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7 Kent.Scheidegger@cjlif.org

8 Attorney for Petitioners
9 Bradley S. Winchell and Kermit Alexander

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

BRADLEY S. WINCHELL and
KERMIT ALEXANDER,

Petitioners,

vs.

JEFFREY A. BEARD, Secretary,
California Department of Corrections and
Rehabilitation,

Respondent.

Case No.

**VERIFIED PETITION
FOR PEREMPTORY WRIT
OF MANDATE**

1 Petitioners petition this Court for a writ of mandate directed to Respondent
2 JEFFREY A. BEARD, Secretary of the California Department of Corrections and
3 Rehabilitation, and by this petition allege:

4 1. Petitioner BRADLEY S. WINCHELL is a citizen of California and a California
5 taxpayer. His sister, Terri Winchell, was murdered. Michael Morales was convicted of
6 this crime and sentenced to death, and the judgment was affirmed by the California
7 Supreme Court in *People v. Morales* (1989) 48 Cal.3d 527. Petitioner Winchell is a victim
8 of this crime within the meaning of article I, section 28, subdivision (e) of the California
9 Constitution.

10 2. Petitioner KERMIT ALEXANDER is a citizen of California and a California
11 taxpayer. His mother, sister, and nephews, Eboria Alexander, Dietra Alexander, Damon
12 Bonner, and Damani Garner, were murdered. Tiequon Cox was convicted of this crime and
13 sentenced to death, and the judgment was affirmed by the California Supreme Court in
14 *People v. Cox* (1991) 53 Cal.3d 618. Petitioner Alexander is a victim of this crime within
15 the meaning of article I, section 28, subdivision (e) of the California Constitution.

16 3. Respondent JEFFREY A. BEARD is the Secretary of the California Department
17 of Corrections and Rehabilitation (CDCR).

18 4. CDCR is responsible for establishing standards for the execution of sentences of
19 death. (Pen. Code, §§ 3604, subd. (a), 5000.)

20 5. On February 14, 2006, the Federal District Court for the Northern District of
21 California conditionally denied Michael Morales's motion for a preliminary injunction
22 against his execution. The order permitted CDCR to proceed if it adopted a single-drug,
23 barbiturate-only method in lieu of the three-drug method prescribed by the existing
24 protocol. (*Morales v. Hickman* (ND Cal. 2006) 415 F.Supp.2d 1037, 1047, affd. 438 F.3d
25 926.)

26 6. On May 15, 2007, CDCR amended its execution protocol, staying with a three-
27 drug method despite the federal district court order. This protocol was enjoined by the
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1 Superior Court for Marin County for failure to comply with the California Administrative
2 Procedure Act, and the Court of Appeal for the First District affirmed. (*Morales v. CDCR*
3 (2008) 168 Cal.App.4th 729, 732.)

4 7. On April 16, 2009, CDCR published a notice promulgating another three-drug
5 protocol as California Code of Regulations, title 15, sections 3349-3349.4.6. After one
6 revision, the Office of Administrative Law approved the regulations on July 30, 2010. This
7 protocol was again enjoined by the Superior Court for Marin County for failure to comply
8 with the California Administrative Procedure Act, and the Court of Appeal for the First
9 District again affirmed in pertinent part. (*Sims v. CDCR* (2013) 216 Cal.App.4th 1059.)

10 8. On April 26, 2012, in its notice of appeal in the case referred to in paragraph 7,
11 CDCR advised the court, through counsel, that “under the Governor’s direction, [CDCR]
12 will also begin the process of considering alternative regulatory protocols, including a one-
13 drug protocol, for carrying out the death penalty.” Over two and a half years later, no such
14 protocol has been promulgated.

15 9. On information and belief, all reviews of the sentences of Michael Morales and
16 Tiequon Cox have been completed and none are pending. The sentences in these cases
17 have gone unexecuted since 2006 in the case of Morales and since 2011 in the case of Cox
18 solely because CDCR has failed to adopt an execution protocol meeting the requirements
19 established in the decisions referred to in paragraphs 5, 6, and 7.

20 10. On information and belief, Respondent CDCR has already drafted a
21 barbiturate-only protocol in response to the Governor’s direction referred to in paragraph 8,
22 but has failed to take the steps necessary to make it legally available for use.

23 11. On September 16, 2014, Petitioner KERMIT ALEXANDER petitioned CDCR
24 pursuant to section 11340.6 of the Government Code to adopt regulations for lethal
25 injection, both as a permanent regulation through the Administrative Procedure Act and on
26 an immediate, interim basis pursuant to the “operational needs” exception of section
27 5058.3 of the Penal Code. The petition also noted two possible forms of alternate relief
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1 that CDCR might undertake, as permitted by section 11340.7, subdivision (b) of the
2 Government Code. A true and correct copy of the petition is attached as Exhibit A. By
3 letter of October 16, 2014, CDCR denied the petition, stating its reasons for not granting
4 the alternative relief, but giving no reason whatever for denying the petition to promulgate
5 a regulation. A true and correct copy of the denial is attached as Exhibit B.

6 12. On September 17, 2014, Petitioner BRADLEY S. WINCHELL petitioned
7 CDCR pursuant to section 11340.6 of the Government Code to adopt regulations for lethal
8 injection, both as a permanent regulation through the Administrative Procedure Act and on
9 an immediate, interim basis pursuant to the “operational needs” exception of section
10 5058.3 of the Penal Code. The petition also noted two possible forms of alternate relief
11 that CDCR might undertake, as permitted by section 11340.7, subdivision (b) of the
12 Government Code. A true and correct copy of the petition is attached as Exhibit C. By
13 letter of October 16, 2014, CDCR denied the petition, stating reasons for not granting the
14 alternative relief but giving no reason whatever for denying the petition to promulgate a
15 regulation. A true and correct copy of the denial is attached as Exhibit D.

16 13. On October 20, 2014, counsel for Petitioners informed CDCR that the denial
17 was in violation of section 11340.7 of the Government Code for failure to state reasons. A
18 true and correct copy of this letter is attached as Exhibit E. To date Petitioners have
19 received no response.

20 14. As immediate relatives of victims murdered by murderers whose execution is
21 prevented by Respondent’s failure to establish standards, Petitioners are “interested
22 persons” within the meaning of section 11340.6 of the Government Code. Petitioners have
23 an interest over and above that of the general public in that their constitutional right to “a
24 prompt and final conclusion of the case and any related post-judgment proceedings” (Cal.
25 Const., art. I, § 28, subd. (b)(9)), *i.e.*, execution of the judgment, has been violated as well
26 as their “right to an expeditious and just punishment of the criminal wrongdoer.”
27 (Proposition 9 of 2008, § 2.) Petitioners have standing both under general principles of
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1 standing and article I, section 28, subdivision (c)(1) of the California Constitution. In
2 addition, Petitioners as citizens of California have a right shared by all the people that
3 sentences imposed “shall be carried out in compliance with the courts’ sentencing orders”
4 (Cal. Const., art. I, § 28, subd. (f)(5)), and therefore have “public interest” standing.

5 **FIRST CAUSE OF ACTION**

6 **(Failure to Establish Standards Under Penal Code § 3604(a))**

7 15. Petitioners reallege paragraphs 1 through 14 of this petition as though fully set
8 forth herein.

9 16. Respondent has a legal duty under section 3604, subdivision (a) of the Penal
10 Code to establish standards for the administration of lethal injection. By failure for over
11 eight years to establish standards meeting legal requirements to execute judgments,
12 Respondent has violated his duty and abused his discretion.

13 17. Petitioners have a right to have this duty performed, both as beneficially
14 interested as immediate relatives of victims of crimes for which the lawfully imposed
15 sentences are not being carried out and as citizens with a public interest in seeing the law
16 enforced.

17 18. Petitioners have exhausted their administrative remedies by petitioning for a
18 regulation as set forth in paragraphs 11 and 12.

19 **SECOND CAUSE OF ACTION**

20 **(Failure to Provide Reasons in Violation of Government Code § 11340.7(a))**

21 19. Petitioners reallege paragraphs 1 through 14 of this petition as though fully set
22 forth herein.

23 20. Respondent had a legal duty under section 11340.7, subdivision (a) of the
24 Government Code to state the reasons for denial of Petitioners’ petitions for adoption of
25 regulations under the Administrative Procedure Act and the operational needs exception to
26 establish standards for administration of lethal injection. Respondent failed to provide any
27 reason whatever for this aspect of the decision.
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21. Petitioners are “interested persons” within the meaning of section 11340.6, subdivision (a) of the Government Code and had a legal right to an explanation of the reason for the agency’s decision.

WHEREFORE, Petitioners request relief as follows:

1. That a peremptory writ of mandate issue directing Respondent to

(a) promulgate within 30 days a temporary regulation for the administration of the death penalty by lethal injection complying with the requirements established in *Morales v. Hickman* (ND Cal. 2006) 415 F.Supp.2d 1037 under the “operational needs” exception of section 5058.3 of the Penal Code; and

(b) commence within 30 days the procedure for promulgating a permanent regulation for the administration of the death penalty by lethal injection complying with the requirements established in *Morales v. Hickman* (ND Cal. 2006) 415 F.Supp.2d 1037, *Morales v. CDCR* (2008) 168 Cal.App.4th 729, and *Sims v. CDCR* (2013) 216 Cal.App.4th 1059 and complete that procedure before the expiration of the temporary regulation and any extension of it;

2. That a peremptory writ of mandate issue directing Respondent to state why the petitions attached as Exhibits A and C to this complaint were denied regarding promulgation of regulations permanently through the Administrative Procedure Act process and temporarily through the “operational needs” exception of section 5058.3 of the Penal Code.

3. That Petitioners be awarded attorneys' fees;

4. That Petitioners be awarded costs of the suit; and

5. That Petitioners be granted such other and further relief as the court may deem just and equitable.

Dated: November , 2014

By: KENT S. SCHEIDEGGER
Attorney for Petitioners

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VERIFICATION

I, BRADLEY S. WINCHELL, declare as follows:

I am a Petitioner in this action. I have read the foregoing Petition for Peremptory Writ of Mandate and know its contents. The same is true of my knowledge, except as to Paragraphs 2 and 11, which pertain to and are verified by the other Petitioner, and except as to those matters which are stated on information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, 2014, at _____, California.

BRADLEY S. WINCHELL

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VERIFICATION

I, KERMIT ALEXANDER, declare as follows:

I am a Petitioner in this action. I have read the foregoing Petition for Peremptory Writ of Mandate and know its contents. The same is true of my knowledge, except as to Paragraphs 1 and 12, which pertain to and are verified by the other Petitioner, and except as to those matters which are stated on information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, 2014, at _____, California.

KERMIT ALEXANDER

EXHIBIT A

Criminal Justice Legal Foundation



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Hon. Edward Panelli

Legal Director & General Counsel

Kent S. Scheidegger

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September 16, 2014

Dr. Jeffery Beard, Secretary
California Department of Corrections and Rehabilitation
1515 S Street
Sacramento, CA 95811

Re: Petition for Regulation on Execution of Capital Punishment by
Lethal Injection

Dear Dr. Beard:

Pursuant to section 11340.6 of the California Government Code, I, Kermit Alexander, hereby petition for the adoption of a regulation for the execution of capital punishment by lethal injection. I am an "interested person" within the meaning of section 11340.6 in that I am an immediate family member of victims murdered by a person whose sentence of death has been reviewed and affirmed through all of the normal reviews and whose execution has been delayed for three years with no end in sight solely by the failure of the California Department of Corrections and Rehabilitation (CDCR) to have a valid execution protocol in place.

My mother, sister, and nephews were murdered by inmate Tiequon Cox 30 years ago. See *People v. Cox*, 53 Cal.3d 618 (1991). Cox was sentenced to death for these crimes, and all normal reviews of his case were completed three years ago. As an immediate family member of deceased victims, I am a victim of this crime within the meaning of the Victims' Bill of Rights, Article I, Section 28 of the California Constitution, with a constitutional right to finality in the case (subdivision (a)(6)) and a prompt and final conclusion (subdivision (b)(9)). These rights have been violated by CDCR's allowing itself to be enjoined from carrying out its responsibility to execute the sentence in this case and failing to take the necessary corrective action.

Dr. Jeffery Beard, Secretary
September 16, 2014
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Section 3604, subdivision (a) of the Penal Code provides, “The punishment of death shall be inflicted by the administration of a lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections.” This is a legislative command, not an option. CDCR has a duty to establish the standards.

The prior three-drug protocol is unusable for three reasons. Over eight years ago, a Federal District Court conditionally denied (and, therefore, conditionally granted) an injunction against the execution of Michael Morales unless CDCR either had a qualified anesthesiologist participate or adopted a barbiturate-only method. See *Morales v. Hickman*, 438 F.3d 926, 927 and n. 2 (CA9 2006). CDCR neither complied with the conditions nor sought appellate review of them. In the years of litigation since, the situation remains essentially unchanged. The federal court would allow California executions to proceed if CDCR adopted a barbiturate-only method, without the problematic paralytic and potassium chloride steps, but CDCR has inexplicably failed to do so.

Second, earlier protocols have been enjoined under the Administrative Procedure Act, and CDCR has not taken any steps in three years to correct the situation. The Court of Appeal for the First District held that the 2007 lethal injection protocol was a regulation for the purpose of the Administrative Procedure Act (APA) and was not exempt under the “single-prison” exception of Penal Code section 5058, subdivision (c)(1). See *Morales v. CDCR*, 168 Cal.App.4th 729, 739-740 (2008). In a later case, the same court held that the 2010 protocol was not validly adopted under the APA. See *Sims v. CDCR*, 216 Cal.App.4th 1059, 1075 (2013). Despite the dubious nature of these holdings, CDCR did not seek review in the California Supreme Court in either case.

Third, CDCR has failed to establish a new protocol in all the time since these decisions. In its notice of appeal in the second case, CDCR said it “will also begin the process of considering alternative regulatory protocols, including a one-drug protocol, for carrying out the death penalty.” It has now been two and a half years since that statement. There is no apparent reason for taking so long. Other states have adopted new protocols and restarted executions in a fraction of the time. While some of these protocols have been problematic, the single-drug method with

Dr. Jeffery Beard, Secretary
September 16, 2014
Page 3

pentobarbital—the method used to euthanize animals every day—has been used many times without significant difficulties.

On July 31, 2013, the Criminal Justice Legal Foundation made a public records request for the draft protocol. The response of August 9, 2013, claimed that the protocol was exempt from disclosure, effectively admitting it exists. That was over a year ago. Evidently, CDCR is simply sitting on it. This is dereliction of duty. CDCR has an obligation to execute duly imposed and fully reviewed sentences of death. Incapacitating itself by failure to adopt a protocol is not an option that the law allows to the department.

The substance of the regulation requested is a lethal injection protocol that uses only one or more sedatives and does not use a paralytic agent or potassium chloride. Pentobarbital is preferred and should be the first choice, but the protocol should also provide for alternative drugs in the event that the existing conspiracy in restraint of trade prevents the department from obtaining pentobarbital.

CDCR's existing stock of sodium thiopental should be one of the alternatives. Although this stock has reached its nominal expiration date, that date is only a conservative estimate. Actual purity and potency of a drug can be readily determined by testing, and such testing addresses any concerns raised by the expiration date.

The procedure for a permanent regulation should be commenced within 30 days of this letter. In addition, the same protocol should be established simultaneously under the "emergency" provisions of the APA. Under Penal Code section 5058.3, "no showing of emergency is necessary" for CDCR to invoke this expedited procedure. Only an operational need of the department is required. CDCR's duty to carry out executions is such a need beyond serious question.

Section 11340.7, subdivision (b) of the Government Code also provides that an agency may provide other relief. Two methods suggest themselves. In the 2008 decision, the Court of Appeal only held that the particular protocol before it did not qualify for the "single prison" exception. It did not hold that execution protocols generally could not qualify. CDCR could, without significant difficulty, produce an execution protocol covering only the procedures to be carried out within San Quentin and leaving other

Dr. Jeffery Beard, Secretary
September 16, 2014
Page 4

matters to other policies. Second, section 11340.9, subdivision (i) of the Government Code provides that a regulation for specifically named persons is not subject to the APA. Those persons whose sentences have been reviewed and upheld through direct appeal, state habeas corpus, and federal habeas corpus are a known and small set of people. An execution protocol could be established for them by name, and these long overdue executions could be carried out promptly. By whatever method, CDCR needs to enable itself to carry out its legal duties, and it needs to do so promptly.

I request prompt action on this petition. Correspondence may be addressed to:

Kent Scheidegger
Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Sincerely,

A handwritten signature in black ink, appearing to read "Kermit Alexander", with a large, sweeping flourish extending from the end of the signature.

Kermit Alexander

EXHIBIT B

OFFICE OF LEGAL AFFAIRS

Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



October 16, 2014

Mr. Kermit Alexander
c/o Kent Scheidegger, Legal Director
Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Dear Mr. Alexander:

DENIAL OF PETITION FOR REGULATION ON EXECUTION OF CAPITAL PUNISHMENT BY LETHAL INJECTION

Pursuant to Government Code section 11340.7, subdivision (a), this letter acknowledges receipt of your petition (enclosed), received on September 17, 2014, in which you seek adoption of a regulation pertaining to lethal injection, pursuant to Government Code section 11340.6. In your petition, you request the California Department of Corrections and Rehabilitation (CDCR) break up the policies contained in previously disapproved regulations, and move forward with an execution protocol dealing solely with San Quentin State Prison (SQ) under the "single prison" exception in Penal Code section 5058, subdivision (c)(1). You also request CDCR move forward with an execution protocol applying solely to an individual under the "single person" exception in Government Code section 11340.9, subdivision (i). CDCR is unable to proceed as requested and accordingly denies your petition in whole.

As you correctly point out, the court has ruled previous execution regulations were not "single prison" regulations for various reasons. (See *Morales v. CDCR* (2008) 168 Cal.App.4th 729.) Pursuant to that holding, we do not agree that we could draft an execution protocol applying only to SQ that would be the method by which CDCR would execute every condemned inmate in the state, notwithstanding the fact the executions would only take place at SQ. Under *Morales*, this makes it a regulation of general statewide application and the single prison exception would not apply.

You also request CDCR pursue a regulation under the "single person" exception. While that exception does apply to a single person, it also requires the regulation not apply generally throughout the state. (See Government Code section 11340.9, subdivision (i).) A regulation comprising an execution protocol that complies with all the complex legal requirements will not be amenable to change every time a new execution is scheduled. Such an execution protocol would not fall under the single person exception, as it must apply to every condemned person

Mr. Kermit Alexander

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statewide. The plain language of the statute in which the exception is found bars any protocol that has general statewide application.

Pursuant to Government Code section 11340.7, subdivision (d), a copy of this denial and your petition shall be transmitted to the Office of Administrative Law, for publication in the California Regulatory Notice Register, as soon as practicable. Interested persons may obtain a copy of your petition from CDCR by sending a request to petitionrequest@cdcr.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Judi Lemos", with a stylized flourish extending from the end.

JUDI LEMOS

Assistant General Counsel
Office of Legal Affairs

Enclosure

EXHIBIT C

Criminal Justice Legal Foundation



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September 17, 2014

Dr. Jeffrey Beard, Secretary
California Department of Corrections and Rehabilitation
1515 S Street
Sacramento, CA 95811

Re: Petition for Regulation on Execution of Capital Punishment by
Lethal Injection

Dear Dr. Beard:

Pursuant to section 11340.6 of the California Government Code, I, Bradley S. Winchell, hereby petition for the adoption of a regulation for the execution of capital punishment by lethal injection. I am an "interested person" within the meaning of section 11340.6 in that I am an immediate family member of a victim murdered by a person whose sentence of death has been reviewed and affirmed through all of the normal reviews and whose execution has been delayed for eight years with no end in sight solely by the failure of the California Department of Corrections and Rehabilitation (CDCR) to have a valid execution protocol in place.

My sister was murdered by inmate Michael Morales 33 years ago. See *People v. Morales*, 48 Cal.3d 527 (1989). Morales was sentenced to death for this crime, and all normal reviews of his case were completed eight years ago. As an immediate family member of a deceased victim, I am a victim of this crime within the meaning of the Victims' Bill of Rights, Article I, Section 28 of the California Constitution, with a constitutional right to finality in the case (subdivision (a)(6)) and a prompt and final conclusion (subdivision (b)(9)). These rights have been violated by CDCR's allowing itself to be enjoined from carrying out its responsibility to execute the sentence in this case and failing to take the necessary corrective action.

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Dr. Jeffrey Beard, Secretary
September 17, 2014
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September 17, 2014
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I request prompt action on this petition. Correspondence may be addressed to:

Kent Scheidegger
Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Sincerely,



Bradley S. Winchell

EXHIBIT D

OFFICE OF LEGAL AFFAIRS

Benjamin T. Rice
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



October 16, 2014

Mr. Bradley S. Winchell
c/o Kent Scheidegger, Legal Director
Criminal Justice Legal Foundation
2131 L Street
Sacramento, CA 95816

Dear Mr. Winchell:

**DENIAL OF PETITION FOR REGULATION ON EXECUTION OF CAPITAL
PUNISHMENT BY LETHAL INJECTION**

Pursuant to Government Code section 11340.7, subdivision (a), this letter acknowledges receipt of your petition (enclosed), dated September 17, 2014, in which you seek adoption of a regulation pertaining to lethal injection, pursuant to Government Code section 11340.6. In your petition, you request the California Department of Corrections and Rehabilitation (CDCR) break up the policies contained in previously disapproved regulations, and move forward with an execution protocol dealing solely with San Quentin State Prison (SQ) under the "single prison" exception in Penal Code section 5058, subdivision (c)(1). You also request CDCR move forward with an execution protocol applying solely to an individual under the "single person" exception in Government Code section 11340.9, subdivision (i). CDCR is unable to proceed as requested and accordingly denies your petition in whole.

As you correctly point out, the court has ruled previous execution regulations were not "single prison" regulations for various reasons. (See *Morales v. CDCR* (2008) 168 Cal.App.4th 729.) Pursuant to that holding, we do not agree that we could draft an execution protocol applying only to SQ that would be the method by which CDCR would execute every condemned inmate in the state, notwithstanding the fact the executions would only take place at SQ. Under *Morales*, this makes it a regulation of general statewide application and the single prison exception would not apply.

You also request CDCR pursue a regulation under the "single person" exception. While that exception does apply to a single person, it also requires the regulation not apply generally throughout the state. (See Government Code section 11340.9, subdivision (i).) A regulation comprising an execution protocol that complies with all the complex legal requirements will not be amenable to change every time a new execution is scheduled. Such an execution protocol would not fall under the single person exception, as it must apply to every condemned person

Mr. Bradley S. Winchell

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statewide. The plain language of the statute in which the exception is found bars any protocol that has general statewide application.

Pursuant to Government Code section 11340.7, subdivision (d), a copy of this denial and your petition shall be transmitted to the Office of Administrative Law, for publication in the California Regulatory Notice Register, as soon as practicable. Interested persons may obtain a copy of your petition from CDCR by sending a request to petitionrequest@cdcr.ca.gov.

Sincerely,



JUDI LEMOS
Assistant General Counsel
Office of Legal Affairs

Enclosure

EXHIBIT E

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October 20, 2014

Ms. Judi Lemos
Assistant General Counsel
Office of Legal Affairs
Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-001

Dear Ms. Lemos:

We have received your letters of October 16, 2014, denying the petitions submitted by Kermit Alexander and Bradley Winchell regarding regulations for execution of death sentences by lethal injection.

The letters give reasons why CDCR has chosen not to grant two forms of alternative relief suggested in a single paragraph on pages 3 and 4 of the petitions, but they give no reason whatever for denial of the main request in the body of the letter—establishing a permanent regulation through the APA process and a temporary one under the “operational needs” exception.

Giving reasons is not optional. CDCR is in violation of subdivision (a) of section 11340.7 of the Government Code.

Sincerely,

Kent Scheidegger
Attorney for Petitioners

KSS:iha