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**THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
**IN AND FOR CARSON CITY**

The American Civil Liberties Union of  
Nevada Foundation, a non-profit organization.

Petitioner,

vs.

State of Nevada *ex rel*, the Nevada  
Department of Corrections; James Dzurenda,  
in his official capacity as Director.

Respondents.

Case No. \_\_\_\_\_

**EMERGENCY**

**EMERGENCY PETITION FOR WRIT  
OF MANDAMUS TO COMPEL THE  
NEVADA DEPARTMENT OF  
CORRECTIONS TO PRODUCE  
PUBLIC RECORDS RELATING TO  
ITS LETHAL INJECTION  
PROCEDURES AND SCOTT  
DOZIER'S JULY 11, 2018  
EXECUTION**

Petitioner, the American Civil Liberties Union of Nevada, through its attorneys, hereby  
petitions this Court pursuant to the Nevada Public Records Act, NRS 239 *et. seq* for a writ of  
mandamus directing the Respondents, Nevada Department of Corrections, and James Dzurenda in  
his official capacity as Director to provide Petitioner with the requested public records on the  
following grounds:

## INTRODUCTION

1. Scott Dozier is scheduled to be executed by the State of Nevada on July 11, 2018.
2. Despite this upcoming execution, Respondents, the Nevada Department of Corrections and its Director, James Dzurenda, (collectively "NDOC") are unlawfully refusing to release to the ACLU of Nevada ("ACLUNV") time-sensitive public records pertaining to NDOC's lethal injection drugs and procedures.
3. NDOC has not only kept records from the ACLU of Nevada, but has completely failed to inform the public about any details of this upcoming execution and has offered only misinformation and shifting explanations.
4. The requested public records are essential for the ACLUNV to both inform the public of how the State of Nevada plans to execute one of its citizens and for the ACLUNV to assess whether the execution will take place in a constitutional manner and then take appropriate steps if it determines the execution will not.
5. "[T]he Eighth Amendment not only protects the right of individuals not to be victims of cruel and unusual punishment, but that it also expresses a fundamental interest of society in ensuring that state authority is not used to administer barbaric punishments." *Gilmore v. Utah*, 429 U.S. 1012, 1019 (1976) (Marshall, J., dissenting).
6. NDOC's restriction of access to public records is especially egregious as this is the first execution in Nevada in over a decade and it will take place in a newly built and untested execution chamber. The precedent set by this execution will affect not only Mr. Dozier, but all other inmates currently sitting on death row. Full and immediate transparency from NDOC is essential to ensuring constitutional compliance.

1 7. The ACLUNV files this petition pursuant to NRS 239.011, which allows a party whose request  
2 for inspection was denied to apply to the district court for an order permitting the requestor to  
3 inspect or copy the record, or obtain a copy.

4 8. Accordingly, this Petition seeks to obtain a court order directing NDOC to immediately produce  
5 the records requested by the ACLUNV under the Nevada Public Records Act, NRS 239 *et seq.*  
6

7 9. As per NRS 239.011, the ACLUNV respectfully requests that this Court “give this matter  
8 priority over other civil matters to which priority is not given by other statutes,” and to treat this  
9 as an Emergency Petition in light of Mr. Dozier’s upcoming execution on July 11, 2018.

#### 10 **JURISDICTION & VENUE**

11 10. This Court has the authority to issue a writ of mandamus pursuant to Nev. Const. Art. 6, § 6  
12 and NRS 34.160.

13 11. An affidavit pursuant to NRS 34.170 attesting to the factual allegations in this application is  
14 attached.  
15

16 12. Venue is proper in this Court as the records at issue are being held by the Nevada Department  
17 of Corrections, whose central administration is located in Carson City. NRS 239.011(1).

#### 18 **PARTIES**

##### 19 **A. PETITIONER**

20 13. The ACLUNV is a non-profit, non-partisan, organization operating in Nevada.

21 14. The ACLUNV works to defend and advance the civil liberties and civil rights of all Nevadans.

22 Grounded in the principles of liberty, justice, democracy and equality, the ACLUNV works in  
23 three areas: public education, advocacy, and litigation when necessary. The ACLUNV’s public  
24 education efforts serve to help the public understand their liberties, rights, and responsibilities,  
25 its advocacy efforts serve to inform and educate public officials about their liberties and rights,  
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1 and their litigation work serves to defend the rights and liberties of individuals when they have  
2 been violated.

3 15. The ACLUNV's work encompasses protecting the constitutional rights of those subject to a  
4 sentence of death, and holding the government accountable in carrying out a sentence of death.

5 16. The ACLUNV engages in governmental oversight by routinely researching and investigating  
6 matters of public concern and publishing those results.<sup>1</sup> The ACLUNV accomplishes this  
7 oversight and public education, in part, by utilizing records obtained through the Nevada Public  
8 Records Act.

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10 **B. DEFENDANTS**

11 17. Defendant, State of Nevada *ex rel* the Department of Corrections is an Executive Department  
12 of the State of Nevada.

13 18. The Nevada Department of Corrections ("NDOC") is a governmental entity as defined in NRS  
14 239.005(5)(b) for purposes of Nevada's Public Records Act.

15 19. Defendant, James Dzurenda, is the Director of the Nevada Department of Corrections. In his  
16 official capacity, he is required to "[s]upervise the administration of all institutions and facilities  
17 of the Department." NRS 209.131(2). He is also required to execute a sentence of death, select  
18 the execution drugs, and otherwise generally oversee the death penalty in the State of Nevada.  
19 NRS 176.355.  
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24 <sup>1</sup> See e.g. *Unlocking Solitary Confinement: Ending Extreme Isolation in Nevada State Prisons*, (ACLU of  
25 Nev., Solitary Watch, and Nev. Disability Advoc. & L. Ctr, Feb. 2017) available at  
26 [https://www.aclunv.org/sites/default/files/aclunv\\_unlocking\\_solitary\\_confinement\\_report.pdf](https://www.aclunv.org/sites/default/files/aclunv_unlocking_solitary_confinement_report.pdf); *Youth*  
27 *Confinement In Nevada: Facility Assessment And Recommendations For Housing Youth Sentenced*  
28 (ACLU of Nev. & the Campaign For Youth Just., June 2018) available at  
<https://www.aclunv.org/en/news/aclu-nevada-releases-report-youth-confinement>.



1 **FACTUAL ALLEGATIONS**

2 **MR. DOZIER'S ORIGINALLY SCHEDULED NOVEMBER 2017 EXECUTION**

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4 20. Mr. Dozier was previously scheduled to be executed on November 14, 2017, using a three (3)  
5 drug cocktail of diazepam (a sedative), fentanyl (a pain medication), and cisatracurium (a  
6 paralytic). This combination of drugs has never been used in an execution in the United States.<sup>2</sup>

7 21. Although Mr. Dozier volunteered for execution, he still recognized the State's independent  
8 responsibility to act in a constitutional manner and brought a motion to determine the lawfulness  
9 of the method of his execution. Mr. Dozier argued that use of a paralytic needlessly risked  
10 causing him a tortious and unconstitutional death.<sup>3</sup>

11  
12 22. The District Court agreed with Mr. Dozier and found that the use of a paralytic carries a  
13 substantial and "objectively intolerable risk of harm" to Mr. Dozier, all in violation of Mr.  
14 Dozier's Eighth Amendment rights under the United States Constitution and corresponding  
15 rights under Article 1, Section 6 of the Nevada Constitution. The District Court prohibited  
16 NDOC from using a paralytic in Mr. Dozier's execution.<sup>4</sup>

17  
18 23. NDOC objected to this prohibition and filed a writ of mandamus with the Nevada Supreme  
19 Court.<sup>5</sup>

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22 <sup>2</sup> Marcella Corona, *How Will Scott Dozier Die? Experts Weigh In On Nevada's Experimental Execution*  
23 *Cocktail*, RENO GAZETTE J., Nov. 9, 2017, <https://www.rgj.com/story/news/2017/11/03/medical-experts-explain-effects-lethal-injection-drugs-nevada-execution/822497001/>

24 <sup>3</sup> Michelle Rindels, *Judge's Order Throws Off Execution Timeline; State Says Nov. 14 Date Canceled*, THE  
25 NEV. INDEP, Nov. 9, 2017, <https://thenevadaindependent.com/article/judges-order-throws-execution-timeline-into-jeopardy-state-says-nov-14-date-canceled>

26 <sup>4</sup> *Id.*

27 <sup>5</sup> Michelle Rindels, *Supreme Court Hears Arguments On Untested Lethal Injection Method For Inmate*  
28 *Who's Asking To Die*, THE NEV. INDEP, May, 8, 2018, <https://thenevadaindependent.com/article/supreme-court-to-hear-arguments-on-untested-lethal-injection-method-for-inmate-whos-asking-to-die>

1 24. The Nevada Attorney General's Office represented in its briefing to the Nevada Supreme Court  
2 that one of the planned execution drugs, diazepam, expired on May 1, 2018.<sup>6</sup> It also made this  
3 representation at oral arguments held on May 8, 2018.<sup>7</sup>

4 25. On May 10, 2018, the Nevada Supreme Court overturned the District Court ruling on procedural  
5 grounds, and never reached the issue of whether using a paralytic was unconstitutional.

6 26. The ACLU of Nevada vehemently and publicly opposed Mr. Dozier's execution and the use of  
7 a paralytic.<sup>8</sup> It made many public statements about the unconstitutionality of using a paralytic  
8 in an execution, demanded transparency from NDOC regarding the execution procedures and  
9 process, submitted public records requests to NDOC regarding the planned November 2017  
10 execution, organized and submitted a petition to Governor Sandoval asking him to stop the  
11 execution, and submitted an *amicus* brief in support of Mr. Dozier's opposition to the Nevada  
12 Attorney General's Nevada Supreme Court Writ Petition.  
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19 <sup>6</sup> *Nevada Department of Corrections v. The Eighth Judicial District Court of the State of Nevada,*  
20 *et al. and Scott Raymond Dozier*, Petitioner's Emergency Petition Writ of Mandamus or  
21 Prohibition at 4. (Exhibit 9).

22 <sup>7</sup> Michelle Rindels, *Supreme Court Hears Arguments On Untested Lethal Injection Method For Inmate*  
23 *Who's Asking To Die*, THE NEV. INDEP, May, 8, 2018, [https://thenevadaindependent.com/article/supreme-](https://thenevadaindependent.com/article/supreme-court-to-hear-arguments-on-untested-lethal-injection-method-for-inmate-whos-asking-to-die)  
24 [court-to-hear-arguments-on-untested-lethal-injection-method-for-inmate-whos-asking-to-die](https://thenevadaindependent.com/article/supreme-court-to-hear-arguments-on-untested-lethal-injection-method-for-inmate-whos-asking-to-die) ("Jordan  
25 Smith, arguing on behalf of the attorney general's office, said the state's supply of diazepam — the first  
26 drug in the three-drug protocol — expired on May 1.").

27 <sup>8</sup> *ACLU Wants Governor to Stop Nevada's 1st Execution Since '06*, ASSOCIATED PRESS, Nov. 2, 2017,  
28 [https://www.usnews.com/news/best-states/nevada/articles/2017-11-02/aclu-wants-governor-to-stop-](https://www.usnews.com/news/best-states/nevada/articles/2017-11-02/aclu-wants-governor-to-stop-nevadas-1st-execution-since-06)  
[nevadas-1st-execution-since-06](https://www.usnews.com/news/best-states/nevada/articles/2017-11-02/aclu-wants-governor-to-stop-nevadas-1st-execution-since-06); Denise Rosch, *Defense Attorney, ACLU Want Answers About Execution*  
*Cocktail Planned For Dozier*, NBC NEWS 3, LAS VEGAS, Aug. 27, 2017  
[http://news3lv.com/news/local/defense-attorney-aclu-want-answers-about-execution-cocktail-planned-for-](http://news3lv.com/news/local/defense-attorney-aclu-want-answers-about-execution-cocktail-planned-for-dozier)  
[dozier](http://news3lv.com/news/local/defense-attorney-aclu-want-answers-about-execution-cocktail-planned-for-dozier); David Ferrara, *ACLU Opposes Drug Cocktail Planned For Nevada Inmate's Execution*, LAS  
VEGAS REVIEW-JOURNAL, AUG. 18, 2017, [https://www.reviewjournal.com/crime/courts/aclu-opposes-](https://www.reviewjournal.com/crime/courts/aclu-opposes-drug-cocktail-planned-for-nevada-inmates-execution/)  
[drug-cocktail-planned-for-nevada-inmates-execution/](https://www.reviewjournal.com/crime/courts/aclu-opposes-drug-cocktail-planned-for-nevada-inmates-execution/)

1                   **ACLUNV REQUESTS RECORDS FROM NDOC REGARDING LETHAL**  
2                   **INJECTION DRUGS AND EXECUTION PROCEDURES**

3       27. After the Nevada Supreme Court's decision, the ACLU of Nevada continued its work in  
4       conducting oversight and public education regarding executions in Nevada and submitted a  
5       public records request to NDOC on June 15, 2018, requesting documents pertaining to NDOC's  
6       lethal injection drugs and procedures. (Exhibit 1).

7       28. The ACLUNV requested records related to the acquisition of lethal injections drugs, including  
8       records of the lethal injection drugs on hand and related details such as the purchase or  
9       acquisition orders and expiration dates of the drugs; the execution manual currently in effect;  
10      records regarding NDOC employees' communications regarding lethal injection drugs, records  
11      relating to the Ely State Prison pharmacy and records relating to the authority of Ely State Prison  
12      to handle controlled substances. *Id.*

14                   **NDOC GIVES CONFLICTING INFORMATION TO THE PUBLIC REGARDING**  
15                   **MR. DOZIER'S NEWLY SCHEDULED EXECUTION**

16      29. On June 19, 2018, a new warrant of execution was signed by the District Court, setting Mr.  
17      Dozier's execution for the week of July 9, 2018. (Exhibit 2).

18      30. On June 20, 2018, NDOC, through its Public Information Officer, Brooke Santana, told the  
19      Associated Press (AP), that NDOC planned to go forward with Mr. Dozier's execution on July  
20      11, 2018, that NDOC "ha[s] what [they] need to complete the execution order," that they were  
21      going to use "[t]he same three drugs," to carry out Mr. Dozier's execution, and that despite  
22      previous representations regarding the diazepam expiring NDOC "ha[s] some [drugs] that are  
23      not expired."<sup>9</sup>

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27      <sup>9</sup> Ken Ritter, *Nevada Sets 1st Execution Since 2006 After Fight Over Drugs*, ASSOCIATED PRESS, June 20,  
28      2018, [https://www.washingtonpost.com/national/judge-oks-nevada-execution-but-questions-about-drugs-remain/2018/06/20/96aa9cde-74bc-11e8-bda1-18e53a448a14\\_story.html?utm\\_term=.67769e197e52](https://www.washingtonpost.com/national/judge-oks-nevada-execution-but-questions-about-drugs-remain/2018/06/20/96aa9cde-74bc-11e8-bda1-18e53a448a14_story.html?utm_term=.67769e197e52)

1 31. However, just a few days later, NDOC, again through its Public Information Officer, changed  
2 its story and told the media that the protocol was “evolving.”<sup>10</sup>

3 32. Since the last statement to the media regarding the “evolving” protocol, NDOC has made no  
4 further statements regarding Mr. Dozier’s execution. Nor has it put out a press release alerting  
5 Nevadans that an execution is going to take place.  
6

7 33. Instead, it is operating in extreme secrecy, despite Nevada’s open records laws, and refuses to  
8 even disclose the names of the drugs it plans to use for Mr. Dozier’s execution.

9 34. On June 22, 2018, concerned about Mr. Dozier’s upcoming execution and the lack of reliable  
10 information being disseminated by NDOC, the ACLUNV wrote to NDOC following-up on its  
11 public records request. It informed NDOC that in light of Mr. Dozier’s July 11th execution, it  
12 was imperative that NDOC release records immediately. (Exhibit 3)  
13

14 35. Despite this urgent need for the public to be informed of Mr. Dozier’s upcoming execution,  
15 NDOC informed the ACLUNV later on June 22, 2018, that none of the requested records were  
16 readily available and that it “anticipate[d]” being able to respond within sixty (60) days.  
17 (Exhibit 4).

18 36. Under NDOC’s proposed timeline, Mr. Dozier will have already been executed by the time any  
19 information is finally produced.  
20

21 **ACLUNV PRIORITIZES AND NARROWS REQUESTS; NDOC STILL REFUSES**  
22 **TO PRODUCE TIMELY RECORDS**

23 37. In response, on June 25, 2018, the ACLUNV wrote NDOC explaining that the sixty (60) day  
24 response time is unacceptable in light of Mr. Dozier’s upcoming execution, which, at the time  
25 was sixteen (16) days away. (Exhibit 5).  
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27  
28 <sup>10</sup> Ken Ritter ASSOCIATED PRESS, *Q&A: Plan Evolving For Nevada's First Execution In 12 Years*, June  
25, 2018 <http://www.chicagotribune.com/sns-bc-us--nevada-execution-challenge-qa-20180621-story.html>

1 38. The ACLUNV further explained in its June 25, 2018, letter that the information needed to be  
2 produced immediately for the ACLUNV to properly assess whether Mr. Dozier's execution  
3 will take place in a constitutional manner and take appropriate steps if it was determined that it  
4 will not. *Id.*

5  
6 39. The ACLUNV also explained in its June 25, 2018 letter that beyond simply needing this  
7 information to assess the constitutionality of NDOC's actions, one of ACLUNV's main  
8 functions is disseminating information to the public about issues of concern to the ACLUNV  
9 and its members and how the state plans to execute Mr. Dozier is of the utmost concern to the  
10 ACLUNV and to Nevadans. *Id.*

11 40. The ACLUNV reminded NDOC that provision of timely records and transparency by NDOC  
12 is especially important as Mr. Dozier's execution will be the first in Nevada in over a decade.  
13 *Id.*

14  
15 41. In an effort to expedite production, in its June 25, 2018, letter, the ACLUNV prioritized and  
16 narrowed some requests. *Id.*

17 42. The ACLUNV informed NDOC that the priority requests pertained to (1) the details of the  
18 lethal injection drugs obtained by NDOC, (2) the execution manual in place, and (2) to records  
19 regarding authorization for Ely State Prison to handle controlled substances. *Id.*

20  
21 43. The ACLUNV asked, at the very least, that NDOC produce immediately:

- 22 a. Records relating to the lethal injection drugs planned to be used in Mr.  
23 Dozier's July 11th execution, including, the names and quantities of the drugs  
24 to be used, and purchase or acquisition orders; and  
25 b. The current Nevada Department of Corrections Execution Manual which will  
26 govern Mr. Dozier's July 11th execution.  
27  
28

1 44. As NDOC plans to go forward with Mr. Dozier's execution in just eight (8) days, there is no  
2 reasonable explanation for why at least those narrow sets of documents would not be readily  
3 available to NDOC.

4 45. The ACLUNV asked NDOC to produce the narrowed records requested by the close of business  
5 on June 25, 2018, and the remainder of the outstanding records by June 27, 2018. *Id.*

6 46. Because of the urgent need for these records, the ACLUNV informed NDOC that failure to  
7 produce readily available records would constitute a denial under NRS 239 *et seq.* *Id.*

8 47. After receiving no response from NDOC, on June 28, 2018, the ACLUNV again wrote to  
9 NDOC confirming that as NDOC had completely failed to produce readily available time-  
10 sensitive records this was a denial of the ACLUNV's requests and that they would take the  
11 appropriate legal action. (Exhibit 6) .

12 48. NDOC responded on July 2, 2018, stating that it had received the ACLUNV's June 25, 2018,  
13 letter and that it "anticipate[d]" being able to respond within sixty (60) days. (Exhibit 7).

14 49. As of the date of this Petition, NDOC has still not produced any information requested by the  
15 ACLUNV in its public records request.

16 50. Accordingly, the ACLUNV respectfully petitions this Court, pursuant to NRS 239.011, for a  
17 writ of mandamus compelling NDOC to allow for inspection and copying of all public records  
18 requested by the ACLUNV and directing such other and further relief as this Court deems  
19 proper.  
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### 23 LEGAL AUTHORITY

24 51. The purpose of Nevada's robust Public Records Act, "is to foster democratic principles by  
25 providing members of the public with access to inspect and copy public books and records to  
26 the extent permitted by law." NRS 239.001(1); *see PERS v. Reno Newspapers Inc.*, 129 Nev.  
27 833, 836-837 (2013) (" The [Nevada Public Records] Act's purpose is to promote government  
28

1 transparency and accountability by facilitating public access to information regarding  
2 government activities.”)

3 52. The provisions of the Act “must be construed liberally to carry out this important purpose.”  
4 NRS 239.001(2).  
5

6 53. Courts “begin with the presumption that all government-generated records are open to  
7 disclosure.” *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 628 (2011).

8 54. Except for the public records identified by statute to be confidential, “all public books and  
9 public records of a governmental entity must be open at all times. . .” NRS 239.010(1).

10 55. Once a public records request is made, the governmental entity is required to respond “[n]ot  
11 later than the end of the fifth business day after the date on which the person who has legal  
12 custody or control of a public book or record of a governmental entity receives a written or oral  
13 request from a person to inspect, copy or receive a copy of the public book or record.” NRS  
14 239.0107(1).  
15

16 56. The governmental entity is required to either allow inspection or copying, or provide a copy of  
17 the record requested. NRS 239.0107(1)(a).

18 57. “If the governmental entity does not have legal custody or control of the public book or record,  
19 provide to the person, in writing: (1) Notice of that fact; and (2) The name and address of the  
20 governmental entity that has legal custody or control of the public book or record, if known.”  
21 NRS 239.0107(b)(1-2).  
22

23 58. “If a public book or record of a governmental entity is readily available for inspection or  
24 copying, the person who has legal custody or control of the public book or record shall allow a  
25 person who has submitted a request to inspect, copy or receive a copy of a public book or  
26 record.” NRS 239.0107(2).  
27  
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1 59. Here, the ACLUNV has requested information under the Nevada Public Records Act relating  
2 to NDOC's lethal injection drugs and procedures, and the upcoming execution of Mr. Dozier  
3 (Exhibits 1 and 5).

4 **THE ACLUNV IS ENTITLED TO RELIEF UNDER NRS 239.011**

5  
6 60. The ACLUNV is entitled to relief because it requested a public book or record that is open to  
7 inspection pursuant to NRS 239.010 and NRS 239.0107, yet NDOC unlawfully denied its  
8 requests for inspection.

9 61. The ACLUNV did not request any information that is confidential pursuant to NRS 239.0105.

10 **A Request was Made for Inspection of a Public Book or Record Open to Inspection**

11  
12 62. As described in paragraphs 27 and 37 above, ACLUNV made a request to NDOC for inspection  
13 of public records open to inspection relating to NDOC's lethal injection drugs and procedures  
14 on June 15, 2018 and again on June 25, 2018.

15  
16 63. Nevada Administrative Code 239.101 defines a public record as any "information that is  
17 created or received pursuant to a law or ordinance, or in connection with the transaction of the  
18 official business of any office or department of a local governmental entity. . ."

19 64. Here, the ACLUNV requested records belonging to NDOC, a governmental entity subject to  
20 the Public Records Act, and the requested records are created or received, or in connection with  
21 the transaction of NDOC's official business, namely conducting executions. (Exhibits 1 and  
22 5).

23  
24 65. NDOC has not indicated that any of the requested records are not in fact public records.

25 66. Although NDOC responded in form letters that it will need to review responsive documents for  
26 confidentiality, it has not affirmatively indicated that any of the requested records are in fact  
27 confidential.  
28



**ACLUNV's Request to Inspect or Copy was Denied**

67. The ACLUNV made it explicitly known to NDOC that the ACLUNV requested these records in connection with Mr. Dozier's upcoming execution for the purpose of performing its oversight function and informing the public about Mr. Dozier's execution. (Exhibits 3, 5, and 6)
68. Despite knowing this, NDOC has refused to timely provide records and does not plan to provide any records until well after the State executes Mr. Dozier. (Exhibits 4 and 7).
69. The purpose of requesting these public records will be frustrated if NDOC does not timely produce records before it executes Mr. Dozier.
70. Timely production of these records is all the more important given NDOC's failure to provide meaningful information about this upcoming execution to the public on its own.
71. The First Judicial District Court has found, in previous litigation surrounding a similar subject matter, that writ relief should be granted when a request to inspect or copy has been explicitly been denied or that "there has not been a timely response to their request." *Reno Newspapers Inc. v. State of Nevada*, Case No. 06-0551A (First Judicial Dist. Ct. April 24, 2006). (Exhibit 8).
72. Federal Courts have also granted mandamus petitions requesting immediate production of public records when failure to do so would cause the public record to lose its "newsworthiness." *Valley Broadcasting Co. V. U.S. District Court for the District of Nevada*, 798 F.2d 1289, 1292 (9th Cir. 1986).
73. The Federal Freedom of Information Act (FOIA) is also instructive here. Under FOIA, a request for public records will be given "expedited processing" when there exists: "An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information." 28 § CFR 16.5(e)(1)(ii).

1 74. Here there is certainly an “urgency to inform the public” about NDOC’s activities as Mr.  
2 Dozier will be executed in just eight (8) days, and the ACLUNV regularly engages in  
3 disseminating information to the public about this subject matter. Obtaining information about  
4 government activity, analyzing that information, and widely publishing and disseminating that  
5 information to the press and public are critical and substantial components of the ACLUNV’s  
6 work. In fact, Courts have found that the ACLU, as well as other organizations with similar  
7 missions that engage in information-dissemination activities similar to the ACLU are “primarily  
8 engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v.*  
9 *Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp.  
10 2d 24, 29 n.5 (D.D.C. 2004); *Elec. Privacy Info. Ctr. v. U.S. Dep’t of Defense*, 241 F. Supp. 2d  
11 5, 11 (D.D.C. 2003).

12  
13  
14 75. If records regarding NDOC’s lethal injection drugs and Mr. Dozier’s execution are not  
15 produced until after NDOC actually executes Mr. Dozier, the purpose of producing the  
16 documents will be frustrated.

17  
18 76. For all these reasons, NDOC has denied the ACLUNV’s public records request.

19 **NDOC Must Immediately Produce “Readily Available” as Defined in NRS 239.0107(2)**

20 77. Moreover, Nevada Statutes require that “[i]f a public book or record of a governmental entity  
21 is readily available for inspection or copying, the person who has legal custody or control of  
22 the public book or record shall allow a person who has submitted a request to inspect, copy or  
23 receive a copy of a public book or record.” NRS 239.0107(2).

24  
25 78. A public record is “readily available” if: (1) the public record is easily retrievable by an officer,  
26 employee or agent of the agency who has legal custody or control of the record; (2) the public  
27 record does not contain any confidential information; and (3) the nature of the public record is  
28

1 such that an officer, employee or agent of the agency who has legal custody or control of the  
2 record is not required to review the record to determine whether the record includes confidential  
3 information.” NAC 239.860.

4 79. As NDOC is going to execute Mr. Dozier in just eight (8) days, it defies logic that **no records**  
5 regarding NDOC’s lethal injection drugs and procedures are available.

6 80. Further, as the ACLUNV’s records request has been outstanding for over eighteen (18) days,  
7 NDOC has had more than enough time to review documents for confidentiality. This is  
8 especially true considering the extraordinary and time-sensitive nature of the requests in relation  
9 to Mr. Dozier’s looming execution.

10 81. NDOC must immediately produce to the ACLUNV all records responsive to its requests that  
11 are readily available.

12  
13  
14 **CLAIM FOR RELIEF**

15 **VIOLATION OF NEVADA PUBLIC RECORDS ACT NRS 239. et seq.**

16  
17 82. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 81 of this Petition.

18 83. NDOC has failed to comply with the Nevada Public Records Act, NRS 239 *et seq.* by failing  
19 to timely provide the ACLUNV with access to the time-sensitive public records regarding its  
20 lethal injection drugs and procedures and Mr. Dozier’s upcoming July 11th execution which  
21 are not otherwise confidential

22  
23 84. A writ of mandamus is necessary to compel NDOC to comply with the Nevada Public Records  
24 Act.

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**RELIEF REQUESTED**

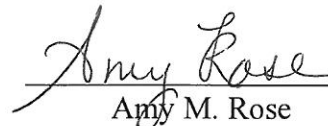
WHEREFORE, Petitioner respectfully request that this Court:

1. Issue a writ of mandamus compelling Respondents, the Nevada Department of Corrections, and James Dzurenda, in his official capacity as Director to allow Petitioners, the American Civil Liberties Union of Nevada Foundation, to inspect and copy the public records requested in its letter to NDOC;
2. Award Petitioner, the American Civil Liberties Union of Nevada Foundation, its reasonable attorneys' fees and costs incurred in this action, as provided by NRS 239.011; and
3. Any other further relief that the Court deems just and proper.

Respectfully submitted this 3<sup>rd</sup> day of July 2018.

Amy M. Rose (Bar No. 12081)  
Lauren Kaufman (Bar No. 14677C)  
AMERICAN CIVIL LIBERTIES UNION OF  
NEVADA  
601 S. Rancho Drive, Suite B11  
Las Vegas, NV 89106  
(702) 366-1536  
[rose@aclunv.org](mailto:rose@aclunv.org)  
[kaufman@aclunv.org](mailto:kaufman@aclunv.org)  
Attorneys for Petitioner

By: \_\_\_\_\_

  
Amy M. Rose

# EXHIBIT 1



June 15, 2018

*Via E-mail, USPS, and Fax*

Brooke Keast  
Public Information Officer  
Nevada Department of Corrections  
P.O. Box 7011  
Carson City, NV 89701  
[bkeast@doc.nv.gov](mailto:bkeast@doc.nv.gov)  
Fax: 775-887-3253

601 S. RANCHO DRIVE  
SUITE B11  
LAS VEGAS, NV 89106  
P/702.366.1536  
F/702.366.1331  
[ACLUNV@ACLUNV.ORG](mailto:ACLUNV@ACLUNV.ORG)

1325 AIRMOTIVE WAY  
SUITE 202  
RENO, NV 89502  
P/775.786.1033  
F/775.786.0805

[WWW.ACLUNV.ORG](http://WWW.ACLUNV.ORG)

**Re: Public Records Request Regarding Current or Proposed Execution  
Drugs**

Dear Ms. Keast:

Please allow this letter to serve as a request under the Nevada Public Records Act, NRS § 239.010 *et seq.*, by the American Civil Liberties Union of Nevada (ACLUNV) for the public records held by the Nevada Department of Corrections, or its associated subdivisions as detailed below.

**A. The Requester**

The ACLUNV is a statewide affiliate of the American Civil Liberties Union, a national organization whose work protects the civil liberties and civil rights of all people. Our mission includes safeguarding the basic constitutional rights to due process, equal protection, and includes protections against the imposition of cruel and unusual punishment. The ACLUNV is responsible for serving the population in the State of Nevada. One of ACLUNV's main functions is disseminating information to the public about issues of concern to the ACLUNV and its members.

**B. Request**

The ACLUNV requests the following records in your custody or under your control:

1. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs<sup>1</sup> since November 9, 2017 from actual or prospective suppliers,

---

<sup>1</sup> For the purposes of all requests in this letter, "lethal injection drugs" includes: (1) any and all drugs previously used in connection with an execution in Nevada; (2) any and all drugs included in any death penalty protocol in Nevada whether ultimately used or not; and (3) any and all drugs NDOC seeks or sought to acquire for the purposes of carrying out an execution.



Nevada

601 S. RANCHO DRIVE  
SUITE B11  
LAS VEGAS, NV 89106  
P/702.366.1536  
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ACLUNV@ACLUNV.ORG

1325 AIRMOTIVE WAY  
SUITE 202  
RENO, NV 89502  
P/775.786.1033  
F/775.786.0805

[WWW.ACLUNV.ORG](http://WWW.ACLUNV.ORG)

distributors and/or manufacturers including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.

2. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs since November 9, 2017 from any other State's Department of Corrections (or otherwise named agency which oversees the state's prison population), or any other State's government or state agency, including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.
3. All records pertaining to any lethal injections drugs obtained since November 9, 2017, including, but not limited to:
  - a. records indicating the current amount of any such drug in NDOC's custody or control;
  - b. the date of purchase or acquisition;
  - c. purchase or acquisition orders;
  - d. licensing information;
  - e. batch number; and
  - f. expiration dates.
4. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and among any NDOC employees that relate to the acquisition or attempted acquisition of lethal injection drugs.
5. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and among NDOC's medical staff relating to lethal injection drugs.
6. All copies or drafts of any proposed or actual edits, since November 9, 2017, to the Nevada Department Corrections Execution Manual or any other policies or procedures related to carrying out and/or preparing for executions in Nevada.
7. All records documenting the maintenance and inspection of the Ely State Prison pharmacy.
8. All records from the Drug Enforcement Agency that demonstrate authorization to handle controlled substances at Ely State Prison.

The ACLUNV does not request any information considered confidential pursuant to state law or statute.

#### C. Waiver of Fees

The ACLUNV requests a waiver of any and all fees associated with this request.



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LAS VEGAS, NV 89106  
P/702.366.1536  
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In relation to both federal and state public records requests, fees are generally waived for nonprofit organizations seeking the copies of materials without commercial interest and for the purpose of contributing to public understanding. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53 (9th Cir. 1997); *Friends of Oceano Dunes, Inc. v. Salazar*, No. C-11-1476 EMC, 2011 WL 6748575 (N.D. Cal. Dec. 22, 2011); *North Cnty. Parents Org. for Children with Special Needs v. Dep't of Educ.*, 23 Cal. App. 4th 144 (Cal. Ct. App. 1994).

Here, the documents requested benefit the public's knowledge and oversight of the Department of Corrections and are not sought for commercial interest. As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLUNV is well situated to disseminate information it gains from this request to the general public as well as to other targeted communities. Dissemination of information to the public is a critical and substantial component of ACLUNV's mission and work.

#### D. Fulfillment of Request

The State of Nevada mandates that all state agency records are public unless declared confidential by law. NRS § 239.010. The Public Records Act favors transparency in government and open access to agency records. The provisions of the Public Records Act must be construed liberally in order to maximize the public's right of access to agency records. NRS § 239.001.

**If all or any part of this request is denied, please provide the ACLUNV with a written statement of the grounds for the denial, citing the law or regulations under which you believe you may deny access for each document.** Furthermore, if you determine that some portions of the requested records are exempt from disclosure, we expect that you provide us with any reasonable severable portion of the records sought.

Please be advised that if any refusal to disclose is based on confidentiality, then "[t]he public official or agency bears the burden of establishing the existence of privilege based upon confidentiality. It is settled that privileges, whether creatures of statute or the common law, should be interpreted and applied narrowly." *D.R Partners v. Board of County Com'rs of Clark County*, 116 Nev. 616, 622 (2000).

Pursuant to state law, we request copies and/or access to these public records be forwarded to the ACLUNV within five (5) business days of this letter, **June 22, 2018.**



**Please forward copies of documents as they are identified, even if production is not fully complete.**

You can contact me directly at (702) 366-1536 or [rose@aclunv.org](mailto:rose@aclunv.org)



Nevada

601 S. RANCHO DRIVE  
SUITE B11  
LAS VEGAS, NV 89106  
P/702.366.1536  
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RENO, NV 89502  
P/775.786.1033  
F/775.786.0805

[WWW.ACLUNV.ORG](http://WWW.ACLUNV.ORG)

Best,

A handwritten signature in black ink that reads "Amy Rose". The signature is written in a cursive, flowing style.

Amy M. Rose  
Legal Director  
American Civil Liberties Union of Nevada

CC: Director James Dzurenda

# EXHIBIT 2

**FILED**

**JUN 19 2018**

*John J. Williams*  
**CLERK OF COURT**

**WARE**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JONATHAN E. VANBOSKERCK**  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**THE STATE OF NEVADA,**  
  
**Plaintiff,**

**-vs-**

**SCOTT RAYMOND DOZIER, aka,**  
**Chad Wyatt, #0927782**

**Defendant.**

**CASE NO: 05C215039**

**DEPT NO: IX**

**THIRD SUPPLEMENTAL WARRANT OF EXECUTION**

**TO: THE SHERIFF OF CLARK COUNTY, NEVADA; and  
THE DIRECTOR OF THE STATE OF NEVADA DEPARTMENT OF  
CORRECTIONS:**

**WHEREAS, on September 25, 2007, SCOTT RAYMOND DOZIER, aka, Chad Wyatt**  
**was found guilty of COUNT 1 – MURDER OF THE FIRST DEGREE WITH USE OF A**  
**DEADLY WEAPON by a duly and legally impaneled jury of twelve persons; and**

**WHEREAS, on October 3, 2007, that same jury returned a verdict of death against**  
**SCOTT RAYMOND DOZIER, aka, Chad Wyatt as to COUNT 1 – MURDER OF THE**  
**FIRST DEGREE WITH USE OF A DEADLY WEAPON; and**

**WHEREAS, on December 20, 2007, SCOTT RAYMOND DOZIER, aka, Chad Wyatt**  
**filed an appeal with the Supreme Court of the State of Nevada; and**

**WHEREAS, on January 20, 2012, the Nevada Supreme Court filed an ORDER**  
**AFFIRMING IN PART, REVERSING IN PART AND REMANDING SCOTT RAYMOND**  
**DOZIER, aka, Chad Wyatt's conviction for MURDER OF THE FIRST DEGREE WITH USE**

1 OF A DEADLY WEAPON, wherein the Supreme Court of the State of Nevada remanded the  
2 matter to the district court to strike the deadly weapon enhancement attendant to the murder  
3 conviction, but affirmed the conviction of MURDER OF THE FIRST DEGREE as well as the  
4 Jury's imposition of the Death Penalty, with an Amended Judgment of Conviction being filed  
5 on June 4, 2012; and

6 WHEREAS, on June 4, 2012, the Court filed an Amended Judgment of Conviction  
7 striking the deadly weapon enhancement attendant to COUNT 1 – MURDER OF THE FIRST  
8 DEGREE; and

9 WHEREAS, on July 27, 2012, SCOTT RAYMOND DOZIER, aka, Chad Wyatt filed  
10 a Petition for Writ of Habeas Corpus (Post-Conviction); and

11 WHEREAS, on October 31, 2016, SCOTT RAYMOND DOZIER, aka, Chad Wyatt  
12 contacted this Court by letter and indicated a desire to cease habeas litigation, waive all post-  
13 conviction and appellate remedies and submit to his sentence of death. SCOTT RAYMOND  
14 DOZIER, aka, Chad Wyatt has consistently maintained this position; and

15 WHEREAS, out of an abundance of caution, this Court ordered a psychological  
16 evaluation of SCOTT RAYMOND DOZIER, aka, Chad Wyatt. Dr. Michael Krelstein  
17 authored a report dated July 9, 2017, that concluded that SCOTT RAYMOND DOZIER, aka,  
18 Chad Wyatt was competent to decide whether to cease habeas litigation, waive all post-  
19 conviction and appellate remedies and submit to his sentence of death; and

20 WHEREAS, the parties have agreed to stay the Petition for Writ of Habeas Corpus filed  
21 on July 27, 2012, in order to facilitate imposition of sentence. The parties have further agreed  
22 that should the STATE OF NEVADA not be able to carry out SCOTT RAYMOND DOZIER,  
23 aka, Chad Wyatt's execution that the stay be lifted and habeas litigation may proceed in the  
24 ordinary course, meaning that SCOTT RAYMOND DOZIER, aka, Chad Wyatt will be in the  
25 same procedural posture as he was before attempting to carry out the execution; and

26 WHEREAS, on November 27, 2017, this Court entered an order enjoining the use of a  
27 paralytic drug in Dozier's execution; and  
28

1           WHEREAS, on June 1, 2018, this Court entered an order vacating the order enjoining  
2 the use of a paralytic drug in Dozier's execution; and

3           WHEREAS, the Court, in which the conviction was had and pursuant to NRS 176.505,  
4 has inquired into the facts and determined that no legal reasons exist against the execution of  
5 the judgment of death, and there being no stay entered as provided for in NRS 176.486 or  
6 176.487 and pursuant to NRS 176.495 has entered a third supplemental order to execute the  
7 judgment and sentence of death,

8           NOW THEREFORE, it is hereby

9           ORDERED that the County Clerk of the County of Clark, State of Nevada, shall  
10 forthwith, execute, in triplicate, under the Seal of the Court, certified copies of the Third  
11 Supplemental Warrant of Execution, the Amended Judgment of Conviction, and of the entry  
12 thereof in the Court Minutes. The original of the triplicate copies of the Amended Judgment  
13 of Conviction, Third Supplemental Warrant of Execution, and entry thereof in the Court  
14 Minutes, shall be filed in the Office of the County Clerk, and two of the triplicate copies shall  
15 be immediately delivered by the Clerk to the Sheriff of Clark County, State of Nevada.

16           IT IS FURTHER ORDERED that one of the triplicate copies be delivered by the Sheriff  
17 to the Director of the State of Nevada Department of Corrections or to such person as the  
18 Director shall designate. The Sheriff is hereby directed to take charge of the said Defendant,  
19 SCOTT RAYMOND DOZIER, aka, Chad Wyatt, and transport and safely deliver the prisoner,  
20 forthwith, to the Director of the State of Nevada Department of Corrections, and said prisoner,  
21 SCOTT RAYMOND DOZIER, aka, Chad Wyatt, is to be surrendered to the custody of the  
22 said Director of the State of Nevada Department of Corrections or to such authorized person  
23 so designated by the Director of the State of Nevada Department of Corrections, in the event  
24 he is not already so imprisoned, for the imprisonment and execution of the said Defendant,  
25 SCOTT RAYMOND DOZIER, aka, Chad Wyatt, in accordance with the provisions of this  
26 Third Supplemental Warrant of Execution.

27           IT IS FURTHER ORDERED that in connection with the above facts and pursuant to  
28 the provisions of NRS 176.345, 176.355, 176.357 and/or 176.495, the Director of the State of

1 Nevada Department of Corrections, or such person as shall by him be designated, shall carry  
2 out said Judgment and Sentence by executing the said SCOTT RAYMOND DOZIER, aka,  
3 Chad Wyatt, by the administration to him, said Defendant, SCOTT RAYMOND DOZIER,  
4 aka, Chad Wyatt, an injection of a lethal drug(s), the drug or combination of drugs to be used  
5 for the execution to be selected by the Director of the State of Nevada Department of  
6 Corrections after consulting with the Chief Medical Officer, *See* NRS 176.355. Said execution  
7 to be within the limits of the State Prison, located at or near Ely, State of Nevada, during the  
8 week commencing on July 9, 2018, in the presence of the Director of the State of Nevada  
9 Department of Corrections, and notify those members of the immediate family of the victim  
10 who have, pursuant to NRS 176.357, requested to be informed of the time, date and place  
11 scheduled for the execution, and invite a competent physician, the county coroner, a  
12 psychiatrist, and not less than six reputable citizens over the age of twenty-one (21) years to  
13 be present at the execution. The Director shall determine the maximum number of persons  
14 who may be present for the execution. The Director shall give preference to those eligible  
15 members or representatives of the immediate family of the victim who requested, pursuant to  
16 NRS 176.357, to attend the execution. The execution must take place at the state prison and a  
17 person who has not been invited by the Director may not witness the execution.

18 ORDERED that said Defendant shall be safely kept and imprisoned by said Director  
19 until the Defendant is put to death by the injection of a lethal drug, or combination of drugs,  
20 and these presents shall be your authority so to do.

21 HEREIN FAIL NOT.

22 WITNESS, the HONORABLE JENNIFER TOGLIATTI, this 19<sup>th</sup> day of June, 2018.

23   
24 DISTRICT JUDGE ML

25 WITNESS my hand and seal this 19<sup>th</sup> day of June, 2018.  
26 STEVEN D. GRIERSON, Clerk

27 BY   
28

# EXHIBIT 3

---

**Subject:** Public Records Request Re: Execution  
**Date:** Friday, June 22, 2018 at 11:47:34 AM Pacific Daylight Time  
**From:** Amy Rose  
**To:** bsantina@doc.nv.gov  
**CC:** Lauren Kaufman  
**Priority:** High  
**Attachments:** PRA\_NDOC\_Execution Drugs\_061518.pdf, image001.png

Hi Brooke,

I'm writing to follow-up on the ACLU of Nevada's June 15th letter requesting multiple documents related to execution drugs and other documents associated with NDOC's execution manual and procedures. I attached the request here again for your reference.

In light of Mr. Dozier's upcoming execution on July 11<sup>th</sup>, compounded by the fact that NDOC plans to amend its previous execution protocol and introduce a new drug to carry out Mr. Dozier's lethal injection, it is imperative to obtain these records immediately.

As requested in our June 15<sup>th</sup> letter, please forward all relevant records to me by the close of business **today, June 22nd**. If you are unable to do so, or plan to deny any part of this request, please let me know immediately in writing. Please feel free to reach out to me if you have any questions about fulfillment of this request. I can be reached via e-mail, my direct line at 702-366-1902, or on my cellphone 626-488-315.

I appreciate your immediate attention to issue of great importance.

Best,

**Amy M. Rose**  
**Legal Director**

ACLU of Nevada  
601 S. Rancho Drive, Suite B11 | Las Vegas, Nevada 89106  
702-366-1536 (phone) | 702-366-1331 (fax)  
[www.aclunv.org](http://www.aclunv.org) | [Facebook](#) | [Twitter](#)

**ACLU**  
Nevada



# EXHIBIT 4

Northern Administration  
5500 Snyder Ave.  
Carson City, NV 89701  
(775) 887-3285

Southern Administration  
3955 W. Russell Rd.  
Las Vegas, NV 89118  
(702) 486-9938



**State of Nevada  
Department of Corrections**

Brian Sandoval  
Governor

James Dzurenda  
Director

Brooke Santana  
Public Information Officer

June 22, 2018

Sent via email to: [rose@aclunv.org](mailto:rose@aclunv.org)

Dear Amy:

Pursuant to Nevada Revised Statutes 239.0107, this letter shall serve as notice that on June 21, 2018 the Nevada Department of Corrections (NDOC) received your correspondence via email which was dated June 15, 2018 in which you request the following:

1. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs since November 9, 2017 from actual or prospective suppliers, distributors and/or manufacturers including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.
2. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs since November 9, 2017 from any other State's Department of Corrections (or otherwise named agency which oversees the state's prison population), or any other State's government or state agency, including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.
3. All records pertaining to any lethal injections drugs obtained since November 9, 2017, including, but not limited to:
  - a. records indicating the current amount of any such drug in NDOC's custody or control;
  - b. the date of purchase or acquisition;
  - c. purchase or acquisition orders;
  - d. licensing information;
  - e. batch number; and
  - f. expiration dates.
4. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and among any NDOC employees that relate to the acquisition or attempted acquisition of lethal injection drugs.
5. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and among NDOC's medical staff relating to lethal injection drugs.

6. All copies or drafts of any proposed or actual edits, since November 9, 2017, to the Nevada Department Corrections Execution Manual or any other policies or procedures related to carrying out and/or preparing for executions in Nevada.

7. All records documenting the maintenance and inspection of the Ely State Prison pharmacy.

8. All records from the Drug Enforcement Agency that demonstrate authorization to handle controlled substances at Ely State Prison.

Your request is being processed. This request is not readily available and requires not only a search of potentially responsive documents but also a review of potentially responsive documents for any confidential, e.g. personal information. Given that the request requires extensive searches and consultation, I anticipate being able to respond to you within sixty (60) days.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brooke Santina", with a stylized, cursive script.

Brooke Santina  
Public Information Officer  
Nevada Department of Corrections

# EXHIBIT 5

---

**Subject:** Re: Public Records Request Re: Execution  
**Date:** Monday, June 25, 2018 at 11:00:18 AM Pacific Daylight Time  
**From:** Amy Rose  
**To:** Brooke Santana  
**CC:** James Dzurenda, Lauren Kaufman, Holly Welborn  
**Priority:** High  
**Attachments:** Ltr to Brook Santana\_06252018\_Re Execution.pdf, image001.png, image002.png

Brooke,

Please see the attached response to your letter. As explained, a sixty (60) day response time is unacceptable in light of Scott Dozier's' July 11th execution, which is just sixteen days away now. Although our June 15, 2018 records request should still be complied with in full, to allow for expedited production we have prioritized and narrowed some requests in the attached. Please provide by the close of business today, June 25, 2018, all readily available and responsive documents to the ACLUNV's requests.

Feel free to call with any questions or concerns. You can reach me on my cell phone, 626-488-3154.

Best,

**Amy M. Rose**  
**Legal Director**

ACLU of Nevada  
601 S. Rancho Drive, Suite B11 | Las Vegas, Nevada 89106  
702-366-1536 (phone) | 702-366-1331 (fax)  
[www.aclunv.org](http://www.aclunv.org) | [Facebook](#) | [Twitter](#)

**ACLU**  
**Nevada**

---

**From:** Brooke Santana <bsantina@doc.nv.gov>  
**Date:** Friday, June 22, 2018 at 2:57 PM  
**To:** Amy Rose <rose@aclunv.org>  
**Cc:** Lauren Kaufman <kaufman@aclunv.org>  
**Subject:** Re: Public Records Request Re: Execution

Amy and Lauren,  
Please see attached 5 day response to your public record request.

Brooke Santana  
Public Information Officer  
Nevada Department of Corrections  
office 775-887-3309  
cell 775-350-0037

Follow us on Facebook <https://www.facebook.com/NevadaDOC>  
and Twitter [https://twitter.com/NV\\_Corrections?cn=Zm9sbG93ZXI%3D&refsrc=email](https://twitter.com/NV_Corrections?cn=Zm9sbG93ZXI%3D&refsrc=email)

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**From:** Amy Rose <rose@aclunv.org>  
**To:** "bsantina@doc.nv.gov" <bsantina@doc.nv.gov>  
**CC:** Lauren Kaufman <kaufman@aclunv.org>  
**Date:** 6/22/2018 11:47 AM  
**Subject:** Public Records Request Re: Execution

Hi Brooke,

I'm writing to follow-up on the ACLU of Nevada's June 15th letter requesting multiple documents related to execution drugs and other documents associated with NDOC's execution manual and procedures. I attached the request here again for your reference.

In light of Mr. Dozier's upcoming execution on July 11<sup>th</sup>, compounded by the fact that NDOC plans to amend its previous execution protocol and introduce a new drug to carry out Mr. Dozier's lethal injection, it is imperative to obtain these records immediately.

As requested in our June 15<sup>th</sup> letter, please forward all relevant records to me by the close of business **today, June 22nd**. If you are unable to do so, or plan to deny any part of this request, please let me know immediately in writing. Please feel free to reach out to me if you have any questions about fulfillment of this request. I can be reached via e-mail, my direct line at 702-366-1902, or on my cellphone 626-488-315.

I appreciate your immediate attention to issue of great importance.

Best,

**Amy M. Rose**  
**Legal Director**

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[www.aclunv.org](http://www.aclunv.org) | [Facebook](#) | [Twitter](#)

**ACLU**

Nevada

June 25, 2018

*Via E-mail, USPS, and Fax*

Brooke Santina  
Public Information Officer  
Nevada Department of Corrections  
P.O. Box 7011  
Carson City, NV 89701  
bsantina@doc.nv.gov  
Fax: 775-887-3253



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LAS VEGAS, NV 89106  
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F/702.366.1331  
ACLUNV@ACLUNV.ORG

1325 AIRMOTIVE WAY  
SUITE 202  
RENO, NV 89502  
P/775.786.1033  
F/775.786.0805

[WWW.ACLUNV.ORG](http://WWW.ACLUNV.ORG)

**Re: Public Records Request Regarding Current or Proposed Execution  
Drugs**

Dear Ms. Santina:

We are in receipt of your June 22, 2018, letter explaining that you do not plan to produce any of the records we requested under NRS §239 *et seq.* pertaining to NDOC's lethal injection drugs and procedures for sixty (60) days. As Scott Dozier's execution is now scheduled to take place on July 11, 2018, which is just **sixteen (16) days away**, that timeline is unacceptable.

The requested information must be provided as soon as possible for the ACLU of Nevada to both properly assess whether Mr. Dozier's execution will take place in a constitutional manner and take appropriate steps if we determine it will not. Moreover, one of ACLUNV's main functions is disseminating information to the public about issues of concern to the ACLUNV and its members. How the state plans to execute Mr. Dozier is of the utmost concern to the ACLUNV and to Nevadans. **Under your proposed schedule, Mr. Dozier will not be alive by the time you produce the requested records.** Due to the rapidly approaching execution date, it is imperative that we receive this information immediately.

Your refusal to provide timely records is especially egregious as this will be the first execution in Nevada in over a decade. The execution is a little over two weeks away, yet NDOC has not formally acknowledged the pending execution through a press release nor has it publicly stated what drugs it will use to carry out Mr. Dozier's execution. The lack of transparency regarding this important matter is troubling.

Although our June 15, 2018 records request should still be complied with in full, to allow for expedited production, the following requests are the priority for production:

1. All records pertaining to any lethal injections drugs obtained since November 9, 2017, including, but not limited to:



AMERICAN CIVIL LIBERTIES UNION

Nevada

601 S. RANCHO DRIVE  
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LAS VEGAS, NV 89106  
P/702.366.1536  
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ACLUNV@ACLUNV.ORG

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F/775.786.0805

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- a. records indicating the current amount of any such drug in NDOC's custody or control;
  - b. the date of purchase or acquisition;
  - c. purchase or acquisition orders;
  - d. licensing information;
  - e. batch number; and
  - f. expiration dates.
2. All copies or drafts of any proposed or actual edits, since November 9, 2017, to the Nevada Department Corrections Execution Manual or any other policies or procedures related to carrying out and/or preparing for executions in Nevada.
3. All records from the Drug Enforcement Agency that demonstrate authorization to handle controlled substances at Ely State Prison.

**At the very least, please produce immediately:**

- a) Records relating to the lethal injection drugs planned to be used in Mr. Dozier's July 11<sup>th</sup> execution, including, the names and quantities of the drugs to be used, and purchase or acquisition orders.
- b) The current Nevada Department of Corrections Execution Manual which will govern Mr. Dozier's July 11<sup>th</sup> execution.

As NDOC plans to go forward with Mr. Dozier's execution in just sixteen (16) days, we see no reason that you should not have readily available both information regarding the specific drugs being used and the execution manual that will govern this execution. (NAC § 239.860 defines "readily available" as "easily retrievable by an officer, employee or agent of the agency who has legal custody or control of the record.").

You are very well aware of both the importance of these records and the public's urgency to be informed about Mr. Dozier's looming execution. Please provide by the close of business **today, June 25, 2018**, all readily available and responsive documents to the ACLUNV's requests. Please provide all other requested information no later than **close of business June 27, 2018**. If you are not able to meet these production dates, please let me know immediately in writing the reasons why you are unable to complete the requests and the exact date that you will provide the requested information.

Your failure to provide readily available documents will constitute a denial under NRS §239 *et seq.* and we will pursue all available legal remedies to obtain the requested information.

If you have any questions, you can contact me directly at (702) 366-1902 or [rose@aclunv.org](mailto:rose@aclunv.org)

Best,





Nevada

A handwritten signature in black ink, which appears to read "Amy Rose". The signature is fluid and cursive.

Amy M. Rose  
Legal Director  
American Civil Liberties Union of Nevada

CC: Director James Dzurenda

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# EXHIBIT 6

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**Subject:** Re: Public Records Request Re: Execution  
**Date:** Thursday, June 28, 2018 at 10:21:34 AM Pacific Daylight Time  
**From:** Amy Rose  
**To:** Brooke Santina  
**CC:** James Dzurenda, Lauren Kaufman, Holly Welborn, Ann McDermott  
**Priority:** High  
**Attachments:** Ltr to Brooke Santina\_06282018\_Re Execution.pdf, image001.png, image002.png, image003.png

Brooke,

Please see the attached letter following-up on the letter I sent to you on Monday. Your timely response to the ACLU of Nevada's records request is vital as you have otherwise completely failed to inform the public about any details of Mr. Dozier's upcoming execution and have offered only misinformation and shifting explanations. To ensure that the State's actions comport with its constitutional responsibilities it is essential that the state proceed with transparency. It is deeply troubling that you are acting otherwise.

The attached letter confirms that the ACLUNV considers your complete failure to provide any timely information about NDOC's lethal injection procedures to be a denial of our requests and we plan to take action accordingly.

If you or anyone else would like to discuss this matter, you can reach me at 626-488-3154.

Best,

**Amy M. Rose**  
**Legal Director**

ACLU of Nevada  
601 S. Rancho Drive, Suite B11 | Las Vegas, Nevada 89106  
702-366-1536 (phone) | 702-366-1331 (fax)  
[www.aclunv.org](http://www.aclunv.org) | [Facebook](#) | [Twitter](#)

**ACLU**  
Nevada

---

**From:** Amy Rose <rose@aclunv.org>  
**Date:** Monday, June 25, 2018 at 11:00 AM  
**To:** Brooke Santina <bsantina@doc.nv.gov>  
**Cc:** James Dzurenda <jedzurenda@doc.nv.gov>, Lauren Kaufman <kaufman@aclunv.org>, Holly Welborn <Welborn@aclunv.org>  
**Subject:** Re: Public Records Request Re: Execution

Brooke,

Please see the attached response to your letter. As explained, a sixty (60) day response time is unacceptable in light of Scott Dozier's July 11th execution, which is just sixteen days away now. Although our June 15, 2018

records request should still be complied with in full, to allow for expedited production we have prioritized and narrowed some requests in the attached. Please provide by the close of business **today, June 25, 2018**, all readily available and responsive documents to the ACLUNV's requests.

Feel free to call with any questions or concerns. You can reach me on my cell phone, 626-488-3154.

Best,

**Amy M. Rose**  
Legal Director

ACLU of Nevada  
601 S. Rancho Drive, Suite B11 | Las Vegas, Nevada 89106  
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Nevada

---

**From:** Brooke Santana <[bsantina@doc.nv.gov](mailto:bsantina@doc.nv.gov)>  
**Date:** Friday, June 22, 2018 at 2:57 PM  
**To:** Amy Rose <[rose@aclunv.org](mailto:rose@aclunv.org)>  
**Cc:** Lauren Kaufman <[kaufman@aclunv.org](mailto:kaufman@aclunv.org)>  
**Subject:** Re: Public Records Request Re: Execution

Amy and Lauren,  
Please see attached 5 day response to your public record request.

Brooke Santana  
Public Information Officer  
Nevada Department of Corrections  
office 775-887-3309  
cell 775-350-0037

Follow us on Facebook <https://www.facebook.com/NevadaDOC>  
and Twitter [https://twitter.com/NV\\_Corrections?cn=Zm9sbG93ZXI%3D&refsrc=email](https://twitter.com/NV_Corrections?cn=Zm9sbG93ZXI%3D&refsrc=email)

*This message, including any attachments, is the property of the Nevada Department of Corrections and is solely for the use of the individual or entity intended to receive it. It may contain confidential and proprietary information and any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient(s) or if you have received this message in error, please contact the sender by reply email and permanently delete it.*

**From:** Amy Rose <rose@aclunv.org>  
**To:** "bsantina@doc.nv.gov" <bsantina@doc.nv.gov>  
**CC:** Lauren Kaufman <kaufman@aclunv.org>  
**Date:** 6/22/2018 11:47 AM  
**Subject:** Public Records Request Re: Execution

Hi Brooke,

I'm writing to follow-up on the ACLU of Nevada's June 15th letter requesting multiple documents related to execution drugs and other documents associated with NDOC's execution manual and procedures. I attached the request here again for your reference.

In light of Mr. Dozier's upcoming execution on July 11<sup>th</sup>, compounded by the fact that NDOC plans to amend its previous execution protocol and introduce a new drug to carry out Mr. Dozier's lethal injection, it is imperative to obtain these records immediately.

As requested in our June 15<sup>th</sup> letter, please forward all relevant records to me by the close of business **today, June 22nd**. If you are unable to do so, or plan to deny any part of this request, please let me know immediately in writing. Please feel free to reach out to me if you have any questions about fulfillment of this request. I can be reached via e-mail, my direct line at 702-366-1902, or on my cellphone 626-488-315.

I appreciate your immediate attention to issue of great importance.

Best,

**Amy M. Rose**  
**Legal Director**

ACLU of Nevada  
601 S. Rancho Drive, Suite B11 | Las Vegas, Nevada 89106  
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[www.aclunv.org](http://www.aclunv.org) | [Facebook](#) | [Twitter](#)

**ACLU**  
Nevada

June 28, 2018

*Via E-mail and Fax*  
Brooke Santina  
Public Information Officer  
Nevada Department of Corrections  
P.O. Box 7011  
Carson City, NV 89701  
bsantina@doc.nv.gov  
Fax: 775-887-3253



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F/775.786.0805

[WWW.ACLUNV.ORG](http://WWW.ACLUNV.ORG)

**Re: Public Records Request Regarding Current or Proposed Execution  
Drugs**

Dear Ms. Santina:

As you are aware I sent correspondence to you on Monday, June 25, 2018 explaining that your proposed sixty (60) day timeline for production of records relating to NDOC's lethal injection drugs and procedures was unacceptable give Mr. Scott Dozier's pending execution on July 11, 2018, now just thirteen (13) days away.

In an effort to expedite at least some of these records, my June 25th letter prioritized and narrowed our original requests. I requested a response no later than close of business on June 27, 2018. As of today, you have failed to produce even one responsive document.

Your timely response to the ACLU of Nevada's records request is vital as you have otherwise completely failed to inform the public about any details of this upcoming execution and have offered only misinformation and shifting explanations. You first claimed the same three drug protocol would be used and that none of the drugs had in fact expired – despite the Nevada Attorney General's representation to the Nevada Supreme Court that the State's supply of Diazepam had expired.<sup>1</sup> Then, just a few days later, you claimed that the protocol was "evolving."<sup>2</sup>

<sup>1</sup> See [https://www.washingtonpost.com/national/judge-oks-nevada-execution-but-questions-about-drugs-remain/2018/06/20/96aa9cde-74bc-11e8-bda1-18e53a448a14\\_story.html?utm\\_term=.4642bb30c214](https://www.washingtonpost.com/national/judge-oks-nevada-execution-but-questions-about-drugs-remain/2018/06/20/96aa9cde-74bc-11e8-bda1-18e53a448a14_story.html?utm_term=.4642bb30c214) (June 20, 2018)(quoting you saying: "The same three drugs. We have some that are not expired."); <https://thenevadaindependent.com/article/nevada-supreme-court-overturns-lower-court-ban-on-using-a-paralytic-in-scott-dozier-execution-citing-procedural-issues> (May 10, 2018)(noting Nevada Attorney General's representation to Nevada Supreme Court that the State's supply of Diazepam had expired)

<sup>2</sup> <http://www.chicagotribune.com/sns-bc-us--nevada-execution-challenge-qa-20180621-story.html>



Nevada

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In the face of this most consequential action of executing Mr. Dozier, you are acting with extreme and unlawful secrecy. You have produced absolutely no information about the lethal injection drugs leaving the public left to wonder about the drugs' sources and their efficacy. The public still does not even know whether the mysterious drug combination was developed with guidance from a medical professional or how staff will be trained and prepared to take on this tremendous responsibility. The public's right to know and perform oversight of NDOC is all the more important here because Mr. Dozier's execution will be the first execution carried out in Nevada since 2006, and will take place in a newly built and untested execution chamber.

To ensure that the State's actions comport with its constitutional responsibilities it is essential that the state proceed with transparency.

It is deeply troubling that you are acting otherwise.

Accordingly, please allow this letter to confirm that the ACLUNV considers your complete failure to provide any timely information about NDOC's lethal injection procedures to be a denial of our requests and we plan to take action accordingly.

If you have any questions, you can contact me directly at (702) 366-1902 or [rose@aclunv.org](mailto:rose@aclunv.org)

Best,

A handwritten signature in black ink that reads "Amy Rose". The signature is fluid and cursive, with the first name "Amy" and last name "Rose" clearly distinguishable.

Amy M. Rose  
Legal Director

American Civil Liberties Union of Nevada

CC: Director James Dzurenda  
Ann McDermott

# EXHIBIT 7



Northern Administration  
5500 Snyder Ave.  
Carson City, NV 89701  
(775) 887-3285

Southern Administration  
3955 W. Russell Rd.  
Las Vegas, NV 89118  
(702) 486-9938



**State of Nevada  
Department of Corrections**

Brian Sandoval  
Governor

James Dzurenda  
Director

Brooke Santana  
Public Information Officer

July 2, 2018

Sent via email to: [rose@aclunv.org](mailto:rose@aclunv.org)

Dear Ms. Rose:

Pursuant to Nevada Revised Statutes 239.0107, this letter shall serve as notice that on June 25, 2018 the Nevada Department of Corrections (NDOC) received your correspondence via email which was dated June 25, 2018 in which you refer to the public record request sent to the PIO office on June 15<sup>th</sup> where you request the following:

1. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs since November 9, 2017 from actual or prospective suppliers, distributors and/or manufacturers including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.
2. All records relating to NDOC's acquisition or attempted acquisition of lethal injection drugs since November 9, 2017 from any other State's Department of Corrections (or otherwise named agency which oversees the state's prison population), or any other State's government or state agency, including, but not limited to correspondence, memorandums, e-mails, and notes, and voice messages.
3. All records pertaining to any lethal injections drugs obtained since November 9, 2017, including, but not limited to:
  - a. records indicating the current amount of any such drug in NDOC's custody or control;
  - b. the date of purchase or acquisition;
  - c. purchase or acquisition orders;
  - d. licensing information;
  - e. batch number; and
  - f. expiration dates.
4. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and among any NDOC employees that relate to the acquisition or attempted acquisition of lethal injection drugs.
5. All records since November 9, 2017, including, but not limited to memorandums, notes, voice messages, text messages, and e-mails, between and

among NDOC's medical staff relating to lethal injection drugs.

6. All copies or drafts of any proposed or actual edits, since November 9, 2017, to the Nevada Department Corrections Execution Manual or any other policies or procedures related to carrying out and/or preparing for executions in Nevada.

7. All records documenting the maintenance and inspection of the Ely State Prison pharmacy.

8. All records from the Drug Enforcement Agency that demonstrate authorization to handle controlled substances at Ely State Prison.

Your request is being processed. This request is not readily available and requires not only a search of potentially responsive documents but also a review of potentially responsive documents for any confidential, e.g. personal information. Given that the request requires extensive searches and consultation, I anticipate being able to respond to you within sixty (60) days.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brooke Santana', with a stylized flourish extending to the right.

Brooke Santana  
Public Information Officer  
Nevada Department of Corrections

# EXHIBIT 8

Case No. 06-00551A

Dept. No. 2

REC'D & FILED

06 APR 24 AM 11:11

BY ALAN GLOVER CLERK  
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

-000-

RENO NEWSPAPERS, INC., a Nevada  
corporation doing business as RENO  
GAZETTE-JOURNAL; and MARTHA  
BELLISLE, an individual,

Petitioners,

vs.

STATE OF NEVADA, ex rel.  
DEPARTMENT OF CORRECTIONS;  
GLEN WHORTON, in his Capacity as  
Director of the Nevada Department of  
Corrections; and WILLIAM DONAT, in his  
Capacity as Warden of the Nevada State  
Prison,

Respondents.

ORDER FOR ISSUANCE OF  
ALTERNATIVE WRIT OF  
MANDAMUS

This Court has reviewed the Petition for Writ of Mandamus for Disclosure of Public Records Pursuant to NRS 239.005, et seq., filed on behalf of the Petitioners on April 20, 2006. Based upon that review, it appears that Petitioners have set forth issues of arguable merit that their request to the Respondents for inspection or copying of a public book or record open to inspection has been denied or that their request has not been a timely response to their request. Pursuant to NRS 239.011 it appears that a Writ of Mandamus should issue:

IT IS THEREFORE ORDERED that an Alternative Writ of Mandamus be issued out of and under the seal of this Court, directed to Respondents, State of Nevada, ex Rel. Department of Corrections; Glen Whorton, in his Capacity as Director of the Nevada

1 Department of Corrections; and William Donat, in his Capacity as Warden of the Nevada  
2 State Prison, commanding them to allow Petitioners to inspect or copy the public books or  
3 records they have requested in their letter of April 10, 2006, or appear before this Court  
4 on the 8th day of May, 2006, at 1:30 p.m., and show cause why a Writ of Mandamus  
5 should not issue compelling such inspection or copying.

6 Both parties or their counsel shall provide the Court with a Memorandum of Points  
7 and Authorities setting forth their respective positions no later than five days prior to the  
8 time the hearing is set in this matter.

9 DATED this 24<sup>th</sup> day of April, 2006.

10  
11   
12 William A. Maddox  
13 District Judge  
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# EXHIBIT 9

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

NEVADA DEPARTMENT OF  
CORRECTIONS,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE JENNIFER  
TOGLIATTI, DISTRICT JUDGE,

Respondents,

and

SCOTT RAYMOND DOZIER,

Real Party in Interest.

Supreme Court Case No.:

Electronically Filed  
Dec 15 2017 02:36 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**\*\*CAPITAL CASE\*\***

**EMERGENCY PETITION FOR WRIT OF MANDAMUS OR  
PROHIBITION UNDER NRAP 21(a)(6) AND NRAP 27(e)**

**ACTION REQUESTED IMMEDIATELY**

**\*\*EXECUTION SCHEDULED FOR NOVEMBER 14, 2017 AT 8:00 P.M.  
HAS BEEN STAYED.\*\***

ADAM PAUL LAXALT

*Attorney General*

ANN M. McDERMOTT (Bar No. 8180)

*Bureau Chief*

JORDAN T. SMITH (Bar No. 12097)

*Assistant Solicitor General*

OFFICE OF THE ATTORNEY GENERAL

555 East Washington Avenue, Suite 3900

Las Vegas, NV 89101

(702) 486-3894

[jsmith@ag.nv.gov](mailto:jsmith@ag.nv.gov)

by NDOC's current protocol, as required by the second prong of the Supreme Court's test.

Instead, the District Court accepted Dozier's "legal team's" effort to fill the evidentiary void left by Waisel. The "legal team" or "defense team" contrived an alternative method of execution using only the first two drugs that have never been used before and are thus not a "known" method of execution. Waisel never endorsed the "alternative" two-drug cocktail and the drafter of NDOC's protocol, Dr. DiMuro, declared that removing the paralytic would actually be less humane and prolong the time to death. Despite this evidence, the lower court struck down NDOC's protocol, directed NDOC to rewrite it without specific medical guidance as to dosages or rates of administration, and ordered NDOC to carry out the execution using this medically unsupported lethal injection protocol in less than three business days. The District Court's ruling is wrong on the Constitution, medicine, and record in this case. Therefore, a writ of mandamus or prohibition must issue to correct the District Court's manifest abuse of discretion and clearly erroneous application of the law.

Without this Court's emergency action, some of the drugs in NDOC's protocol—and the District Court's revised protocol—will begin to expire. Specifically, NDOC's supply of Diazepam expires on May 1, 2018 and its supply of Cisatracurium starts to expire on April 1, 2018. This Court and, potentially, the United States Supreme Court will need to rule with sufficient time for NDOC to obtain a new execution warrant before the drugs begin to expire on April 1, 2018. A new execution warrant