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**IN THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

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RALPH MENZIES, an individual;  
DOUGLAS STEWART CARTER, an  
individual; TROY KELL, an individual;  
MICHAEL ARCHULETA, an individual,  
TABERON HONIE, an individual

Plaintiffs/Petitioners,

vs.

UTAH DEPARTMENT OF  
CORRECTIONS; UTAH STATE  
CORRECTIONAL FACILITY; BRIAN  
Redd, Director, Utah Department of  
Corrections; SPENCER J. COX, Governor  
of Utah; ROBERT POWELL, Warden,  
Utah State Correctional Facility;  
SPENCER TURLEY, Assistant Deputy  
Executive Director, Utah Department of  
Corrections; TRAVIS KNORR, Training  
Academy Director, Utah Department of  
Corrections; DOES I through X, inclusive,  
in their official capacity,

Defendants.

**Motion to Supplement Third Amended  
Complaint with New Information and  
Relevant Exhibits**

Civil No. 230901995

Judge Coral Sanchez

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## INTRODUCTION

Defendants have argued that information pertaining to the state’s execution process, including which lethal injection drugs it is seeking to obtain, is available to the public via GRAMA. During oral arguments on the motion to dismiss, Defendants asserted that Plaintiffs could acquire information on the intended drugs for execution through a then-pending GRAMA request. *See* Oct. 26, 2023, Oral Arg. Tr.<sup>1</sup>

Over the past year, Plaintiffs have diligently pursued this avenue, specifically seeking information regarding Utah’s efforts to procure lethal injection drugs under GRAMA. Now, having previously disclosed only minimal details about its drug acquisition endeavors, the Utah Department of Corrections (“UDC”) has rejected Plaintiffs’ requests, citing protection under GRAMA. This shift is a result of UDC’s clandestine amendment to an otherwise uncontroversial legislative measure, Senate Bill 109, which protects “identifying information” about personnel involved in executions and the provision of execution drugs and equipment under Utah Code 64-13-27. 2024 Bill Text UT S.B. 109. Citing this revision, UDC has taken the position that all information regarding its drug procurement attempts is protected from public release such that Plaintiffs are not even entitled to the redacted versions of responsive documents in its possession, even if such documents are redacted to omit any newly protected information. UDC overbroadly applies the new secrecy statute to support this position.

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<sup>1</sup> The transcript of the oral argument has been ordered but is not yet available. The citations to the oral argument are taken directly from the audio recording.

This pattern exemplifies Defendants’ longstanding practice of striving to conceal crucial information about the execution process, including the drugs intended for Plaintiffs’ executions, through any means available. Plaintiffs have argued that UDC’s persistent pursuit of secrecy justifies equitable tolling of the statute of limitations. Contradicting its prior stance on the public availability of execution procedures, Defendants have consistently asserted before this Court that information concerning its execution procedures, including the drugs it intends to use, is accessible via GRAMA. However, the recent developments mean that Defendants’ assertions during oral argument, that Plaintiffs could attain information on execution drugs through GRAMA, are no longer accurate, as UDC now maintains that Plaintiffs are entitled to no such information.

### **ARGUMENT**

Over the past year, counsel for Plaintiffs has diligently sought information regarding Utah’s attempts to acquire lethal injection drugs via GRAMA. On March 3, 2023, Plaintiffs filed a GRAMA request seeking any and all information related to UDC’s attempts to obtain lethal injection drugs. Exhibit 1 (Mar. 3, 2023, GRAMA req. and UDC resp.). UDC responded on March 15 that it had “reviewed its files and determined there are no responsive documents to your request.” Exhibit 1 at 3.

This lawsuit was filed on March 23, 2023. Doc. 1. Plaintiffs refiled their GRAMA request on September 25, 2023, again seeking any information related to UDC’s attempts to obtain lethal injection drugs. Exhibit 2 (Sept. 25, 2023, GRAMA req. and UDC resp.). UDC delayed responding to Plaintiffs’ request for almost two months, despite the statute requiring a response within ten business days. Utah Code Ann. § 63G-2-204. During that

delay, this Court heard oral argument on Defendants' motion to dismiss this lawsuit. At the argument, Defendants argued that Plaintiffs had access to information about the drugs UDC was seeking and relied on the fact that counsel for Plaintiffs had a pending GRAMA request seeking such information. Specifically, Defendants' counsel argued the following:

[T]here are other avenues through which Plaintiffs can obtain much of the information they require, and that's through GRAMA. So, the concern I heard expressed was at the last minute, the state, for some unknown reason, is going to execute these individuals through the most painful method possible, and the prisoner wouldn't know the drugs that are being administered to enforce the sentence and to carry out the execution. Well, on October 5, Plaintiffs' counsel sent to the Department of Corrections a GRAMA request, and they asked for documentation related to the Department of Corrections' attempts to obtain Sodium Thiopental, and Pancuronium Bromide, Potassium Chloride, or any other substance the department of corrections is considering using during a lethal injection execution.

Oct. 26, 2023, Oral Arg. Tr.<sup>2</sup> Defendants' counsel then represented to the Court that Plaintiffs could obtain such information through GRAMA. *Id.*

However, at the time of the hearing, UDC had still not released any information pertaining to Plaintiffs' GRAMA request from 31 days earlier. On November 17, 2023, with oral argument out of the way, UDC finally released limited information that indicated it was inquiring with the Drug Enforcement Agency about the legality of obtaining Pentobarbital for use during executions. Exhibit 2 at 18-20. UDC's release is silent about whether UDC has an avenue to obtain Pentobarbital. This release contains information dating as far back as 2011, even though UDC replied to the March 2023 GRAMA request that there were no documents responsive to Plaintiffs' requests. Exhibit 1.

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<sup>2</sup> This quote is taken directly from the audio recording of Defendants' rebuttal argument.

After this disclosure, counsel for Plaintiffs requested of counsel for UDC that the GRAMA request seeking lethal injection drug information remain rolling, and that UDC provide regular updates as responsive information is created. Counsel for UDC responded that they would regularly disclose this information under GRAMA. However, UDC subsequently requested that counsel for Plaintiffs keep submitting new GRAMA requests, rather than maintain a rolling request, while assuring counsel that UDC is “likely to produce new documents [after December 1], particularly with potential executions on the horizon.” Exhibit 2 at 2-3. Plaintiffs refiled their request on December 1, 2023. Exhibit 3 (Dec. 1, 2023, GRAMA req. and UDC resp.). On January 23, 2024, UDC responded that there were no responsive records. Exhibit 3.

On February 14, 2024, counsel for Plaintiffs refiled his GRAMA request seeking updated information about Utah’s attempts to obtain lethal injection drugs. Exhibit 4 (Feb. 14, 2024, GRAMA req. and UDC resp.).

On January 17, 2024, Senate Bill 109, a non-controversial corrections overhaul bill, was introduced in the Utah legislature. During the initial committee hearing, the sponsor, along with Defendant Brian Redd, presented the bill as one that would “help improve[] retention and recruitment, better supervise people on parole, and help people be more successful when they reenter the community and to reduce the number of people who return to prison.” House Law Enforcement and Criminal Committee Hearing, Feb. 7, 2024, at 18:00, <https://le.utah.gov/av/committeeArchive.jsp?timelineID=247798>. On January 31, 2024, an amendment was introduced to the bill without any discussion, debate, or public comment regarding its substance. Exhibit 5 (Corrections Modifications Bill Comparison

versions 2 and 3). This amendment added a secrecy provision to Utah Code 64-13-27 restricting identifying information about the personnel involved in Utah's executions and information about individuals who provide execution drugs to UDC. Exhibit 5 at 19-20. It specifically states that identifying information regarding the people involved in executions or people who are involved in the provision of lethal injection drugs and equipment "is not subject to release through discovery or other judicial process or orders; and [] may not be introduced as evidence in a civil proceeding, a criminal proceeding, an agency proceeding, or any other administrative or judicial proceeding." Exhibit 5 at 19. Defendants did not notify Plaintiffs nor Plaintiffs' counsel about the amendment relevant to their pending GRAMA request.

The bill, as amended, was signed by the governor on February 16, 2024, while Plaintiffs' GRAMA request was still pending. Despite counsel for UDC representing to counsel for Plaintiffs that there are new documents responsive to Plaintiffs' most recent GRAMA request, UDC subsequently denied Plaintiffs' GRAMA request seeking information about its attempts to procure lethal injection drugs, and specifically, what drugs it was attempting to procure. Exhibit 4. That denial is grounded in an overbroad application of the amendment to the statute that UDC was able to covertly pass without any public comment, discussion, or notice to Plaintiffs or their counsel. Exhibit 4 at 1. Plaintiffs have initiated the appeal process under GRAMA, which is ongoing. Exhibit 6 (Administrative Appeal, Mar. 4, 2024).

For over a decade, Defendants have endeavored to withhold from Plaintiffs crucial information about their execution process. As described in Plaintiffs' Motion for Leave to

Amend Complaint, Defendants repeatedly denied GRAMA requests for the execution protocol. Defendants now have clandestinely secured an amendment to the statutory code, arguing that it bars Plaintiffs or any other member of the public from obtaining information regarding Utah's attempts to procure lethal injection drugs. So, despite assuring the Court that Plaintiffs could "proceed[] through statute through GRAMA to obtain the very information that they say is necessary" (Oct. 26, 2023 Oral Arg. Tr.), Defendants purposefully withheld the release of existing, responsive documents in order to wait out the amendment to GRAMA to avoid disclosing crucial information about the state's search for drugs. This perpetuates Defendants' insistence that the State of Utah can execute Plaintiffs without providing them or the public with any information about the execution procedures, including the intended drugs. This secrecy is unprecedented; no other state conceals the drugs intended for use in executions.

When confronted with the fact that Defendants previously argued that this information was publicly available under GRAMA, counsel for UDC suggested that Plaintiffs simply subpoena the redacted information. However, Defendants have consistently opposed Plaintiffs' attempts to obtain discovery in these proceedings. Defendants' arguments before this Court have been disingenuous, and they now seek to withhold crucial basic information from the public and Plaintiffs, including what drugs they seek to use for executions.

Utah's attempts to conceal the drugs intended for Plaintiffs' execution is constitutionally intolerable. This new evidence underscores why Plaintiffs should be entitled to equitable tolling of the statute of limitations, allowing them to use the discovery

process to ascertain the drugs and procedures Defendants intend to employ for their executions.

Plaintiffs hereby move to supplement their third amended complaint to introduce these new allegations and the exhibits attached to this motion. This addition serves to demonstrate UDC's recent obstruction of Plaintiffs' GRAMA requests seeking information about execution procedures.

DATED March 7, 2024.

JON M. SANDS  
Federal Public Defender

/s/ Eric Zuckerman  
Assistant Federal Public Defender



**CERTIFICATE OF SERVICE**

I hereby certify that on March 7, 2024, I electronically filed the foregoing Motion to Supplement Third Amended Complaint with New Information and Relevant Exhibits with the Clerk of the Court by using the Utah Court's ECF electronic filing system and all registered ECF participants were served.

/s/ Daniel Juarez  
Assistant Paralegal