond W. Weaver, Jr.	32,134
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YUMA - Division 1

Douglas W. Keddie	20,399
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Division 2

Thomas A. Thode	16,119
Philip L. Hall	8,455

Division 4

Tom C. Cole	13,298
Mary E. White	11,949

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
PROPOSITION 100 HCR 2001	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE V, SECTION 1, ARTICLE VII, SECTION 7 AND ARTICLE VIII, PART 1, SECTION 4, CONSTITUTION OF ARIZONA; RELATING TO ELECTION OF CERTAIN STATE OFFICERS.															
YES	11,004	21,677	24,196	11,687	6,084	2,310	3,056	531,779	25,628	15,633	189,972	23,582	4,832	39,026	17,447	927,913
NO	5,729	9,924	15,426	5,834	2,942	1,340	1,529	278,402	12,213	7,566	75,947	11,384	2,276	16,537	8,663	455,712
PROPOSITION 101 HCR 2002	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XIX, CONSTITUTION OF ARIZONA; RELATING TO THE STATE MINE INSPECTOR.															
YES	9,149	17,576	20,487	8,046	4,452	1,695	2,179	424,040	17,667	11,996	164,739	16,563	3,736	28,100	14,666	745,091
NO	7,474	13,777	18,332	9,374	4,550	1,966	2,355	370,413	19,814	11,047	97,047	18,112	3,292	26,550	11,203	615,306
PROPOSITION 102 HCR 2029	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE X, CONSTITUTION OF ARIZONA, BY ADDING SECTION 12; RELATING TO STATE LANDS.															
YES	7,931	15,772	18,571	7,532	3,873	1,534	1,778	346,653	15,663	10,003	148,269	13,546	3,445	25,056	12,111	631,737
NO	8,596	15,448	20,625	9,808	5,074	2,077	2,744	440,860	21,598	12,979	112,945	20,959	3,528	29,831	13,578	720,650
PROPOSITION 103 HCR 2014	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XXII, SECTION 22, CONSTITUTION OF ARIZONA; RELATING TO JUDGMENTS OF DEATH.															
YES	10,618	22,940	29,692	12,521	6,017	2,376	3,253	611,790	27,647	15,840	205,686	25,206	5,240	42,469	19,240	1,040,535
NO	5,389	8,048	9,058	4,699	2,835	1,181	1,273	183,099	9,686	6,811	53,478	9,318	1,615	11,793	6,636	314,919
PROPOSITION 104 HCR 2012	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, SECTION 20, CONSTITUTION OF ARIZONA; RELATING TO POLITICAL SUBDIVISION EXPENDITURE LIMITATIONS.															
YES	9,624	17,349	22,917	8,891	4,253	1,796	2,298	417,969	19,613	12,036	152,887	17,973	4,042	26,617	13,765	732,030
NO	6,778	13,673	15,675	8,267	4,512	1,773	2,168	359,784	17,364	10,749	102,671	16,215	2,932	27,352	11,787	601,700
PROPOSITION 105 HCR 2007	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE XII, CONSTITUTION OF ARIZONA, BY ADDING SECTIONS 5 THROUGH 9; RELATING TO COUNTY CHARTERS.															
YES	7,909	14,714	17,675	6,684	3,068	1,127	1,713	405,592	16,104	9,264	162,385	14,880	3,500	25,312	11,136	701,063
NO	7,685	14,206	15,791	9,215	5,141	2,197	2,337	358,220	17,335	11,775	90,755	17,255	2,894	23,450	12,562	590,818
PROPOSITION 106 SCR 1020	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, SECTION 8, CONSTITUTION OF ARIZONA; RELATING TO SCHOOL DISTRICT DEBT CAPACITY.															
YES	7,824	10,170	16,343	4,930	2,781	1,220	1,211	273,247	10,289	8,375	109,745	10,165	2,700	14,408	8,446	481,854
NO	8,641	20,993	22,639	12,300	6,045	2,377	3,296	518,571	26,786	14,489	152,377	24,017	4,252	40,045	17,335	874,163
PROPOSITION 107 AN INITIATIVE MEASURE	PROPOSING AMENDMENTS TO THE CONSTITUTION OF ARIZONA TO KEEP THE NAMES OF SENATORS FROM ARIZONA TO THE UNITED STATES SENATE WHO ARE COMPLETING TWO CONSECUTIVE TERMS (12 YEARS) AND REPRESENTATIVES FROM ARIZONA TO THE UNITED STATES HOUSE OF REPRESENTATIVES WHO ARE COMPLETING THREE CONSECUTIVE TERMS (6 YEARS) FROM BEING PRINTED ON THE BALLOT BY AMENDING ARTICLE VII TO ADD SECTION 18; TO LIMIT THE TERMS OF STATE SENATORS AND REPRESENTATIVES TO FOUR CONSECUTIVE TERMS (EIGHT YEARS) BY AMENDING ARTICLE IV, PART 2, SECTION 21; TO LIMIT THE TERMS OF OFFICE OF MEMBERS OF THE ARIZONA EXECUTIVE DEPARTMENT TO TWO CONSECUTIVE TERMS (EIGHT YEARS) BY AMENDING ARTICLE V, SECTION 1(A); TO DELETE ARTICLE V, SECTION 10, PERTAINING TO THE LIMITATION OF TERMS OF THE STATE TREASURER, AS IT IS SUPERSEDED BY THE AMENDMENT PROPOSED BY THIS INITIATIVE MEASURE; TO LIMIT THE TERMS OF OFFICE OF MEMBERS OF THE CORPORATION COMMISSION TO ONE CONSECUTIVE TERM (6 YEARS) BY AMENDING ARTICLE XV; AND TO LIMIT THE TERMS OF OFFICE OF THE STATE MINE INSPECTOR TO FOUR CONSECUTIVE TERMS (8 YEARS) BY AMENDING ARTICLE XIX.															
YES	11,555	22,726	29,739	12,963	6,307	2,371	3,539	615,444	30,347	17,059	179,482	25,780	5,029	44,690	19,799	1,026,830
NO	4,750	8,606	10,071	4,330	2,537	1,202	1,035	195,669	7,120	5,909	88,821	8,502	1,970	10,129	6,148	356,799

	APACHE	COCHISE	COCONINO	GILA	GRAHAM	GREENLEE	LA PAZ	MARICOPA	MOHAVE	NAVAJO	PIMA	PINAL	SANTA CRUZ	YAVAPAI	YUMA	TOTAL
PROPOSITION 108 AN INITIATIVE MEASURE	PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE IX, CONSTITUTION OF ARIZONA, BY ADDING SECTION 22; RELATING TO PUBLIC DEBT, REVENUE, AND TAXATION.															
YES	9,862	22,892	26,848	12,713	6,270	2,425	3,454	581,113	29,442	15,210	170,932	25,743	4,731	44,390	19,166	975,191
NO	6,790	8,473	12,258	4,692	2,607	1,173	1,108	210,676	8,168	7,872	89,431	8,862	2,213	10,832	6,622	381,777
PROPOSITION 109 HCR 2009	A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 28, 30, 35, 36, 37, 38 AND 40, CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, CONSTITUTION OF ARIZONA, BY ADDING NEW SECTIONS 41 AND 42; RELATING TO THE JUDICIAL DEPARTMENT.															
YES	8,922	16,584	19,025	8,470	3,830	1,443	2,189	433,250	19,190	10,802	153,387	18,262	3,927	26,922	12,452	738,655
NO	6,869	12,412	14,805	7,631	4,397	1,891	1,915	316,557	14,623	10,268	96,095	14,040	2,546	22,279	11,147	537,475
PROPOSITION 110 AN INITIATIVE MEASURE	THE PREBORN CHILD PROTECTION AMENDMENT TO THE ARIZONA CONSTITUTION.															
YES	8,483	10,657	12,477	6,154	4,719	1,631	1,244	264,180	11,084	11,085	74,511	12,246	2,728	17,655	8,800	447,654
NO	8,100	21,298	28,523	11,573	4,456	2,063	3,504	572,368	27,712	12,328	198,017	23,264	4,526	39,420	18,099	975,251
PROPOSITION 200 AN INITIATIVE MEASURE	RELATING TO GAME AND FISH: DEFINING UNLAWFUL METHODS OF TAKING WILDLIFE; AND ADDING SECTION 17-301(D), (E) AND (F) TO ARIZONA REVISED STATUTES TO DEFINE LAWFUL METHODS OF TAKING OR CAPTURING WILDLIFE, SPECIFICALLY BANNING CERTAIN LETHAL AND/OR DANGEROUS DEVICES, ALLOWING THE USE OF IMPLEMENT IN HAND AND ALLOWING NON-LETHAL RESEARCH METHODS OF CAPTURE.															
YES	6,575	11,182	15,018	3,464	1,436	516	1,023	315,220	10,261	5,629	139,511	8,960	3,699	16,967	6,516	545,977
NO	10,374	21,268	26,716	14,704	8,107	3,373	3,804	525,118	29,099	18,322	136,629	27,242	3,730	40,825	20,411	889,722
PROPOSITION 300 HCR 2011	A CONCURRENT RESOLUTION ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING TO LEGAL HOLIDAYS.															
YES	11,707	16,385	28,954	8,412	3,934	1,843	1,990	531,187	15,257	13,253	185,696	18,691	4,929	26,023	12,227	880,488
NO	5,454	16,069	12,749	9,692	5,457	1,967	2,804	309,914	23,946	10,730	89,509	17,737	2,496	31,754	14,911	555,189
PROPOSITION 301	RECOMMENDATIONS OF THE COMMISSION ON SALARIES FOR ELECTED STATE OFFICERS AS TO LEGISLATIVE SALARIES HAVE BEEN CERTIFIED TO THE SECRETARY OF STATE AND ARE HEREBY SUBMITTED TO THE QUALIFIED ELECTORS FOR THEIR APPROVAL OR REJECTION.															
YES	6,315	11,165	13,381	4,207	1,930	802	1,084	274,971	8,341	6,477	125,342	9,085	2,528	15,200	7,443	488,271
NO	10,468	20,762	27,168	13,573	7,239	2,896	3,597	542,489	30,018	17,055	144,265	26,379	4,724	41,253	19,139	911,025

EXHIBIT 10

Woods says he didn't see finger gesture

Got Harding's message
by way of eye contact

By Michael Murphy
THE PHOENIX GAZETTE

Attorney General Grant Woods said he did not see triple murderer Donald Eugene Harding's ultimate parting shot — an obscene gesture — through the gas chamber window.

Woods said he got the message anyway.

"He certainly looked at me, and he made faces at me a couple of times," Woods said on Tuesday. "He was smirking ... and basically, I felt trying to convey the same things through facial expressions that he apparently tried to do with the middle finger."

The attorney general said he resisted a temptation to respond in kind to Harding, who was executed early Monday for the 1980 murders of two businessmen, he robbed, hogtied, beat and shot in a Tucson motel room.

"The whole scene was too eerie and really tragic to want to participate in any way except as an observer," Woods said. "Regardless of what the antics were, I think it was appropriate for me to present a different demeanor."

"He needed to know from start to finish that we were not going to cut him any slack because he didn't deserve it. That means right up to the end."

Instead, Woods said he focused on another witness, Debrah Gage, whose father, Allan, was one of Harding's victims.

"I tried to minimize what Harding had to go through, but I think it pales in comparison to what all these other men, innocent men, went through in their final hours."

At the same time, Woods said the execution was "a terrible thing to witness," and said the experience hardened his resolve against use of the gas chamber.

Noting that he has always advocated lethal injections as a means of killing convicts, Woods said that watching the use of the gas chamber "solidified my opinion we should go to that."

"It took so long," he said. "I don't know who came up with this concept of a gas chamber in the first place. Maybe that was innovative a while ago, but it's not today."

"It makes me continue to appreciate that it should be reserved only for a very few because it is such an extreme step. I'm satisfied that that standard is being met in this state."

Woods said he believes executions under the death penalty will happen regularly at the state prison because his office has streamlined the appeals process.

He said the "unbelievable spotlight" on Harding's execution was positive because society needs to continually re-examine its beliefs in an area like this to make sure it's something it wants to do.

EXHIBIT 11

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID FIERRO, ROBERT HARRIS, and
ALEJANDRO GILBERT RUIZ, as
individuals and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

JAMES GOMEZ, as an individual, and in his
capacity as Director, California Department of
Corrections, and DANIEL VASQUEZ, as an
individual, and in his capacity as Warden of
San Quentin Prison,

Defendants.

No. C-92-1482-MHP

**DECLARATION OF JAMES J.
BELANGER, ESQ. IN LIEU
OF LIVE TESTIMONY BY
STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 5

JCRC000078

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

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BELANGER, ESQ. IN LIEU
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STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 5

JCRC000079

AFFIDAVIT

I, James J. Belanger, declare and aver as follows:

1. I am an attorney, licensed to practice law in the state of Arizona. I was the attorney for Don Eugene Harding. I began working on Mr. Harding's case on March 15, 1991. In November of 1991, Don asked me to witness his execution. I agreed out of great personal respect for Don and desire to carry out his final wishes.

2. On March 20, 1992, I received an invitation to attend Mr. Harding's execution, which was scheduled to take place at 12:05 a.m. on Monday, April 6, 1992.

3. At approximately 11:00 p.m. on Sunday night, April 5, I arrived at the Central Unit of the Arizona State Prison Complex in Florence, Arizona. I was escorted to a meeting room by a deputy warden. He was our escort for the remainder of the evening.

4. After a few minutes I was joined by two other persons that Don had asked to witness his execution. At approximately 11:30 p.m., we were all escorted to a chapel located several yards from the gas chamber where Don was being held. We were joined there by the final person who would be witnessing the execution on Don's behalf. While we waited in the chapel, a prison official entered and asked us to draw numbers from a box. These numbers determined the order in which we were allowed into the viewing room. I drew number one.

5. At approximately ten minutes past midnight, the deputy warden asked us to convene outside of the chapel. There we were joined by the other witnesses to the execution and formed a procession to the gas chamber. As we walked, the inmates in the

17. Don Harding took ten minutes and thirty one seconds to die. At least eight of these minutes were spent in gross and brutal agony. They were also the most excruciatingly painful eight minutes of my life.

18. During the entire time I was in the room, until the execution was over, my knees were shaking so badly I thought I might fall down. At least two times I had to lean against the wall that was immediately behind me. My heart continued to race until I was out of the witness room. At one point I thought I might throw up. I wept.

19. Nothing in my life prepared me for the horror of Don being ritualistically and methodically stripped of his humanity and then watching him being tortured to death. I will never forget the look on his face when he turned to me several seconds after first having inhaled the fumes. It is an image of atrocity that will haunt me for the rest of my life. Don Harding's death was slow, painful, degrading, and inhumane. He would not tolerate such cruelty even to put an animal to death. He literally choked and convulsed to death in front of my eyes. I felt embarrassed and humiliated for having witnessed the gross brutalization of another human being. God willing, something such as this will never happen again.

DATED this 7th day of April, 1992.

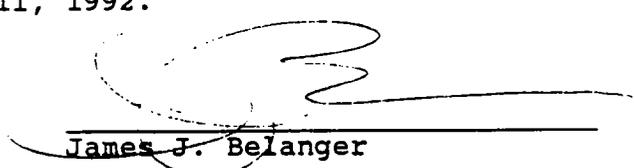

James J. Belanger

EXHIBIT 12

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

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individual, and in his capacity as Warden of
San Quentin Prison,

Defendants.

No. C-92-1482-MHP

**DECLARATION OF CARLA
McCLAIN SUBMITTED IN
LIEU OF LIVE TESTIMONY
BY STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 37

JCRC000082

DECLARATION OF CARLA McCLAIN

I, Carla McClain, declare the following:

1. On April 6, 1992, at approximately 12:10 a.m., I was a media witness to the execution of Donald Harding, the first execution in Arizona in twenty-nine years. I have been a reporter for almost twenty-five years, and for the last thirteen years have written on health and medicine policy issues for the Tucson Citizen. I was chosen to witness this execution from among the Citizen's staff based on seniority and experience.

2. I was escorted along with the other witnesses to the freshly painted death house, where we were taken inside one by one. The three windows which we faced were covered with blinds. Slowly, the blinds were lifted. Mr. Harding was already strapped into the execution chair. Mr. Harding was stripped to his undershorts and the white flesh of his body seemed to fill the heavy metal chair. He was tightly strapped to the chair.

3. Mr. Harding seemed agitated, his hands moving about under the straps. He appeared startled when the curtains were lifted and he was facing the Arizona Attorney General. Turning his head, Mr. Harding saw his attorney and gave him a thumbs up sign and a smile.

4. I could see the warden through the chamber as he stood with his hand on the lever that would lower the cyanide into the acid. I saw him drop his arm and heard the clank of the heavy lever which sent the pound of cyanide pellets into the vat of acid beneath the chair. I saw the deadly gas enshroud Mr. Harding in a fine, white mist.

5. Mr. Harding shuddered deeply, then slowly raised the middle finger of his left hand, aiming it at the warden who had set the execution in motion by bringing the lever down. Mr. Harding breathed deeply, his hands clenching. He groaned loudly and began to choke to death. His head dropped forward, and then swung up high and back. He groaned again and again, gasped, and his body turned bright red, almost purple as he clenched and convulsed in obvious pain.

6. As his head rolled to the right I saw his eyes begin to close. His head jerked up again, then rolled forward and then slowly down onto his chest. He was unconscious, finally, after more than two minutes.

7. For several more minutes his chest convulsed and his muscles quivered. He seemed to continue gasping and shuddering. His body heaved, and then he was still.

8. The witness room was silent. Several more minutes

passed. Then the public information officer for the prison entered and announced the execution was complete. Eleven minutes had passed.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Dated this 20th day of October, 1993.


CARLA McCLAIN

EXHIBIT 13

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

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ALEJANDRO GILBERT RUIZ, as)
individuals and on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

JAMES GOMEZ, as an individual, and in his)
capacity as Director, California Department of)
Corrections, and DANIEL VASQUEZ, as an)
individual, and in his capacity as Warden of)
San Quentin Prison,)

Defendants.)
_____)

No. C-92-1482-MHP

**DECLARATION OF DONNA
LEONE HAMM SUBMITTED
IN LIEU OF LIVE
TESTIMONY BY STIPULATION
OF THE PARTIES**

PLAINTIFFS' EXHIBIT NO. 16

JCRC000086

DECLARATION OF DONNA HAMM

I, Donna Leone Hamm, declare as follows:

1. Don Eugene Harding was executed in Arizona's gas chamber on April 6, 1992 beginning at 12:18 a.m., just over a week ago. I knew Don for about eight months prior to his execution. Don had asked me to witness his execution so that I might tell his family and the families of others on death row what actually happens when one is killed by lethal gas. Despite strong apprehensions, I agreed to honor his request.
2. Upon my arrival at Arizona State Prison, Florence, Arizona, I was escorted by a prison official to the chapel where other witnesses for Don Harding were waiting. As a group, we avoided talking about what we were about to see. Instead, we shared memories of our personal human experiences with Don and his family, and spoke about carrying out his final wishes. We were in the chapel for nearly an hour during which time a prison official had us draw numbers from a box. This number established the order in which we would enter into the viewing area and where we would stand in proximity to the viewing windows of the gas chamber. I drew number eighteen.
3. At approximately 12:00 a.m., all the witnesses for Don, for the State and from the media, converged on the sidewalk to walk over to the Death House. No one spoke. The only noises I could hear were my own footsteps and the sounds of some inmates in the darkened cellblocks hollering at us as we passed by their windows. We filed into the Death House in the pre-designated order, as a prison staff member checked off our lottery numbers. I stood in the second of three rows, directly behind where Don was seated in the gas chamber chair. Three sides of the octagonal gas chamber had windows for viewing. As we entered and took our places, the blinds

were drawn. When all the witnesses were assembled, an official announced that Don's last appeal had failed and the execution would proceed. The door to the Death House viewing room was closed and an officer was ordered to roll up the blinds.

4. Don was strapped to the metal chair with numerous black restraints. He was facing away from us, dressed only in his underwear. I had been warned in advance of the ritualistic execution policies, and observed my fellow witnesses take on behavior which could only be described as "execution etiquette" — an unspoken but pervasive feeling that we were expected to act civilly and with detachment to the coming events. However, I was struck with a feeling of overwhelming despair as Don Harding, in the name of our government, had indeed been literally and figuratively stripped of his humanity.

5. I watched Don turn to look at one of his attorneys. He forced a slight smile, but could not disguise the child-like terror in his face. He turned the other direction and I believed he was looking for me. He never knew I was there, as he could not see the people standing directly behind him. He moved around in the chair, as much as the restraints would allow. He seemed to be mumbling to himself. He was agitated and fidgety. Knowing Don as I did, I realized that his agitation was born of his tragic desire to control one tiny aspect of this utterly dehumanizing spectacle. He wanted it to be quick and painless.

6. About 60 seconds after the blinds were lifted, the pellets were released under his chair. I heard the loud noise as they were dropped into the acid. It took about 5 seconds for the mist, and the first trace of fumes, to reach him. At that point, Don's naked back inflated against the chair as if he were taking a

large breath. His head was thrown back violently against the chair and he turned his head from side to side. He jerked and twisted as if gasping for air. At the same time, his body buckled against the straps. Severe convulsing began, and continued throughout. Even through the thick glass of the gas chamber, I heard him moan a low, guttural sound of sheer torment. I prayed for him to go quickly.

7. At one point, I was unable to sustain watching this prolonged suffering alone. I broke from my assigned standing spot and walked over to Don's minister. We held on to each other and with his arm around my shoulder, I noticed how badly I was shaking. From that position, I could closely see Don's hand and arm twitching. For the almost two minutes I stood there, his hand never stopped contorting in bizarre ways. His body, especially his back and neck had turned a deepening red. His head flung back and then drooped against his chest. The convulsions caused his body to shake so badly that I momentarily thought the chair would shake. The spasms and gasping lasted about seven minutes until his head dropped to his chest for the last time. Finally, he appeared to be dead, but I noticed what appeared to be involuntary movement of his left hand. I continued to pray that this spectacle be over.

8. I saw a prison doctor approach the glass from the other side of the chamber, in front of Don. He gazed dispassionately at Don's now quieted body and quickly moved away from the window and back into the shadows on the front side of the chamber. Soon, a prison official announced to the witnesses that the execution was complete. It had taken ten and one-half minutes. The last look at Don was one I will never forget. Where minutes before his body had been hot red, it was now slumped over and was ashen grey/beige -- the antiseptic color of the gas chamber itself. The

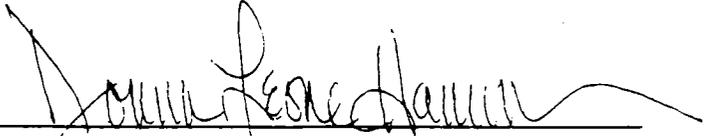
prison officials ordered the blinds to be closed. The door to the outside opened and we all filed out.

9. Nothing in my life prepared me to witness the prolonged, ritualistic torture of another human being. I have struggled to put this experience into any kind of human perspective. I had spent a lot of time imagining painful death before. My father burned to death in a plane crash when I was 21 years old. He died brutally and his body was charred beyond recognition. I am still plagued -- twenty-three years later -- by gruesome images of his unspeakable suffering in the last painful seconds of his life. Nonetheless, as I watched the agony suffered by Don Harding, I knew that his torment was far worse and much prolonged than that experienced by my father. I am told that my father probably died in 30 seconds. Don endured his torture for ten and one-half minutes. His suffering was palpable and sickening, and I felt it like a cloak draped over my body. I winced with every convulsion, moan, and every desperate contortion. Those ten and one-half minutes were the longest and most harrowing moments of my life.

10. A little more than a week later, I am still in shock over what I witnessed. I awake during the night startled and unable to sleep because of the terrifying images of Don suffocating to death. The images of his convulsing and with his hand clenched to the chair will be etched in my mind forever.

11. I am humiliated for my fellow man. Don's punishment was to torture him in view of 25 witnesses. It was not the act of civilized people. He suffered in discernable agony for over ten minutes. I talked with Don's family about his execution, but I could not bring myself to tell them just how brutally he died. Death by gas is barbaric, and an inhumane infliction of torture.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability, and that this declaration was executed on April 14, 1992 at Tempe, Arizona.



Donna Leone Hamm

EXHIBIT 14

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

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and all others similarly situated,

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No. C-92-1482-MHP

**DECLARATION OF TAD
DUNBAR IN LIEU OF LIVE
TESTIMONY BY STIPULATION
OF THE PARTIES**

PLAINTIFFS' EXHIBIT NO. 14

JCRC000092

DECLARATION OF TAD DUNBAR

I, Tad Dunbar, do declare:

1. I have been in the television news business for over twenty-nine years. After I graduated from Abilene Christian College in Abilene, Texas, I went to work for several television news departments in Texas. I worked there for seven years, then moved to Reno, Nevada, where I have worked as an anchorman at Channel 8 News since 1969.

2. In 1979, Nevada had its first post-Furman execution. It was the only the third in the nation and there was a great deal of publicity surrounding the execution. I agreed to act as a press witness for Channel 8 News to the October 22, 1979 lethal gas execution of Jesse Bishop at the Nevada State Prison in Carson City. As part of my assignment, I interviewed Jesse Bishop one week before his scheduled execution. He was determined to be very "cool" and dignified throughout his execution.

3. There were fourteen witnesses at Mr. Bishop's execution. Before we entered the observation room, a prison official told us that if when we were in the room and we "smell anything funny -- hold your breath and exit the room quickly." Needless to say, this was a bit unnerving.

4. The witnesses were led into the observation room and stood in sort of a semi-circle around the chamber. Curtains were drawn on the chamber. When they were lifted, Mr. Bishop was already strapped into the chair. He was wearing blue jeans and a blue

prison shirt. I had an unobstructed view of the most of his face and the front of his body. He looked around the room to see who had come to watch him die. His eyes met mine, and I soon heard a "clunk." The pellets had been released into the acid-water.

5. I didn't see any gas, but I noticed that Mr. Bishop took a deep breath. He immediately gasped and convulsed strenuously. His body stiffened and his head lurched back. His eyes widened, and he strained as much as the straps would allow. He unquestionably appeared to be in pain. I noticed that he had urinated on himself.

6. He alternately strained and then relaxed against the straps for about ten minutes. I could see his chest expand and contract. These movements became weaker as the minutes ticked away. I could not tell at what point Bishop finally died.

7. I had entered the observation room at the Nevada State Prison with no predisposed thoughts about the use of lethal gas. I was surprised to see that death did not appear to come rapidly or painlessly under that method of execution.

I declare, under penalty of perjury, that the foregoing is true and correct, and that this declaration was executed on April 15th, 1992 at Reno, Nevada.



Tad Dunbar

EXHIBIT 15

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

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No. C-92-1482-MHP

**DECLARATION OF DENNIS N.
BALSKE, ESQ. IN LIEU
OF LIVE TESTIMONY BY
STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 2

JCRC000095

DECLARATION OF DENNIS N. BALSKE

I, Dennis N. Balske, do declare:

1. I am an attorney licensed to practice law in the States of Ohio and Alabama. I received my J.D. degree from Ohio State University College of Law in 1974, where I subsequently taught from 1975 to 1978. From 1978 to 1986, I was a staff attorney and then Legal Director at the Southern Poverty Law Center in Montgomery, Alabama. I was the founder and first president of the Alabama Criminal Defense Lawyers Association in 1981. I have been a member of the Alabama Supreme Court Advisory Committee on Criminal Procedure since 1985. In 1986, I was awarded the Heeney Award, the highest award given by the National Association of Criminal Defense Lawyers, and in 1989, I received the Award of Merit from the Alabama State Bar Association. I currently maintain a private practice in Montgomery, Alabama.

2. For many years, I have specialized in trial and post-conviction representation of inmates charged with capital crimes. One of my clients was Jimmy Lee Gray, the first man executed in Mississippi following reinstatement of the death penalty. I represented Mr. Gray in post-conviction proceedings in 1983. His case is reported as Gray v. Lucas, 677 F.2d 1086 (5th Cir. 1982).

3. Mr. Gray was executed by cyanide gas on September 9, 1983, at 12:01 a.m. in Parchman, Mississippi. At his request, I was a witness to his death. I was made to stand with reporters in an area designated for observation. The

area was hot and muggy and thick with the smell of bug spray. Although Mr. Gray's face was not covered, the chair into which he was strapped faced away from us. No vantage point from the observation area allowed a clear view of Mr. Gray's face. I saw only the back of Mr. Gray's head.

4. The signal was given, the pellets were dropped and white fumes rose from below the chair. Once the gas reached Mr. Gray's face, he began to thrash around in his chair. He jerked forward and back, repeatedly slamming his head on a metal support pole situated behind the chair. The chilling sound of his head desperately smashing against the pole reverberated through the area over and over again. About the seventh time he pounded his head against the pipe, his desperation was so great that the six-sided glass chamber seemed to shake with the impact. He slumped and lay still for a few moments, then tensed up and resumed his struggling, again smashing his head against the pole. Mr. Gray struggled for air while his body contorted and twisted.

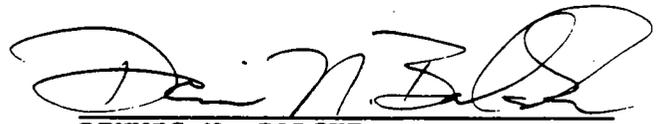
5. A full eight minutes into the execution, while Jimmy Lee Gray writhed in agony, all reporters were ordered to leave. Several seconds later, I too was ordered from the observation room, despite my objections that Mr. Gray wanted me there and had the right to have his attorney present. I was made to leave while Mr. Gray was still struggling for air and banging his head. It was a nightmare.

6. Nothing in my experiences as an attorney or a human being could have prepared me to witness the prolonged and

torturous death of Jimmy Lee Gray. I could tell that Mr. Gray was still alive when I and the other witnesses were forced to leave. I believe that the prison officials made me leave prematurely, because they were deliberately trying to conceal the extreme and prolonged suffering caused by the cyanide gas.

7. Although I fully expected that this would be an unpleasant manner of death for Mr. Gray, I had not anticipated the conditions under which I witnessed my client suffer. As a witness, this execution was vile and repulsive to observe. For Mr. Gray, it was clearly excruciating and horrific.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 13, 1992, at Montgomery, Alabama.


DENNIS N. BALSKE

Sworn to and subscribed before me this the 13th day of April, 1992.

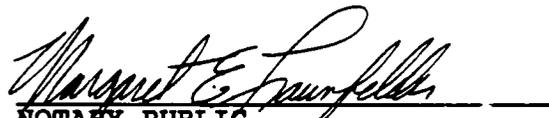

NOTARY PUBLIC
My Commission Expires: 4-7-93

EXHIBIT 16

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAVID FIERRO, ROBERT HARRIS, and
ALEJANDRO GILBERT RUIZ, as
individuals and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

JAMES GOMEZ, as an individual, and in his
capacity as Director, California Department of
Corrections, and DANIEL VASQUEZ, as an
individual, and in his capacity as Warden of
San Quentin Prison,

Defendants.

No. C-92-1482-MHP

**DECLARATION OF DAN A.
LOHWASSER SUBMITTED
IN LIEU OF LIVE
TESTIMONY BY STIPULATION
OF THE PARTIES**

PLAINTIFFS' EXHIBIT NO. 21

JCRC000099

DECLARATION OF DAN A. LOHWASSER

I, Dan A. Lohwasser, declare as follows:

1. I live in Charlotte, North Carolina. I graduated from University of North Carolina, with a degree in journalism. I was a reporter for the United Press International from 1975 to 1984, and for the Charlotte Observer for two years. I am currently the senior vice president of a sports marketing company.

2. I was a helicopter pilot in the Viet Nam War, during which time I was exposed to violent death and hideous injuries. I have seen combat, as well as civilian casualties, in which people had suffered truly gruesome deaths. Therefore, I was not particularly concerned when I was asked to cover an execution in the gas chamber.

3. On September 8, 1983, as a reporter for United Press International, I traveled to Parchman, Mississippi to witness the lethal gas execution of Jimmy Lee Gray. I arrived at the Prison several hours before the scheduled execution and joined three other reporters in the administration building. We were instructed as to the rules and regulations to be followed, then driven to observation room.

4. Jimmy Lee Gray, wearing a prison jumpsuit, was escorted into the chamber by two guards. He was quickly strapped into the large, metal chair. A prison guard hooked the cyanide crystals beneath the chair, then left Mr. Gray alone. The chamber door was sealed. Very shortly afterwards, I heard the lever being

pulled and the cyanide dropped into the acid.

5. When the white mist began to rise, Mr. Gray leaned forward and inhaled. Then suddenly, his head snapped back and his body rose up against the straps. He was struggling to lift himself up out of the gas. His eyes were open and his head moved from side to side. His mouth took on an anguished, distorted expression as he gasped for air. These movements went on for about three to four minutes. After about four minutes, Mr. Gray's head fell forward on his chest, then he again raised it up and started to slam his head into the metal pole situated behind his chair. He let out a very long guttural groan. He looked like he was being strangled to death. It was obvious that Mr. Gray was in excruciating pain.

6. Eight minutes into the execution, while Mr. Gray was still smashing his head on the pole, a prison official sternly stated, "Gentlemen, let's go." All of the witnesses, including myself, were confused. Jimmy Lee Gray was still appeared to be alive, repeatedly smashing his head against a pole and gasping for air. I was to report to the press conference and describe the execution. I was very shocked by the scene before me and confused by the prison's decision to dismiss us partway through the execution.

7. The images of Jimmy Lee Gray helplessly searching the room with his eyes, straining to escape the gas, and smashing his head against that pole are permanently burned into my memory. These images are far more cruel, barbaric, and demoralizing than

any other violent and gruesome acts that I have witnessed.

8. After the painful details of Jimmy Lee Gray's execution were made public, I fully believed that the gas chamber had been replaced by more humane methods of execution. I was shocked and dismayed when I recently heard that an execution by lethal gas had been scheduled in California. Death by lethal gas can never be anything less than brutal and inhumane.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on April 15, 1992.


DANIEL LOHWASSER

EXHIBIT 17

DECLARATION OF ROBERT R. MARSHALL, ESQ.

I, Robert Marshall, declare under penalty of perjury:

1. I am an attorney licensed to practice law in the State of Mississippi. Before completing my undergraduate studies in English at a Southern Baptist College in Clinton, Mississippi, I served for three years in the United States Army Infantry as a machine gunner and ultimately as an E5 sergeant. I saw no combat, but I am no stranger to violence and sudden death.

2. After receiving my J.D. from the University of Mississippi in Oxford in 1973, I worked for eight years with the firm of Young, Scanlon, & Sessums in Jackson, Mississippi, first as an associate and then as a partner. I withdrew from the firm in 1981, and continued practice as a sole practitioner. I currently maintain a private practice in Hattiesburg, specializing in bankruptcy and family law. I am also a candidate for the M.S. degree in counseling psychology at the University of Southern Mississippi.

3. In 1987, I shared an office with attorney Shirley Payne. Ms. Payne represented Connie Ray Evans in post-conviction proceedings in Mississippi, following a 1981 death sentence. The final denial of Mr. Evans' request for a stay and petition for writ of certiorari is reported as Evans v. Thigpen, 483 U.S. 1033

(1987).

4. As Mr. Evan's execution date drew nearer, Ms. Payne associated me onto the case. She believed that the services of a second attorney would be vitally important during the final hours before execution. Ms. Payne anticipated that legal proceedings would continue into the final hours. In that case, it was essential that an attorney be with our client to inform him of any changes in the status of the litigation and ensure that the litigating attorney had confidential access to the personal knowledge and assistance of the inmate. Moreover, we considered it important for one member of the defense team to witness the execution. Accordingly, I was among the witnesses to the execution by lethal gas of Connie Ray Evans on July 7, 1987.

5. The execution took place at Parchman, Mississippi, on a hot, muggy summer night. I was one of about 20 witnesses who entered the observation room. Glass observation windows of the metal gas chamber protruded into the observation room, but curtains were drawn on the chamber's windows. Once the witnesses were seated, a spokesman for the prison explained that procedure and told the witnesses that Connie Ray would be probably be dead after a minute or two but a healthy young male like Connie Ray would live for several minutes after becoming brain dead. The curtains were opened. Mr. Evans was already strapped into the metal chair, dressed in a prison jumpsuit. His head was tied to

a metal post behind him.

6. As the only attorney present on Mr. Evans' behalf, a special chair had been designated for me. From this chair, I had a side view of Mr. Evans. Reporters and other witnesses sat in the same observation room, but could see only the back of my client. I could see through the chamber's windows to the side behind a wall where the State's witnesses sat. These included the warden, assistant warden, chaplain, a representative from the attorney general's office, and the physician who pronounced Mr. Evans dead.

7. The chamber was not sound proof -- I heard a "thump" and gas began to rise from below Mr. Evans' chair. He then let out the first of several loud agonizing gasps. I saw the muscles tightening and bulging on his neck. His forced breathing and tensed body exhibited excruciating pain. He lost control of his bodily functions. Saliva drooled from his mouth, running down his chin, and hanging in a long rope from his chin. I was on the verge of nausea, with a sick felling in the pit of my stomach, and I felt a nervous energy which both agitated and drained me. It took the cyanide gas thirteen minutes to kill Mr. Evans, the longest and most horrific thirteen minutes of my life.

8. The beeping stopped on the heart monitor, and Mr. Evans was pronounced dead. A prison official shut the curtains, and

the witnesses were ushered out of the room. I was numb and repulsed. I tried everything that I could to get the gruesome visions of Connie Ray Evans's death out of my mind, but they remain deeply etched. For almost five years, I've struggled with recurring visions and intrusive thoughts about the horror and repulsion of seeing Mr. Evans suffocate in an octagon-shaped chamber while over twenty people anxiously watch. I continue to have nightmares about Mr. Evans' torture. I have suffered post traumatic stress disorder as a direct result of witnessing this horrendous act. I received counseling from both a psychiatrist and a clinical psychologist to help me recover and deal not only with the stress disorder, but with the reality of the terrifying experience which brought it on.

9. The execution of Mr. Evans is still a painful, difficult, and disturbing subject for me to talk about; however, I feel discussion is necessary in order to inform this country's citizens that execution by lethal gas can never be anything less than torturous and barbaric.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 14th day of April, 1992.


ROBERT R. MARSHALL

EXHIBIT 18

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DAVID FIERRO, ROBERT HARRIS, and)
ALEJANDRO GILBERT RUIZ, as)
individuals and on behalf of themselves)
and all others similarly situated,)

Plaintiffs,)

v.)

JAMES GOMEZ, as an individual, and in his)
capacity as Director, California Department of)
Corrections, and DANIEL VASQUEZ, as an)
individual, and in his capacity as Warden of)
San Quentin Prison,)

Defendants.)
_____)

No. C-92-1482-MHP

**DECLARATION OF KENNETH
ROSE, ESQ. SUBMITTED
IN LIEU OF LIVE TESTIMONY
BY STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 29

JCRC000108

DECLARATION OF KENNETH ROSE

I, Kenneth Rose, declare as follows:

1. I am an attorney licensed to practice law in the States of Mississippi, North Carolina and Georgia. I received my Arts and Sciences undergraduate degree from Washington University in Saint Louis, and my J.D. degree from Boston University Law School in 1981. Since that time, I have specialized in capital litigation throughout the South. From 1981 to 1984, I was a Staff Attorney with the Team Defense Project in Atlanta, Georgia. From 1984 to 1989, I established a private practice in Jackson, Mississippi, where I continued to represent death-sentenced prisoners in post-conviction litigation, and in 1989, I became Director of the Mississippi Defense Resource Center. I currently maintain a private practice in Durham, North Carolina.

2. Over the years, I have represented many inmates sentenced to death, including Leo Edwards, the last person to die in Mississippi's gas chamber. I represented Mr. Edwards in post-conviction proceedings from 1983 to 1989. His final appeal is reported as Edwards v. Black, 876 F.2d 377 (5th Cir. 1989).

3. During the time that I knew him, Mr. Edwards was very protective of the other inmates on death row. He was more concerned about how others would be affected by his legal

proceedings and eventual execution than he was with his own needs and well-being. He tried to comfort and reassure those around him that everything would work out. Even as his execution approached, Leo Edwards was a source of strength and inspiration to those who knew him.

4. On June 21, 1989, at 12:01 a.m., Leo Edwards was executed in the gas chamber at Parchman, Mississippi. At his request, I witnessed the execution. There were approximately a dozen witnesses, as well as a number of correctional officers. We were led into an observation room containing two rows of seats, one behind the other.

5. The guards brought Mr. Edwards into the chamber. They strapped him into the chair with arm, leg and chest restraints, then secured a heavy black harness over his head. The head harness fit tightly and attached to a thick chin strap, effectively preventing him from turning his head. According to newspaper reports of the execution, my client had been heavily sedated just prior to being led into the gas chamber. Despite whatever sedatives he was on, his eyes searched frantically and he looked confused and disoriented, like a wounded, injured animal. Mr. Edwards was forced to sit in the chair and wait for about 5 minutes before the pellets were finally dropped.

6. The deadly gas was visible, appearing like steam which rose from below Mr. Edwards' chair. When it reached his face, he

gasped, then started banging his head and throwing himself back and forth in the chair. His body strained so desperately against the straps that I was afraid they would cut him. He then let out a shriek of terror, the first of many. It was the sound of pure torment. My heart raced as I tried to control my own reaction to the torture I was witnessing. It seemed like hours passed as he writhed and pleaded. The shrieking and thrashing lasted for several minutes; he remained alive for some time after that.

7. I know that Mr. Edwards was conscious and suffering excruciating pain during the execution. I do not believe that an unconscious person could scream the agonizing screams that ripped through that room in Mississippi. I was disgusted and sickened by the pain and torment I saw in Leo Edwards' final desperate minutes of life.

8. It is my opinion that the execution of Leo Edwards was nothing less than torture and that slow asphyxiation by cyanide gas is a horrible and painful way to die.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 10, 1992, at Durham, North Carolina.



Kenneth Rose, Esq.

EXHIBIT 19

WARREN GEORGE
CAROLYN L. REID
McCutchen, Doyle, Brown & Enersen
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 393-2000

MICHAEL LAURENCE
MATTHEW A. COLES
American Civil Liberties Union
Foundation of Northern California, Inc.
1663 Mission Street, Suite 460
San Francisco, California 94103
Telephone: (415) 621-2493

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ALEJANDRO GILBERT RUIZ, as)
individuals and on behalf of themselves)
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JAMES GOMEZ, as an individual, and in his)
capacity as Director, California Department of)
Corrections, and DANIEL VASQUEZ, as an)
individual, and in his capacity as Warden of)
San Quentin Prison,)

Defendants.)

No. C-92-1482-MHP

**DECLARATION OF GLORIA H.
LYON SUBMITTED IN LIEU
OF LIVE TESTIMONY BY
STIPULATION OF THE
PARTIES**

PLAINTIFFS' EXHIBIT NO. 22

JCRC000112

DECLARATION OF GLORIA H. LYON

I, Gloria H. Lyon, do declare:

1. I live in San Francisco, California, where my husband and I have raised our two sons. I am a survivor of the Holocaust; I have spoken to over 350 groups about my experiences. For several years, I have been preparing a film documentary about my Holocaust history. I have attached videos which contain footage of the ruins of the gas chambers and crematoria at Auschwitz-Birkenau.

2. I was born in Nagy Bereg, Czechoslovakia. I had a younger sister and four older brothers. We lived in a small rural community of farmers where my father owned and operated a farm and vineyards.

3. My entire family was picked up by German soldiers the day after Passover in 1944; I was 14. Although one of our neighbors had warned my family the night before that the Germans were picking up all of the Jews, we still had no idea of the terror that awaited us. We were taken to Auschwitz-Birkenau.

4. It was only after three or four days at Auschwitz-Birkenau that I realized that Auschwitz and the surrounding camps were not just "relocation" camps; they were death camps. Once a girl was standing on a stool in the barracks, taking turns with me singing, when a woman came over and smacked the girl. She said, "What do you think this is, a resort? You see those smoke stacks over there? The putrid smell, the black smoke? That is

the remnants of camp prisoners, most of them were fellow Jews." It was at this moment that I realized the Nazis' brutal plans. I lived in fear of the gas chambers every day thereafter.

5. At Birkenau, they separated the males from the females, and then Dr. Josef Mengele further separated us into groups. My mother and I were ordered into one group, and my sister, Annuska, age 12, was put into a large group which included the old, sick, pregnant, and all the children. Fortunately, Annuska escaped from her group and caught back up with mother and me. We later learned that all the others in that group were murdered immediately upon arrival in the huge gas chambers, in which hundreds could be killed at one time.

6. I remember another time Annuska was taken from us. An SS officer came in and was harassing her, instructing her to braid cloth around his boots. When she was finished, he took Annuska with him. I believed that he was taking her to the gas chamber. I am not able to describe the pain and heartache that I felt knowing that my sister was going to suffocate in the gas chamber. I knew it was a painful death, as I had heard screams coming from the gas chamber. Annuska, once again, returned unharmed, but the feeling that I had during her absence is indescribable.

7. Birkenau had four gas chambers and crematoria where the corpses were burned. On the way to work duty, my work detail would have to walk by two crematoria and a lake into which they dumped human ashes from the ovens. I could often see people come

in on the cattle cars and march over to gas chamber and crematorium #4. They would undress outside on the lawn and then enter what they were told was a shower house. I never saw anybody come out. Piercing cries and screams of anguish could be heard coming from the brick building. Even today, when I hear children crying, I am physically affected as my memory takes me back to the gas chambers at Birkenau. Sometimes the SS officers would hang blankets on the fence between our work place and the crematorium, in an effort to conceal the people being led to extermination. However, the screams were too chilling and the air too thick with smoke and smell of burning flesh for the guards to hide the truth. One of my jobs was to sort the clothes of those who were murdered in the gas chambers. The good quality clothes were packaged by us for shipment to Germany.

8. I shared the third tier of a bunk with eleven other girls. Obviously, we were unable to all lie down at once, so six of us would sit up while the other six lay down, and then we would switch positions. One night, my cousin Piroska Gelb was sitting up on the outer side of the bunk bed. She fell asleep and fell off the bunk. She broke a limb, so we had to lift her back onto the bunk. The next morning she was not able to come out for the daily head count. I saw a truck come to pick her up and I never saw her again. Undoubtedly, Piroska died in the gas chambers.

9. Every day of my incarceration, I lived with the constant torture and fear of "When am I going to be next? When is my

mother going to be next? When is my best friend going to be next?" The selection was arbitrary and one never really knew who would be selected to go to the gas chamber. This arbitrariness was part of the torture and part of the Nazis' deception. The anticipation was too much for many prisoners to handle; it ate at their nerves and will to live every day. It was a daily occurrence to see people dead on the electric wire fences. They committed suicide, rather than die in a gas chamber or live under the constant fear and degradation.

10. I know first hand what it is to face death by poison gas. I was selected for extermination by Dr. Mengele, together with 30 other young women, and ordered onto a truck bound for the gas chamber. A guard in a low voice told us that our only chance for survival was to jump from the truck on the way. We were all naked, crammed into the truck like cattle. As the truck drove along, I asked who would come with me. Nobody responded. Everyone was starved, exhausted and robbed of all will power and hope. But I had my loving mother and sister to live for. When the truck approached the wooded area, the location of the gas chambers, I jumped off the slow moving truck and slid down into a deep ditch by the road. My body kept sticking to the ice. At the bottom, the water ran into a culvert which could not be seen from the road, and I crouched down in this culvert. I hid in the culvert about 24 hours, without any food or clothing. The fear of discovery and death in the gas chamber and the need to keep my mother from weakening over my death and consequently leaving

Annuska alone, kept me going. The next night I crawled out from my hiding place, followed a little light some distance away, and entered undetected into a barrack. There I found a place for myself among the inmates, one of whom gave me an overcoat.

11. My mother and sister remained at Auschwitz-Birkenau. When I was selected, my mother broke down crying; it was the last time I ever saw her. From Birkenau I was shipped to the concentration camp of Bergen-Belsen. Every day I wondered about my family. I wondered whether they were alive or dead. Even more, however, I was concerned about my mother's grief for me. I knew that everyone thought that I had died in the gas chamber, and I worried about their grief.

12. After liberation, the Swedish Red Cross took me to Sweden. They gave us food, new clothes, and showed us to the showers. But we were all afraid to enter the Red Cross showers. We all made the immediate connection to the gas chambers. Memories of the cries, the smell, and visions of prisoners taking their final walk into the death chamber permeated my mind. They had to prove to us that the showers were real, that they spewed water, not gas, before we agreed to use them.

13. The visions of innocent men, women and children being driven into the gas chambers, and the memories of horror, anguish, and suffering continue to enter my dreams and come back to me when I least expect them. The connections are obvious, however: crying children, shower houses, smoke stacks, cattle cars, and gas chambers.

14. When I learned of the scheduled execution of convicted murderer Robert Harris in the San Quentin gas chamber on April 21, 1992, it caused me to think again of the gas chambers of Nazi Germany and the millions of people tortured to death in them.

15. Each of the innocent victims of the Holocaust was a unique person whose loss is important to all of us. The circumstances of the convicts on death row can never be compared to the horror and suffering of the victims of the Holocaust. There is one similarity, however: the method of using poisonous gas to take a human life.

16. Innocent Holocaust victims can never be compared with convicted murderers. However, the fact remains that being suffocated to death with poisonous gas is always cruel, painful, inhumane and barbaric. As a person who saw the daily horror of mass extermination by gas, I know that execution by gas is torture and it can never be anything less. The torture begins with one's awareness of the way in which his or her life would be taken, and intensifies with one's knowledge of how slow and painful a method of execution gas is.

17. I have devoted my life to teaching others about the Holocaust in the hope that we will remember the lessons of man's inhumanity to man and learn to live together in peace on this planet earth. All of us survivors carry in our hearts the memory of the suffering of our families. It is the legacy of the Holocaust that we must keep their memory alive and strive for the betterment of humanity. Respect for human life is paramount. We

must expect civilized society to do better than what a murderer has done, even though he or she has shown no compassion for other human beings. I know that the State of Israel, where many thousands of Holocaust survivors have found sanctuary and have rebuilt their lives, has abolished the death penalty altogether, except for the crime of genocide. In our enlightened country, at least the cruelty of death by gassing should be abolished.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 7, 1992 at San Francisco, California.


Gloria H. Lyon