STEVE COOLEY, State Bar Number 056789
District Attorney
PATRICK DIXON, State Bar Number 068130
Assistant District Attorney
GARY HEARNSBERGER, State Bar Number 092698
Head Deputy
MICHELE HANISEE, State Bar Number 187430
Deputy District Attorney
ALLYSON OSTROWSKI, State Bar Number 229153
Deputy District Attorney
Major Crimes Division
210 W Temple Street, Suite 1700
Los Angeles, CA 90012
(213) 974-3800

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. TIEQUON AUNDRAY COX, Defendant.	Case Number: A758447 COMMITMENT AND JUDGMENT OF DEATH, NOTICE OF MOTION AND MOTION FOR ORDER OF EXECUTION USING SINGLE DRUG METHOD AND ORDER TO SHOW CAUSE Date: May 25, 2012 Time: 8:30 a.m. Dept: 100

TO THE HONORABLE PATRICIA SCHNEGG, PRESIDING JUDGE OF THE SUPERIOR COURT OF THE COUNTY OF LOS ANGELES, THE DEFENDANT, TIEQUON AUNDRAY COX AND HIS ATTORNEYS OF RECORD, AND TO THE WARDEN OF THE CALIFORNIA STATE PRISON AT SAN QUENTIN:

The People hereby move this court to order the Warden of the California State Prison at San Quentin to execute condemned inmate, Tiequon Aundray Cox, according to the attached order, or to show cause why such an execution cannot be performed. This Motion is based on the attached Statement of Facts and Points and Authorities and upon any other evidence which may be presented in court at the time of the hearing.

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Summary of Crimes Committed

On August 31, 1984 at 8:00 a.m., fifty-four-year-old grandmother Ebora Alexander stood in the kitchen of her immaculately kept home located at 126 West 59th Street in South Los Angeles. The defendant, Tiequon Cox, a Rollin 60's gang member armed with a .30 caliber military rifle, entered Ebora's residence through the front door.[1] (TT 2993-2994; 3049; 2811.) After walking past the living and dining room, the defendant found Ebora at her kitchen counter. Ebora was still wearing her nightgown and bedroom slippers and preparing her first cup of coffee when the defendant shot her three times in the head. The gunshots caused Ebora's brain to explode out of her skull and onto the kitchen curtains. (TT 2774-2781; 3248.)

After executing Ebora, the defendant walked down the hallway into the bedroom where Ebora's twenty-four-year-old daughter, Dietra Alexander, and Ebora's two grandsons, eight-year-old Damon Bonner and thirteen-year-old Damani Garner, were sleeping. (TT 2720.) The defendant executed each young boy with one shot to the head. Dietra, awakened by the gunshots that killed her sons, had time to scream only once before Cox fired three shots into her head and chest. (TT 2704, 2782-2789.)

The screaming and gunshots woke Dietra's 33 year old brother, Neal, who was sleeping in another bedroom. Neal jumped out of bed and ran towards Dietra's room. As he ran, Neal heard a gunshot and ducked down because he assumed the shot was being fired at him. (TT 2902.) After getting up, Neal saw the back of a man holding a rifle standing in Dietra's bedroom. Neal ran into the room and jumped on the gunman's back. (TT 2902-2903.) The two men went down to the floor near a red trunk that was across from Dietra's bed. During the struggle, Neal was hit in the head with a metal object and fled the room through the back door. (TT 2903-2906.) During the subsequent crime scene investigation, a palm print was lifted from the red trunk and found to be a match to the defendant. (TT 2832-2833; 2861-2862.)

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[1] We know from the statements of co-defendants Horace Burns and Darren Williams (which were not admissible against Cox at his trial), that the motive for the killings was financial gain. The suspects were hired by the owner of the Vermont Club to kill a woman who was suing the club after she was injured in a bar fight. The woman lived two houses down from the Alexander home. The defendants simply misread the address they had been given.

Ivan Scott, the fourteen-year-year old grandson of Ebora and brother to Damon, was also in the house at the time of the killings. Ivan was asleep in the same room as his Uncle Neal when he, too, awoke to the sound of screams and gunshots. (TT 2916-2917.) Terrified, Ivan hid in the bedroom closet. It wasn't until his Uncle Neal came back for him that Ivan left the closet and witnessed the carnage inflicted on his family. (TT 2918.) In a victim impact letter to the trial judge, Ivan recounted, "I had to see it all. I'm in an institution because of what that fool did. He messed my hole [sic] life up." Ivan and Damon's mother also wrote a victim impact letter, stating "at times it seems to me that I have lost two boys instead of one. [Ivan] is so distraught over seeing the victims that he can't sort out in his mind the deaths and what he should do to get on with his life."

A neighbor, Lashawn Driver, testified that just before she heard the gunshots, she observed two African American men walking towards the Alexander house. Less than five minutes later, while standing on her porch, Driver heard two separate volleys of gunshots. (TT 2941-2946.) After the first set of shots, Driver observed co-defendant Darren Charles Williams (aka "CW" from the Rolling 60's) walk out from the side of the Alexander house. (TT 2946; 2950.) After the second set of shots, Driver saw Cox running from the Alexander house with a rifle in his hands. (TT 2947-2950.)

Another neighbor, Venus Webb, testified that she was inside her residence (located directly across the street from the Alexander home) when she heard several gunshots. (TT 2960-2962.) She, too, saw Cox walking from the Alexander house to a waiting van which then fled the location. (TT 2962-2963.)

That van was owned and driven by Ida Moore. Moore testified at trial, as did her front seat passenger, Delisa Brown. Both women testified that Williams and another Rolling 60's gang member named Horace Burns (aka "Horse") were at Moore's residence earlier that morning. (TT 3035-3036.) Williams used Moore's telephone to make a telephone call. Shortly thereafter the defendant arrived. Williams asked Moore to drive them to a location so Williams could pick up some money that he was owed by a girl. (TT 3036-3037.) Moore agreed, and the three men (Williams, Burns and Cox) all sat in the back passenger compartment of her van as she drove. (TT 3039.)

As they left Moore's house, there was some discussion about gas money, but none of the three men had any money to give Moore. Accordingly, Moore used her own two dollars to gas up the van. (TT

3040-3042; 3106-3107.) Although she saw no firearms while the men were at her residence, Moore did notice a large gun in the back of the van when they stopped for gas. (TT 3040; 3043.) After fueling her van, Moore followed Williams's directions and drove to a residential location. Upon their arrival, Brown heard one of the men say, "to kill everyone in the house." (TT 3111) Moore heard Williams say, "We are going to go in there, kick in the door and scare them up and shoot them up." Neither Burns nor Cox objected to these instructions. (TT 3089.)

Moore parked the van about thirty-five feet away from the Alexander house and left the engine running. (TT 3046-3047; 3050-3051.) Williams and Cox exited the van but Burns remained in the van with the two women. As they exited, Williams removed a pistol from his waistband and Cox held a rifle wrapped in a light blue jacket. (Crime scene investigator Doreen Music recovered a light blue jacket from the front porch of the Alexander residence.) (TT 3045-3049; 3113; 3168-3169.) As Moore watched Williams and Cox walk towards the Alexander house, she asked Burns what they were going to do. Burns said, "They just going to go shoot it up." (TT 3049-3050.) After a few minutes and the sound of gunshots, Williams ran back to the car with the pistol still in his hand. (TT 3051; 3114.) A few minutes after that, Cox came running back, still carrying the rifle. As Cox entered the van, he said, "I just blew that bitch's head off." (TT 3051-3053; 3090-3091; 3116-3118.)

Moore was directed to drop all three men off at the Vermont Club, a little over a mile from the crime scene. At this time, Cox and Williams still had their respective weapons. (TT 3054-3055; 3066-3067; 3119-3120.) Later that day, Brown agreed to drive Williams's car from Moore's house to the Vermont Club. (TT 3122-3126.) When she arrived at the club, she observed Williams handing the rifle to Cox over a fence. (TT 3124-3125.) Cox placed the rifle into the trunk of Williams's car, and then drove Williams's car (with only him and Brown in it) to an apartment building on 10th Avenue and Hyde Park. (TT 3125-3126.) At this location, Brown saw Cox remove the gun from the trunk, wrap it in a black jacket with red stripes, and go inside the complex. Cox returned approximately ten minutes later without either the gun or jacket. (TT 3126-3128.)

Although none of the three men were able to provide Moore with any money for gas on the morning of the murders, later that same day, Williams gave $55 to Moore and $20 to Brown. (TT 3065; 3131.) At approximately 1:00 p.m. that day, witness Perry Kendrix observed Cox purchase a 1975

yellow Cadillac for $3,000 cash at Figueroa Automobile (where Mr. Kendrix worked as a mechanic). (TT 3188-3190.) One week later, on September 6, 1984, Los Angeles Police Officer Roger Blackwell observed Cox driving a 1975 yellow Cadillac. (TT 3195.)

Witness James Kennedy testified that the defendant showed up at his apartment complex located at 10th Avenue and Hyde Park with a gun wrapped in a black jacket with red stripes. (TT 2979; 2980; 2982-2983.) Kennedy knew the defendant in two respects: (1) Cox had dated Kennedy's sister; and (2) Kennedy had recently joined the defendant's gang. (TT 2979-2980; 2944.) Kennedy knew the defendant by the name "Little Fee." (TT 2978.) Cox told Kennedy to get rid of the gun and have his sister wash the jacket because it had gun powder on it. (TT 2983-2985.) Kennedy then saw Cox leave the location in a brown car with a female passenger. (TT 2988.) Kennedy gave the jacket to his sister, but did not get rid of the gun. (TT 2985.) About two or three hours later, Kennedy saw Cox and Burns return to his apartment complex where they hung out for the rest of the day. (TT 2988-2989.) At this time, Cox asked Kennedy what he had done with the gun. Kennedy told Cox that the gun was inside his residence. Cox told Kennedy to get the gun out of the house. Kennedy later put the gun in some bushes behind his apartment complex. (TT 3105.) Approximately one month later, when police conducted a narcotics raid near Kennedy's apartment complex they arrested Kennedy and recovered the hidden gun. (TT 2998; 3026-3027.)

After the murders but before the defendant's arrest, witness Cassandra Haynes saw him at the Los Angeles County Jail while she was visiting her child's father. (TT 3200-3201.) Haynes lived across the street from James Kennedy and knew the defendant. (TT 3199.) When she encountered the defendant at this time, he asked her, "Did the police get that gun that James had?" (TT 3201-3202.)

Firearms expert Jimmy Trahin identified the rifle as a .30 caliber M-1 carbine with a thirty round magazine, collapsible wire stock extension, and forearm grip, which was designed for paratroopers in combat situations. (TT 2812.) Trahin testified that he examined the bullets and casings found at the crime scene as well as the rifle that Cox had given to James Kennedy. (TT 2818-2819.) The casings from the crime scene were the same kind of ammunition that was found loaded in the rifle when it was seized. (TT 2818-2819; 3027.) The rifle was conclusively found to be the weapon used to murder Dietra, Damon and Damani. (TT 2817.)

In the penalty phase of trial, the People presented evidence of the defendant's prior criminal conduct. Specifically, on April 7, 1981, when the defendant was sixteen-years-old, he physically attacked twelve-year-old Preston Taylor who was walking home from the bus after school. Cox walked straight up to Taylor and punched him in the face causing Taylor to fall to the ground. Cox demanded Taylor's money, and when Taylor said he did not have any, the defendant started digging in Taylor's pockets. The defendant and his accomplices repeatedly kicked Taylor until a man driving down the street saw the attack and stopped to intervene. (TT at 3492-3500.)

After attacking Taylor, the defendant and his accomplices moved on to thirteen-year-old James Love and 14-year-old Gerald Penney. Cox hit both Love and Penny with a broomstick. After the attack, both Love and Penney were robbed of 60 cents and a gold chain, respectively. (TT at 3501-21.) While Penney was able to break free and run for help, Cox and his accomplices continued to hit Love until an adult broke up the assault. (TT at 3510-14.)

On May 18, 1981, the defendant and his accomplice committed an armed carjacking against Rosalyn Lebby. At approximately 1:30 p.m., Lebby drove to Hyde Park Elementary School to pick up her eight-year-old son. She had a little black poodle in the car with her. While her son was getting into the car, Cox approached the car with a gun in his hand. Cox's accomplice came up to the driver's side of the car, told Lebby to get out and leave her purse and the dog. Lebby went around the car to get her son out of the car. As she did this, Cox told her, "I got your ass." Lebby ran toward a day care center across the street from the school to report the robbery. Lebby then saw Cox and his companion drive around the block and park in a nearby alley. Seeing they were still nearby, Lebby decided to go get her dog. When Lebby reached the alley, Cox began walking towards her with the gun down by his side, frightening Lebby into retreating. (TT at 3435-62.)

Shortly thereafter Officer Ronald Ryerson pursued Lebby's vehicle for twenty-nine minutes at speeds reaching ninety miles per hour. During the chase, Cox, who was driving, drove between two vehicles stopped at a light and careened off another vehicle without even slowing. Cox also hit a parked car but continued his flight. Cox came to a stop only after crashing into a telephone pole at which point he got out of the car and started running. After the Cox was apprehended, the car was searched by Officer Samuel Brown who found a loaded .32-caliber revolver on the driver's floorboard. (TT at 3467-91.)

Tiequon Aundray Cox Trial and Direct Appeals

On January 18, 1985, an Information numbered A758447 was duly filed in the Superior Court of the State of California by the District Attorney of Los Angeles County, charging Tiequon Aundray Cox with four counts of murder in violation of California Penal Code §187. As to each count, the Information charged the special circumstance of multiple murders under Penal Code §190.2(a)(3). On February 1, 1985, defendant was duly arraigned, entered a plea of not guilty to the charges and denied the special circumstances alleged in the Information.

On November 25, 1985, the case came to trial and the selection of the jury was commenced. On December 17, 1985, the trial jury and four alternates were impaneled and sworn. On January 7, 1986, evidence was duly presented to the trial jury as to the issues raised by defendant's plea of not guilty and his denial of the special circumstance charged in the Information, and thereafter argument was made to said trial jury by the prosecution (defendant waived closing argument) and the court instructed said jury as to the applicable law of the case.

On January 21, 1986, the trial jury rendered a verdict of guilty on all four counts of murder, fixed the degree of murder in the first degree, and found the special circumstances as set forth in the Information to be true.

On January 29, 1986, pursuant to *Penal Code* §190.3, evidence was presented on behalf of the People and the defendant as to whether the penalty shall be death or life imprisonment without possibility of parole. Following arguments of both counsel and instruction of law by the court, on February 18, 1986, the trial jury did return a finding that the penalty shall be death.

On April 30, 1986, the defendant's motion for new trial and modification of the verdict and finding imposing the death penalty were heard by the court and said motions were denied.

On April 30, 1986, defendant's counsel stated there was no legal cause why sentence should not be pronounced, and the court pronounced judgment as follows:

> Tiequon Aundray Cox, it is the judgment and sentence of this court that for the offense of murder of victim Ebora Alexander, as charged count 1 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be

death and this court on this date having denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Dietra Alexander charged in count 2 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Damani Garner charged in count 3 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Damon Bonner charged in count 4 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Should for any reason and in any case defendant become the subject of consideration for parole or some related procedure, the court further states that it is the court's belief that the defendant is a danger and a

> menace to society; that he is vicious and presently apparently without moral fiber, willing to prey on the weak and helpless and kill the innocent and murder children even for some personal or transitory gain and would, upon opportunity, kill again without provocation were it to bring him some immediate satisfaction. It is the court's opinion he should never be released to the public streets in his lifetime...
>
> The defendant is remanded to the care, custody and control of the Sheriff of Los Angles County to be delivered to the Warden of the State Penitentiary at San Quentin within ten days from the date hereof, in the usual course of his duties; for which you have been found guilty and the special circumstances having been found to be true, to be held by him pending the final determination of your appeal in this matter, which is automatic, as I have stated; and said sentence to be executed upon final determination of said appeal, and you are to be held by him during said period of time, until further order of this court...The defendant is remanded as indicated by the order.

On an automatic appeal to the Supreme Court of the State of California, in the case of *People v. Tiequon Aundray Cox*, Criminal Case No. S004711, decided on May 2, 1991, the judgment of the Superior Court imposing death for the crimes of murder in the first degree as alleged in the Information and with the alleged special circumstance was affirmed.

On January 21, 1992, defendant's petition for writ of certiorari to the United States Supreme Court in the case of *Cox v. California*, Case Number 91-6205 was denied.

On July 23, 1997, defendant's petition for writ of habeas corpus to the Supreme Court of the State of California in the case of *In re Tiequon A. Cox*, Case Number S044014 was denied.

On February 13, 2002, defendant's second petition for writ of habeas corpus to the Supreme Court of the State of California in the case of *In re Tiequon Aundray Cox*, Case Number S082898 was denied.

On March 15, 2007, the defendant's petition for writ of habeas corpus to the United States District Court, Central District of California in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. CV 92-3370-CBM was denied.

On appeal from the judgment entered by United States District Court, Central District of California, the United States Court of Appeals, Ninth Circuit in the published decision of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 07-99010 (cited as 613 F.3d 883), affirmed the District Court's judgment on December 10, 2009.

On July 22, 2010, defendant's petition for hearing and rehearing en banc to the United States

Court of Appeals, Ninth Circuit regarding the published decision in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No 07-99010 was denied.

On July 22, 2010, the United States Court of Appeals, Ninth Circuit amended its published decision without altering its judgment in *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 07-99010, cited as 613 F.3d 883 and issued a memorandum disposition denying three claims that had been certified for appeal but were not specifically addressed in the Court's published opinion.

On February 9, 2011, the United States Court of Appeals, Ninth Circuit in the case of *Tiequon Aundray Cox v. Robert L. Ayers,* Case No. 07-99010, cited as 414 Fed. Appx. 80, amended its July 22, 2010 memorandum disposition without altering its judgment and denied defendant's petition for hearing and rehearing en banc directed at the three claims addressed in the memorandum disposition.

On October 3, 2011, defendant's petition for writ of certiorari to the United States Supreme Court in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 11-5255 was denied. [Exhibit A: Supreme Court of the United States Order.]

The judgment and sentence of defendant Cox has now become final and the remittitur from the Supreme Court of the State of California has been returned to this Court. [Exhibit B: Remittitur.]

There is, at this time, no stay of execution pending in any court of the State of California, Supreme Court of the United States, or Circuit Court of the United States.

California's Execution Protocol

California's Execution Protocol is Operational Procedure 770 ("OP 770") codified as California Code of Regulations Title 15, Division 3, Subchapter 4, Article 7.5, "Administration of Death Penalty," §§ 3349 through 3349.4.6. [Exhibit C: OP 770.] OP 770 requires the sequential administration of three drugs: (1) sodium thiopental, a barbiturate, which renders the inmate unconscious; (2) pancuronium bromide, a paralytic, which prevents possible seizures during the administration of the third drug; and (3) potassium chloride, which causes cardiac arrest, thus stopping the heart.

Morales Lawsuit in District Court

On February 10, 2006, after being scheduled for execution on February 21, 2006, condemned

inmate Michael Morales filed a lawsuit in the U.S. District Court, California Northern District (*Morales v. Tilton*, Case No. 3:06-cv-00926-RS) alleging that California's execution protocol violated the Eighth Amendment prohibition against cruel and unusual punishment. Plaintiffs alleged that the three-drug protocol creates an unreasonable risk of infliction of pain and suffering because an insufficient dose of the first drug could result in the inmate reawakening after administration of the second drug but being paralyzed and unable to communicate and that the inmate would then experiencing extreme pain during the administration of the third drug.

Mitchell Sims eventually intervened in the lawsuit, as did condemned inmates Stevie Lamar Fields and Albert Greenwood Brown. During the course of the lawsuit, defendant James E. Tilton, Acting Secretary of the California Department of Corrections and Rehabilitation, was replaced by his successors to that position, Roderick Q. Hickman and thereafter, Matthew Cate.

On February 14, 2006, Federal District Judge Jeremy Fogel "conditionally denied" a preliminary injunction against the execution of Morales and made the following order.

> Accordingly, and good cause therefor appearing, Plaintiff's motion for a preliminary injunction is conditionally DENIED. Defendants may proceed with the execution scheduled for February 21, 2006, provided that they do one of the following:
>
> 1) Certify in writing, by the close of business on Thursday, February 16, 2006, that they will use only sodium thiopental or another barbiturate or combination of barbiturates in Plaintiff's execution.
>
> 2) Agree to independent verification, through direct observation and examination by a qualified individual or individuals, in a manner comparable to that normally used in medical settings where a combination of sedative and paralytic medications is administered, that Plaintiff in fact is unconscious before either pancuronium bromide or potassium chloride is injected. Because Plaintiff has raised a substantial question as to whether a person rendered unconscious by sodium thiopental might regain consciousness during the administration of pancuronium bromide or potassium chloride, the presence of such person(s) shall be continuous until Plaintiff is pronounced dead.

[Exhibit D: Morales v. Hickman, "Order Denying Conditionally Plaintiff's Motion for Preliminary Injunction."] Absent compliance with these conditions, the court ordered that a, "stay of execution will issue without the necessity of further proceedings." The state chose to employ the three-drug method with monitoring by anesthesiologists. Inmate Morales appealed the conditional order to the Ninth Circuit

which **held that the District Court did not abuse its discretion in modifying the lethal injection protocol**. *Morales v. Hickman* (9th Cir. 2006) 438 F.3d 926.

> The district court's modification of Protocol No. 770, relying in large part on the testimony of Morales' own expert, attempted to accommodate Morales' objections and cure the perceived constitutional infirmities. The district court exercised its equitable powers to "preserve[ ] both the State's interest in proceeding with [Morales'] execution and [Morales'] constitutional right not to be subject to an undue risk of extreme pain."

Morales, supra, at p. 930. However, the Court of Appeal construed the order as requiring that the anesthesiologist, "have the authority to take 'all medically appropriate steps" to insure Morales' unconsciousness at the time the third drug was administered. Feeling that the modification of their role from observers to participants would violate their Hippocratic oath, the anesthesiologists retained by the state declined to participate in the execution. CDCR then sought approval from the court to proceed using only sodium thiopental and the execution was rescheduled to a later time the same day. The court issued a stay, noting that although the single drug option would have been available if CDCR had elected that option initially, the attempt to switch execution methods only hours before the execution deprived the plaintiffs of a meaningful opportunity for review. [Exhibit E: Morales v. Tilton, "Memorandum of Intended Decision; Request for Response from Defendants," p. 6-7.]

Thereafter, Judge Fogel ordered the state to review and revise its execution protocol. The Governor's Office directed CDCR to revise its protocol and to consider alternatives to the existing three-drug method, including a one-drug method of execution. [Exhibit F, p. 2.] On May 15, 2007, the state published its "State of California Lethal Injection Protocol Review" [Exhibit F.] which again, employed a three-drug method. At the time, no state had yet adopted a single-drug protocol. The state reissued a revised OP 770 which, after an initial rejection and revision, was approved by the Office of Administrative Law (OAL) on July 30, 2010. [Exhibit C.]

Meanwhile, in March 2008, the United States Supreme Court upheld Kentucky's three-drug execution protocol in *Baze v. Rees* (2008) 553 U.S. 35. The basis of the challenge to Kentucky's protocol was the same as the challenge to California's protocol: that the improper administration of the first drug could leave the inmate paralyzed, but suffering extreme pain at the time of administration of the third drug. Petitioner proposed alternative methods including the elimination of the second drug, pancuronium

bromide, or a single drug method using a barbiturate (the method used by veterinarians to euthanize animals) The court found that the use of the second drug served the purposes of (1) preventing involuntary seizures, thus preserving the dignity of the execution and (2) hastening death. Regarding the suggested single-drug protocol, the court noted that the three-drug protocol served the legitimate interest providing a quick, certain death. The two dissenters in the opinion noted that California's execution protocol had additional safeguards not used in Kentucky's protocol to monitor the effectiveness of the sodium thiopental. The Supreme Court found that it would be error to grant a stay if a state's method is at least as good as Kentucky's.

Subsequent to the *Baze* decision, two states adopted a single-drug protocol. In 2009, Ohio adopted a single-drug protocol and used it to execute condemned inmate Kenneth Biros. Ohio has since carried out 14 more successful executions. Ohio's protocol [Exhibit G: Ohio Department of Rehabilitation and Correction execution protocol] calls for the use of five grams of pentobarbital and includes as a back-up, the administration of an additional five grams of pentobarbital.

On March 8, 2010, while an Eighth Amendment challenge to its three-drug protocol was pending before the Washington Supreme Court, the state of Washington adopted a single-drug protocol. Washington's three-drug protocol used the same three drugs as California's protocol. Washington changed its protocol to eliminate the use of pancuronium bromide and potassium chloride (which the Plaintiff's to the lawsuit claimed were the drugs that caused the risk of unnecessary pain and suffering) and switched to a single drug method that uses sodium thiopental only. *Brown v. Vail* (2010) 169 Wash.2d 318. On July 29, 2010, the Washington Supreme Court dismissed the challenge of inmate Cal Coburn Brown to the three drug protocol because according to the plaintiff, the first two drugs were what caused the risk of pain and suffering. As there was no claim that sodium thiopental alone would cause pain and suffering, the use of that drug alone rendered plaintiff's claims moot. *Id.* at p. 42.

> This change in policy goes to the crux of the Appellants' constitutional challenge, which focuses on the risk of a very painful death if the sodium thiopental does not fully produce unconsciousness when the pancuronium bromide and potassium chloride take effect. [citations omitted]. **The Department argues that the Appellants' claims are now moot because execution by sodium thiopental alone does not pose this risk, so "there is no cruel punishment," ergo "no constitutional violation."** Reply to Resp. to Mot. to Dismiss as Moot at 3. . . .

> In a similar case, the Sixth Circuit Court of Appeals held that a challenge to Ohio's three-drug lethal injection protocol became moot upon that state's adoption of the one-drug protocol. *Cooey v. Strickland,* 588 F.3d 921, 923 (6th Cir.2009). **The same conclusion must follow here: the Appellants' constitutional claim regarding the Department's use of three drugs in its lethal injection protocol is moot in light of the Department's abandonment of that protocol.**

Id. at. 336-337 [emphasis added].

Brown filed for stays with the Ninth Circuit Court of Appeals [Exhibit H: Sims v. CDCR - Docket] and the United States Supreme Court (see *Brown v. Vail* (2010) 131 S.Ct. 58; *Brown v. Washington* (2010) 131 S.Ct. 58). Those courts denied the applications for a stay and Brown was executed on September 10, 2010.

Once California's revised protocol was approved by the OAL, the Riverside County District Attorney obtained an execution date of September 29, 2010, for condemned inmate, Albert Greenwood Brown. The selected date was shortly before the state's then-existing supply of sodium thiopental[2] reached its expiration on October 1, 2010. During a status conference on September 21, 2010, Judge Fogel requested information from CDCR regarding the adjustments to the protocol that would be needed to perform a single drug execution and the time needed to do so. [Exhibit I: Morales v. Hickman: Order Requesting Supplemental Briefing.] **CDCR acknowledged that it was capable of performing a single drug execution.** [Exhibit J: Morales v. Hickman: Defendant's Response to Court's Inquiries.] "Defendants' Responses to Court's Inquiries."] In its response to the court's inquiry, CDCR stated that it would increase the sodium thiopental dosage from three grams to five grams and omit the portions of the protocol for administration of the other two drugs. [Exhibit J, p. lines 17-28.] CDCR also requested at least three days notice to enable the execution to team to conduct training prior to such an execution. [Exhibit J, p. 2.]

On September 24, 2010, Judge Fogel granted Brown leave to join the Morales lawsuit and issued another conditional denial of stay, similar to the one issued for Morales four years earlier. (*Morales v. Cate* (2010) 2010 WL 3751757.) The conditions were that Brown could choose the single-drug method,

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[2] An additional complication to the ability of California and other states to perform executions was the decision of Hospira, the only U.S. manufacturer of sodium thiopental, to discontinue manufacture of the drug. Many states have since switched to the use of pentobarbital, which is a comparable barbiturate.

and that if he did, "Defendants shall carry out the execution in accordance with Cal.Code Regs. Tit. 15, §§ 3349, et seq., except that they shall do so using sodium thiopental only and in the quantity and in the manner described in their submission dated September 23, 2010." [Exhibit K: Morales v. Cate: Order Granting Motion for Leave to Intervene; and Denying Conditionally Intervenor's Motion for Stay of Execution.] On September 26, 2010, Brown appealed the order to the Ninth Circuit. Although the Ninth Circuit had previously upheld a similar order as to Morales, on September 28, with only two days left to perform an execution before the state's existing supply of sodium thiopental expired, the court ruled that the district court's order as to Brown was invalid. *Morales & Brown v. Cate* (9th Cir. 2010) 623 F.3d 828. The court had the following to say about the last-minute efforts to proceed with the execution before the state's supply of sodium thiopental expired.

> There is a dispute whether the State has sufficient supply to implement such an option. In addition, the State advises that its current supply of sodium thiopental has an expiration date of October 1, 2010. Further the state has understandably not adopted procedures or implemented training on the one-drug option and claims it would need *at least three days* to do so. Despite the best intentions on the part of the district court to fashion a compromise and a choice of methods here, imposing on Brown such a choice between the new three-drug protocol and a one-drug option never adopted by the State places an undue burden on Brown and is beyond the power and expertise of the district court *at this juncture*. The result in this case should not be driven by compromise nor by the State's deadlines superimposed on the district court's already pending review of the new execution protocol.

Id. at p. 831 [emphasis added]. The Ninth Circuit remanded the matter to the district court with instructions to determine whether an execution conducted using the three-drug protocol then in effect would be permissible under the new *Baze* standard.

On November 16, 2010, at a hearing in the district court, **the Deputy Attorney General representing the state and CDCR represented that they would not be requesting any further execution dates until conclusion of the federal litigation.**

> THE COURT: I just want to get clarification from the State, and I think if I have understood the State's position correctly then there shouldn't be any problem.
>
> What I read in the latest papers filed by the State is that the Attorney General's Office is not going to request any execution dates until either the court has determined this matter or until the conclusion of the evidentiary hearing and there are time frames that are attached to those.

> And the caveat, which is simply a statement of the law, is you can't control what local District Attorneys do. But I took from the filing that there will be some conversation about that, that the State will not – we don't have a repeat of the situation we have with Mr. Brown if it's at all avoidable.
>
> Is that a fair reading of where the state is?
>
> MR. GOLDMAN: Well, that's correct in that we are making this representation in order to comport with the court's expectation.

[Exhibit L: Morales v. Cate: Transcript of Proceedings, November 16, 2010, p. 3, lines 24 – p. 4, line 16.] The court, however, recognized that the agreement could not control what local District Attorneys do. [Exhibit L, p. 4, line 5-7.] During the hearing, Judge Fogel expressed his intent to resolve the matter expeditiously saying, "I think in order for everybody's interest to be met here, and what I'm committed to is getting the challenges to the lethal injection practices in California resolved soon, within the next few months." [Exhibit L, p. 13, lines 18-22.]

As recently as February 14, 2011, **CDCR again acknowledged that it is fully capable of performing a single-drug execution**. [Exhibit M: Morales v. Cate: "Notice of Motion and Motion for Protective Order."]

> **"Further, Defendants admit that a one-drug method is feasible, and readily available if regulations allowing for this method are adopted pursuant to California law."**

[Exhibit M, p. 1, footnote 1.]

> "...[T]he feasibility and availability of using a high dose of only sodium thiopental for an execution is not in dispute in this case."

[Exhibit M, p. 7, lines 24-26.]

In September of 2011, Judge Fogel was taken off the *Morales* case and the matter was reassigned to Judge Richard Seeborg. On November 3, 2011, Judge Seeborg approved a stipulated discovery schedule that extends into August of 2012.

The Sims Lawsuit in the Superior Court, County of Marin

On August 2, 2010, three days after the Office of Administrative Law (OAL) approved the revised OP 770, Sims, Morales, Brown and Cooper filed a Complaint for Declaratory and Injunctive Relief in the Superior Court, County of Marin, alleging that the state and CDCR failed to comply with the

Administrative Procedure Act (APA) in enacting OP 770. Among the allegations was that the state failed to meaningfully consider a single-drug protocol.

The APA (California Government Code §§ 11340 et seq.) establishes the procedures by which state agencies may adopt regulations. The agency must give public notice of its proposed regulation; issue a complete text of the proposed regulation with a statement of reasons for each clause of the proposed regulation; provide a complete text of the proposed regulation to all persons who have requested notice; give interested parties an opportunity to comment on the proposed regulation; respond in writing to all public comments; and forward a file of all materials on which the agency relied in the regulatory process to the Officer of Administrative Law which reviews the regulation for consistency with the law, clarity, and necessity. *Tidewater Marine Western Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568. One purpose of the APA is to ensure that those persons or entities whom a regulation will affect will have a voice in its creation. *Id.* at p. 568.

On December 19, 2011, Marin Superior Court Judge Faye D'Opal granted partial summary judgment, finding that CDCR had not complied with the APA. [Exhibit N: Sims v. CDCR, "Final Ruling re Plaintiff's Motion for Summary Judgment."] Among the reasons cited by the court was the state's failure to meaningfully consider alternatives to the three-drug protocol such as a single-drug protocol. [Exhibit N, p. 2-6.]

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POINTS AND AUTHORITIES

I.

THE TRIAL COURT HAS JURISDICTION TO COMPEL OBEDIENCE TO ITS JUDGMENTS AND ORDERS

A.

WHEN ALL APPEALS ARE EXHAUSTED AND A REMITTITUR ISSUES, JURISDICTION RETURNS TO THE TRIAL COURT.

California Code of Civil Procedure § 1265 subdivision (a) states that, "After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect shall be made by the court to which the certificate is remitted."

Penal Code § 1193 specifically confers upon the trial court the authority to reimpose and pronounce a sentence of death after the remittitur is issued.

> . . . [W]hen any judgment imposing the death penalty has been affirmed by the appellate court, sentence may be reimposed upon the defendant in his or her absence by the court from which the appeal was taken, and in the following manner: upon receipt by the superior court from which the appeal is taken of the certificate of the appellate court affirming the judgment, the judge of the superior court shall forthwith make and cause to be entered an order pronouncing sentence against the defendant, and a warrant signed by the judge, and attested by the clerk under the seal of the court, shall be drawn, and it shall state the conviction and judgment and appoint a day upon which the judgment shall be executed, which shall not be less than 60 days nor more than 90 days from the time of making the order; and that, within five days thereafter, a certified copy of the order, attested by the clerk under the seal of the court, and attached to the warrant, shall, for the purpose of execution, be transmitted by registered mail to the warden of the state prison having the custody of the defendant and certified copies thereof shall be transmitted by registered mail to the Governor; and provided further, that when any judgment imposing the death penalty has been affirmed and sentence has been reimposed as above provided there shall be no appeal from the order fixing the time for and directing the execution of the judgment as herein provided.

P.C. 1193. *People v. Rittger* (1961) 55 Cal.2d 849, holds that following affirmance, the superior court's jurisdiction is limited to, "do only those things required by law toward ultimate execution of the judgment" and not to reconsider the judgment. (*Rittger*, supra at p. 852.)

B.

THE TRIAL COURT HAS THE AUTHORITY TO ORDER THE WARDEN OF SAN QUENTIN TO PERFORM AN EXECUTION.

California Code of Civil Procedure § 128, subdivision (a) provides, "Every court shall have the power . . . (4) To compel obedience to its judgments, orders and process . . . ." C.C.P. §187 confers on a court of proper jurisdiction, "all means necessary" to carry its orders into effect.

> When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, *all the means necessary* to carry it into effect are also given; and in the exercise of this jurisdiction, *if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.*

C.C.P. 187 [emphasis added]. This includes the authority to adopt "any suitable process or mode" to effectuate the court's orders. These sections apply to both civil and criminal cases. (See e.g., *People v, Hyde* (1975) 49 Cal.App.3d 97, 103 (applying these sections in a criminal case); *People v. Ainsworth* (1990) 217 Cal.App.3d 247, 254 ("section 187 applies in criminal proceedings").)

The Supreme Court addressed the application of section 187 in the context of a capital case, in *People v. Gonzalez* (1990) 51 Cal.3d 1179. While Gonzalez had both an appeal and a habeas corpus petition pending in the Supreme Court, he asked the trial court for an order of postjudgment discovery. The Supreme Court held, "The trial court lacked jurisdiction to order 'free floating' postjudgment discovery when no criminal proceeding was then pending before it." *Id.* at p. 1256. Endorsing the reasoning of *People v. Ainsworth*, supra, the court went on to hold:

> Once a criminal proceeding is final *in the trial court*, that court's subsequent direct jurisdiction over the case is strictly limited by statute and by the appellate remittitur. (See e.g. §§ 1193, 1265; C.C.P. § 916,

> subd. (a); *People v. Rittger* (1961) 55 Cal.2d 849, 852. Nothing remains pending in the trial court to which its discovery authority may attach.)

Id. at p. 1257 (italics in original).

Just as the trial court *lacks* jurisdiction during the appellate process, once the remittitur is issued jurisdiction returns to the trial court to make all orders necessary to carry the judgment into effect. (*Ainsworth, supra,* 217 Cal.App.3d at p. 255, citing Penal Code § 1193 and 1265: "Jurisdiction of the trial court upon issuance of the remittitur is limited to the making of orders necessary to carry the judgment into effect.")

Based upon the above authorities, it is clear that once the remittitur is issued, jurisdiction returns to the trial court to make all orders necessary to carry out the judgment and sentence of death, and, as stated in C.C.P. § 187, "*if the course of proceeding may not be specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted.*"

Normally the Superior Court would do nothing more than set a date and leave to CDCR the task of determining how to perform the execution. However, in the absence of a validly enacted protocol, the task falls on the court having jurisdiction to make all orders necessary to carry out the judgment of death, including the "suitable process or mode" by which the execution is to occur. The litigation in federal district court has resulted in a situation where executions can go forward with a one-drug method, but not a three-drug method. CDCR has also conceded that they are capable, with three days notice, of performing an execution using a one-drug method. [Exhibit F]. *Tidewater Marine Western Inc. v. Bradshaw* (1996) 14 Cal.4th557, which is discussed at length in the following section of this brief, tells us that a court can and should order enforcement of the underlying statute notwithstanding the inability of the government agency in question to enact a valid regulation. The Ninth Circuit in *Morales v. Hickman, supra*, recognized that the district court had the inherent authority to exercise its equitable powers by specifying a "suitable process or mode" of execution.

> The issue presented in this case is a narrow one. Morales does not challenge the constitutionality of the death penalty in general nor even the constitutionality of lethal injections in particular. His only claim is that Protocol No. 770 as currently implemented in California, and as modified by the district court, violates the Eighth and Fourteenth Amendments. However, we need not decide this broad issue, but need only determine whether the district court's modification of Protocol No. 770 was an abuse of discretion in light of the court's findings of fact.
> . . . .

> The district court's modification of Protocol No. 770, relying in large part on the testimony of Morales' own expert, attempted to accommodate Morales' objections and cure the perceived constitutional infirmities. **The district court exercised its equitable powers to "preserve[ ] both the State's interest in proceeding with [Morales'] execution and [Morales'] constitutional right not to be subject to an undue risk of extreme pain.**"

Morales v. Hickman, supra, at p. 929-930 [emphasis added].

II.

WHEN AN AGENCY CHARGED WITH ENFORCING THE LAW IS UNABLE TO DO SO BECAUSE ITS REGULATION IS INVALID UNDER THE APA, THE COURT MUST CRAFT A REMEDY ON A CASE-BY-CASE BASIS.

A.

THE STATE AND CDCR ARE UNABLE TO PERFORM AN EXECUTION UNDER THE CURRENT PROTOCOL.

As a practical matter, the state cannot use the three-drug protocol because although the state has a sufficient supply of sodium thiopental, we have been informed that the state does not have any of the second drug, pancuronium bromide.

Moreover, the state is legally unable to perform a three drug execution because the execution protocol (OP 770) was found to be an invalid regulation by Judge D'Opal in the *Sims* lawsuit. The state has been legally enjoined from performing executions *pursuant to OP 770*, "unless and until these prospective, separate documents/regulations have been drafted and approved following successfully completion of the APA review and public comment process. . . ." [Exhibit N., p. 8, § 9.] The last time the state undertook that process was when directed to do so by Judge Fogel on December 15, 2006. The final regulation was not approved by the OAL until over three years later on July 30, 2010. If the state began the process of drafting a new regulation now, by the time it is approved by the OAL, the state's existing supply of sodium thiopental will have expired. (The existing supply reaches its expiration date in

May of 2014.) There is no longer a U.S. manufacturer of sodium thiopental. Hospira, the only U.S. manufacturer, discontinued making the drug specifically to prevent its use in executions. CDCR's existing supply was obtained from a supplier in Great Britain, but since that time the European Union has passed regulations banning the export of any drugs for use in executions.

Finally, CDCR and the Attorney General have made representations in the Morales lawsuit that *they* will not seek execution dates until the litigation in that case is final. [Exhibit H, p. 3-5.] Meanwhile, the state and CDCR continue with the Morales litigation over the constitutionality of an execution protocol that the state is physically unable to perform, which requires drugs that are no longer readily available, and which has been held invalid under the APA.

But as Judge Fogel recognized on the record in the Morales lawsuit, *the District Attorneys cannot legally be prevented from setting execution dates.* [Exhibit H, p. 4, line 5-7.]

B.

BECAUSE THE REGULATION HAS BEEN FOUND INVALID, THE APPROPRIATE REMEDY IS FOR THIS COURT TO ENFORCE THE LAW BY ORDERING CDCR TO PERFORM EXECUTIONS ON A CASE BY CASE BASIS.

California Penal Code § 190 states that the punishment for murder in the first degree shall be death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. Penal Code § 3604 describes the method of execution:

> (a) 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.
> (b) Persons sentenced to death prior to or after the operative date of this subdivision shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. This choice shall be made in writing and shall be submitted to the warden pursuant to regulations established by the Department of Corrections. If a person under sentence of death does not choose either lethal gas or lethal injection within 10 days after the warden's service upon the inmate of an execution warrant issued following the operative date of this subdivision, the penalty of death shall be imposed by lethal injection.

> (c) Where the person sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate again shall have the opportunity to elect to have punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subdivision (b).
>
> (d) Notwithstanding subdivision (b), if either manner of execution described in subdivision (a) is held invalid, the punishment of death shall be imposed by the alternative means specified in subdivision (a).

At present, the laws of this State (Penal Code §§ 190 and 3604) are not being enforced by the agency designated to do so (CDCR). The regulation (OP 770) drafted by CDCR and approved by the OAL was ruled invalid in the Marin Superior Court for failure to follow all APA requirements in its enactment.

In the case of OP 770, the extensive, detailed and onerous requirements of an *administrative code* are being used to thwart enforcement of the *law*. **However, even in the absence of a valid *regulation*, the law remains in force and *enforceable* on a case-by-case basis.**

In *Tidewater Marine Western Inc. v. Bradshaw* (1996) 14 Cal.4th557, 577, the Supreme Court rejected an interpretation of the APA whereby an agency's invalid regulation, "would undermine the legal force of the controlling law." The issues in *Tidewater* were (1) whether certain offshore oil workers who worked twelve hour shifts fell under an enforcement policy promulgated by the Division of Labor Standards Enforcement (DLSE) that interpreted a wage order of the Industrial Welfare Commission (IWC) which required overtime pay for work in excess of eight hours; (2) was the wage order a "regulation" subject to APA rules for enactment; and (3) if so, was the regulation valid under the APA? The Supreme Court determined that the regulation was subject to the APA but was *invalid* because it had been promulgated without going through APA required procedures.

Nevertheless, the Supreme Court held that while the DLSE's policy was void, the underlying wage orders were *not* void and that, "***Courts must*** enforce those wage orders just as they would if the DLSE had never adopted its policy." *Tidewater* at. p. 577 [emphasis added]. Thus, the Supreme Court found that the appropriate remedy was for the *court* to enforce the underlying law because failure to do so would create a situation wherein a *law* became invalid, because the agency's regulation interpreting the law was invalid.

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> **If, when we agreed with an agency's application of controlling law, we nevertheless rejected that application simply because the agency failed to comply with the APA, then we would undermine the legal force of the controlling law. Under such a rule an agency could effectively repeal a controlling law simply by reiterating all its substantive provisions in improperly adopted regulations.**

Tidewater at p. 577. Also see *Morningstar Company v. State Board of Equalization et al.* (2006) 38 Cal.4th 324, 340.

When a court makes an order to enforce the law in a specific case, the court's ruling is not a "regulation" by a government "agency" such that it is subject to the APA. The APA defines "'regulation'" as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Cal. Gov. Code § 11342.600.) **"[I]nterpretations that arise in the course of case-specific adjudications are not regulations. . . ."** *Tidewater* at. p. 571, citing *Bendix Forest Products Corp. v. Division of Occupational Saf. & Health* (1979) 25 Cal.App.3d 303, 309-310. Furthermore, Government Code § 11340.9 subdivision (a) states, "This chapter does not apply to any of the following: (a) An agency in the judicial or legislative branch of the state government."

The result in Tidewater was that although the *regulation* was held invalid, the remedy was for the court to enforce *the underlying law* without deference to the agency or the invalid regulation. The court's own interpretation and enforcement of the law produced the exact same result as if the regulation had been valid. Although the court must form its order without regard to the invalid regulation, "agencies may provide private parties with advice letters, which are not subjected to the rulemaking provisions of the APA." *Tidewater,* at p. 571. Additionally, the court can direct the agency to impose the law without reliance on the department's invalid regulation. *Morningstar, supra,* at p. 341.

The *Tidewater* rule has been applied in the quasi-criminal context of a Sexually Violent Predator commitment where significant due process rights were at stake. In *In re Ronje* (2009) 179 Cal.App.4th 509, petitioner challenged his commitment, claiming that the standardized assessment protocol which was used to evaluate petitioner was an invalid underground regulation under the APA. The Court

of Appeal found that the assessment protocol was, in fact, invalid under the APA, but held that the remedy, despite the attachment of significant due process rights, was not dismissal of the petitioner's case, but rehearing of the matter by the trial court without reliance on the invalid protocol.

Although *Tidewater* was not specifically cited by the court in the *Morales* lawsuit, the district court did, in fact, make an order permitting the execution of a particular condemned inmate (Morales) that deviated from the allegedly flawed regulation. In light of plaintiff's claim that the three-drug protocol violated the Eighth Amendment, the court found that the proper remedy was not that the plaintiff escape the punishment imposed by the State, but that the sentence be carried out in a way that did not violate the Eighth Amendment.

> The fact that Plaintiff has raised such questions does not mean that he must be granted a stay of execution. The State's "strong interest in proceeding with its judgment," *Gomez v. U.S. Dist. Ct. N.D. Cal.*, 503 U.S. 653, 654 (1992), is no less important here than it was in *Cooper* and *Beardslee* . . . . At best Plaintiff would be entitled to injunctive relief requiring the State to modify its lethal-injection protocol to correct the flaws Plaintiff has alleged. Presumably, at some point, Plaintiff would be executed.
>
> Having given the matter much thought, the Court concludes that it is within its equitable powers to fashion a remedy -- set forth below as the order of the Court -- that preserves both the State's interest in proceeding with Plaintiff's execution and Plaintiff's constitutional right not to be subject to an undue risk of extreme pain.

[Exhibit D: Morales v. Hickman: Order Denying Conditionally Plaintiff's Motion for Preliminary Injunction, February 14, 2006, p. 12, lines 6 - 18.] That order was appealed to the Ninth Circuit which upheld the order.

> The district court's modification of Protocol No. 770, relying in large part on the testimony of Morales' own expert, attempted to accommodate Morales' objections and cure the perceived constitutional infirmities. The district court exercised its equitable powers to "preserve [ ] both the State's interest in proceeding with [Morales'] execution and [Morales'] constitutional right not to be subject to an undue risk of extreme pain.

Morales v. Hickman (9th Cir. 2006) 438 F.3d 926, 930 [brackets in original].

> The district court did not abuse its discretion in fashioning a remedy that would alleviate the substantial concerns it found with the way Protocol No. 770 was being implemented.

Morales v. Hickman (9th Cir. 2006) 438 F.3d 926, 930.

III.

THE COURT SHOULD ORDER CDCR TO PERFORM THE EXECUTION USING A SINGLE DRUG METHOD.

A.

A SINGLE-DRUG EXECUTION THAT USES A MASSIVE DOSE OF A BARBITURATE OR COMBINATION OF BARBITURATES IS EFFECTIVE AND PAINLESS.

In all the legal attacks on the three-drug protocol used by most states, in the Morales lawsuit, in *Baze v. Rees,* and in *Brown v. Vail*, the plaintiffs have alleged that a single-drug execution method that eliminates the use of pancuronium bromide and potassium chloride, would eliminate the risk of unnecessary pain and suffering. Likewise in the Sims lawsuit, the primary attack on the regulation was that the state failed to meaningfully consider a single-drug method of execution when enacting OP 770.

> In the context of lethal injection, sodium thiopental and pancuronium, if successfully delivered into the circulation in larges doses, would indeed each be lethal because they would stop the inmates breathing.

[Exhibit O: Declaration of Dr. Mark Heath - Morales v. Hickman: Plaintiff's Motion for Temporary Restraining Order: Memorandum of Points and Authorities in Support Thereof, January 26, 2006, p. 6, lines 26-28.]

> I agree with the statement of the CDC that the doses of sodium thiopental and potassium chloride are lethal doses.

[Exhibit O: Declaration of Dr. Mark Heath - Morales v. Hickman: Plaintiff's Motion for Temporary Restraining Order, January 26, 2006, p. 23, lines 21-22.]

> [T]he administration of five grams of sodium thiopental by itself would be lethal in almost anyone.

[Exhibit O: Declaration of Mark Dershwitz, dated February 3, 2004 - Morales v. Hickman: Plaintiff's Motion for Temporary Restraining Order: Memorandum of Points and Authorities in Support Thereof, January 26, 2006, p. 4, line 4-5.]

CDCR's own expert, John W. McAuliffe, who was part of the Lethal Injection Protocol Review Team who drafted the 2007 Lethal Injection Protocol Review [Exhibit F], testified during a deposition in the *Morales* lawsuit that he had recommended a single-drug method to CDCR when the new protocol was being drafted.

> Q: What suggestions did you make as far as how many drugs to use in the lethal injection protocol?
>
> A: Single drug.
>
> Q: You made a suggestion to use a single drug?
>
> A: Yes.

[Exhibit P: People v. Tilton, Case No. C 06 0219 & C 06 926: Deposition of John W. McAuliffe, Sep. 19, 2007, p. 190, lines 14-18.]

The district court made findings during the *Morales* lawsuit that a single-drug execution could effectively be performed using a massive dose of a barbiturate, and made an order that permitted CDCR to perform such an execution.

> This Court and others have found persuasive the declaration of Defendant's medical expert, Dr. Mark Dershwitz, to the effect that "over 99.999999999999% of the population would be unconscious within sixty seconds from the start of the administration [five grams of] thiopental sodium" and that "this dose will cause virtually all persons to stop breathing within a minute of drug administration.

[Exhibit D: Morales v. Hickman: Order Denying Conditionally Plaintiff's Motion for Preliminary Injunction, February 14, 2006, p. 8, line 27 - p. 9 - line 1 (brackets in original).]

Judge Fogel's 2006 order in *Morales* permitted a single-drug method of execution as one of two options. The order stated:

> Defendants may proceed with the execution scheduled for February 21, 2006, provided they do one of the following:
>
> 1. Certify in writing by the close of business on Thursday, February 16, 2006, that they will use only sodium thiopental or another barbiturate or combination of barbiturates in Plaintiff's execution.
>
> 2. Agree to independent verification, through direct observation and examination by a qualified individual or individuals, in a manner comparable to that normally used in medical settings where a combination of sedative and paralytic medications is administered, that

> Plaintiff in fact is unconscious before either pancuronium bromide or potassium chloride is injected.

[Exhibit D: Morales v. Hickman: Order Denying Conditionally Plaintiff's Motion for Preliminary Injunction, February 14, 2006, p. 13, line 20 - page 14, line 4.]

> As detailed in many of the Court's prior orders, sodium thiopental is painless and, in the amounts at issue here, virtually always fatal.

[Exhibit Q: Morales v. Cate: Order Following Remand, Sep. 28, 2010, footnote 7.]

The three states that have adopted a single-drug execution method (Washington, Ohio and Arizona) have collectively performed at least eighteen successful executions using sodium thiopental or a comparable barbiturate.

B.

CDCR IS CAPABLE OF PERFORMING

A SINGLE-DRUG EXECUTION.

Based on the assertion by the plaintiffs in *Morales* that a single-drug method would eliminate the risk of undue suffering during an execution, Judge Fogel inquired of CDCR about its ability to perform an execution using a single-drug method. In its response to the court's inquiry, CDCR represented that it is able to perform an execution using a single drug method. [Exhibit J: "Defendants' Responses to Court's Inquiries."] CDCR stated that it would increase the sodium thiopental dosage from three grams to five grams and omit the portions of the protocol for administration of the other two drugs. CDCR also requested at least three days notice to enable the execution team to conduct training prior to such an execution. [Exhibit J, p. 2.]

As recently as February 2011, CDCR reiterated its ability to perform an execution using a single drug method. [Exhibit I, p. 1, footnote 1 and p. 7, lines 24-26.]

> Further, Defendants admit that a one-drug method is feasible, and readily available if regulations allowing for this method are adopted pursuant to California law.

[Exhibit M, p. 1, footnote 1.]

> [T]he feasibility and availability of using a high dose of only sodium thiopental for an execution is not in dispute in this case.

[Exhibit M, p. 7, lines 24-26.]

C.

A SINGLE-DRUG EXECUTION USING A MASSIVE DOSE OF A BARBITURATE OR COMBINATION OF BARBITURATES DOES NOT VIOLATE THE EIGHTH AMENDMENT.

Prior to ordering the two conditional stays of execution in the Morales lawsuit that permitted CDCR to perform an execution using a three drug method with an anesthesiologist or by a single drug method, Judge Fogel conducted an extensive review of the methods of execution by lethal injection. In the "Memorandum of Intended Decision; Request for Response from Defendants," Judge Fogel discussed how the court had "undertaken a thorough review of every aspect of the protocol . . . reviewed a mountain of documents, including hundreds of pages of legal briefs, expert declarations, and deposition testimony, and it has conducted five days of formal hearings, including a day at San Quentin Prison that involved a detailed examination of the execution chamber and related facilities." [Exhibit E., p. 3.] In the Memorandum of Intended Decision, Judge Fogel said the following.

> [B]ecause the constitutional issues presented by this case stem solely from the effects of pancuronium bromide and potassium chloride on a person who has not been properly anesthetized, removal of these drugs from the lethal-injection protocol, with the execution accomplished solely by an anesthetic, such as sodium thiopental, would eliminate any constitutional concerns, subject only to the implementation of adequate, verifiable procedures to ensure that the inmate actually receives a fatal dose of the anesthetic.

Judge Fogel's order, allowing the executions to proceed using a single drug method, was appealed to the Ninth Circuit Court of Appeals which held that the order was a proper exercise of the court's jurisdiction.

> The district court's modification of Protocol No. 770, relying in large part on the testimony of Morales' own expert, attempted to accommodate Morales' objections and cure the perceived constitutional infirmities. **The district court exercised its equitable powers to "preserve[ ] both the State's interest in proceeding with [Morales'] execution and [Morales'] constitutional right not to be subject to an undue risk of extreme pain."**

Morales v. Hickman (9thCir. 2006) 438 F.3d 926.

The single-drug execution method has been successfully implemented in Washington and Ohio who have, between them, performed fifteen executions. Washington's single-drug method is identical to the method proposed by CDCR and consists of a single massive dose of sodium thiopental. *Brown v. Vail,* at p. 336. The decision of the Washington Supreme Court, allowing executions by a single drug method in *Brown v. Vail, supra,* was appealed to the Ninth Circuit Court of Appeals and the United States Supreme Court who both denied the request for a stay of execution. (*See* Exhibit H; *Brown v. Vail* (2010) 131 S.Ct. 58; and *Brown v. Washington* (2010) 131 S.Ct. 58.) Brown was executed using a single drug method.

The order by Judge Fogel in the *Morales* lawsuit that permitted CDCR to execute Morales using a single-drug was upheld by the Ninth Circuit.

On March 8, 2010, while an Eighth Amendment challenge to its three-drug protocol was pending before the Washington Supreme Court, the state of Washington adopted a single-drug protocol. Washington's three-drug protocol used the same three drugs as California's protocol. Washington changed its protocol to eliminate the use of pancuronium bromide and potassium chloride and switched to a single drug method that uses sodium thiopental only. *Brown v. Vail* (2010) 169 Wash.2d 318. On July 29, 2010, the Washington Supreme Court dismissed the challenge of inmate Cal Coburn Brown to the three drug protocol because according to the plaintiff, the first two drugs were what caused the risk of pain and suffering. As there was no claim that sodium thiopental alone would cause pain and suffering, the use of that drug alone rendered plaintiff's claims moot. *Id.* at p. 42.

> This change in policy goes to the crux of the Appellants' constitutional challenge, which focuses on the risk of a very painful death if the sodium thiopental does not fully produce unconsciousness when the pancuronium bromide and potassium chloride take effect. [citations omitted]. **The Department argues that the Appellants' claims are now moot because execution by sodium thiopental alone does not pose this risk, so "there is no cruel punishment," ergo "no constitutional violation."** Reply to Resp. to Mot. to Dismiss as Moot at 3. . . .
> In a similar case, the Sixth Circuit Court of Appeals held that a challenge to Ohio's three-drug lethal injection protocol became moot upon that state's adoption of the one-drug protocol. *Cooey v. Strickland,* 588 F.3d 921, 923 (6th Cir.2009).
>
> **The same conclusion must follow here: the Appellants' constitutional claim regarding the Department's use of three drugs in its lethal injection protocol is moot in light of the Department's abandonment of that protocol.**

Id. at. 336-337 [emphasis added]. Cal Coburn Brown was executed on September 10, 2010. His last words were, "I only killed one victim."

In *Towery v. Arizona,* death row inmates brought an Eighth Amendment challenge to Arizona's three-drug protocol. On the eve of the planned executions of inmates Robert Towery and Robert Moormann, and hours before the oral argument before the Ninth Circuit, Arizona switched to a single-drug execution method using pentobarbital only. The court found that the challenges to the three-drug protocol were moot for purposes of the appeal. The single-drug protocol, as agreed to by Arizona, consisted of: a) a qualified and trained execution team; b) availability of "backup drugs" and a backup catheter for use should circumstances so require; and c) access to counsel. The Ninth Circuit held that the outlined protocol comported with *Baze* and did not violate the Eighth Amendment. *Towery v. Arizona* (9th Cir. Feb. 28, 2012) 2012 WL 627787. The court stated:

> We also recognize that the State ordinarily has 'a 'strong interest in enforcing its judgments without undue interference from federal courts,'"
> . . .
> Finally, we also recognize that the victims of crime have an important interest in 'timely enforcement of a sentence.' *Hill* 547 U.S. at 584-85.

The court denied Towery and Moorman's Eighth Amendment claims and denied the request for a preliminary injunction. Robert Moormann, who was released from prison on a compassionate leave to visit his ailing mother who he then murdered and chopped into pieces, was executed on February 29, 2012. His final words were, "I hope this will bring closure and start the healing now and I hope they will forgive me in time." Robert Towery was executed on March 8, 2012 after apologizing to his own family and the family of his murder victim.

CONCLUSION

Just as the District Court, which then had jurisdiction over the Morales and Brown cases, had equitable powers to order CDCR to perform the executions of Morales and Brown in a particular manner; and as the court in *Tidewater* had the obligation to make orders that would effectuate the imposition of the law even in the absence of a valid regulation; this trial court having current jurisdiction over inmate Mitchell Sims, has both statutory and equitable power to order CDCR to execute inmate Sims using a single-drug method.

Jurisdiction having thus been established, the People of the State of California, represented by District Attorney Steve Cooley, will then respectfully request that this court commence hearings to determine the ability of CDCR to perform an execution, as well as the manner in which CDCR shall be ordered to perform an execution and the type and quantity of drugs to be used.

At the conclusion of those hearings, the People will respectfully request this court to order CDCR to execute Tiequon Cox using a single-drug method, or show cause why such an execution cannot be performed and to set an execution date.

RESPECTFULLY SUBMITTED THIS 1st DAY OF MAY, 2012:

STEVE COOLEY
District Attorney

PATRICK DIXON
Assistant District Attorney
Special Operations

[redacted]

ALLYSON OSTROWSKI,
Deputy District Attorney
Major Crimes Division

[redacted]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

TIEQUON AUNDRAY COX,
Defendant.

Case Number: A758447

COMMITMENT AND JUDGMENT OF DEATH AND ORDER OF EXECUTION USING SINGLE DRUG METHOD: ORDER

TO THE WARDEN OF THE CALIFORNIA STATE PRISON AT SAN QUENTIN: On the 18th day of January, 1985, an Information numbered A758447 was duly filed in the Superior Court of the State of California by the District Attorney of Los Angeles County, charging Tiequon Aundray Cox with four counts of murder in violation of California Penal Code §187. As to each count, the Information charged the special circumstance of multiple murders under Penal Code §190.2(a)(3). On February 1, 1985, defendant was duly arraigned, entered a plea of not guilty to the charges and denied the special circumstances alleged in the Information.

Thereafter, defendant was duly arraigned, entered a plea of not guilty to the charges and denied the special circumstances as set forth in the Information.

Thereafter, on November 25, 1985, the defendant and his attorney being present, the case came to trial and the selection of the jury was commenced. On December 17, 1985, the trial jury and four

alternates were duly and regularly impaneled and sworn to try the above-entitled case. That thereafter, on January 7, 1986, evidence was duly presented to the trial jury as to the issues raised by defendant's plea of not guilty and his denial of the special circumstances charged in the Information, argument was made to said trial jury by the prosecution (defendant waived closing argument), and the court instructed said jury as to the applicable law to the case.

Thereafter, on January 21, 1986, the trial jury rendered a verdict of guilty on all four counts of murder, and fixed the degree of murder in the first degree, found the special circumstances as set forth in the Information to be true.

Thereafter, on January 29, 1986, pursuant to Penal Code § 190.3, evidence was presented on behalf of the People and the defendant as to whether the penalty shall be death or life imprisonment without possibility of parole. Thereafter, following arguments of both counsel and instruction of law by the court on this issue, the said trial jury on February 18, 1986, did return a finding that the penalty shall be death.

Thereafter, on April 30, 1986, the defendant's motion for new trial and modification of the verdict and finding imposing the death penalty were heard by the court and said motions were denied, whereupon on April 30, 1986, the defendant's counsel stated there was no legal cause why sentence should not be pronounced, and the court pronounced judgment as follows:

> Tiequon Aundray Cox, it is the judgment and sentence of this court that for the offense of murder of victim Ebora Alexander, as charged count 1 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court on this date having denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.
>
> Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Dietra Alexander charged in count 2 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having

previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Damani Garner charged in count 3 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Mr. Cox, it is also the judgment and sentence of this court that for the offense of murder of victim Damon Bonner charged in count 4 of the information of which you previously, to wit, on January 21, 1986, were found guilty; the jury having found the offense of murder to be first degree and the jury having returned a finding of the special circumstances, multiple murders, alleged in the information under California Penal Code Section 190.2(a)(3) were true; and the jury having previously, to wit, on February 18, 1986, found that the penalty shall be death and this court having this date denied your motion for new trial and application for modification of verdict and finding imposing the death penalty; it is the order of this court that you shall suffer the death penalty; said penalty to be inflicted within the walls of the state prison at San Quentin, California, in the manner prescribed by law and at a time to be fixed by this court in the warrant of execution.

Should for any reason and in any case defendant become the subject of consideration for parole or some related procedure, the court further states that it is the court's belief that the defendant is a danger and a menace to society; that he is vicious and presently apparently without moral fiber, willing to prey on the weak and helpless and kill the innocent and murder children even for some personal or transitory gain and would, upon opportunity, kill again without provocation were it to bring him some immediate satisfaction. It is the court's opinion he should never be released to the public streets in his lifetime…

The defendant is remanded to the care, custody and control of the Sheriff of Los Angles County to be delivered to the Warden of the State Penitentiary at San Quentin within ten days from the date hereof, in the usual course of his duties; for which you have been found guilty and the special circumstances having been found to be true, to be held by him pending the final determination of your appeal in this matter, which is automatic, as I have stated; and said sentence to be executed upon final determination of said appeal, and you are to be held by him during said

> period of time, until further order of this court...The defendant is remanded as indicated by the order.

WHEREAS, on an automatic appeal to the Supreme Court of the State of California, in the case of *People v. Tiequon Aundray Cox*, Criminal Case No. S004711, decided on May 2, 1991, the judgment of the Superior Court imposing death for the crimes of murder in the first degree as alleged in the Information and with the alleged special circumstance was affirmed;

WHEREAS, on January 21, 1992, defendant's petition for writ of certiorari to the United States Supreme Court in the case of *Cox v. California*, Case Number 91-6205 was denied;

WHEREAS, on July 23, 1997, defendant's petition for writ of habeas corpus to the Supreme Court of the State of California in the case of *In re Tiequon A. Cox*, Case Number S044014 was denied;

WHEREAS,, on February 13, 2002, defendant's second petition for writ of habeas corpus to the Supreme Court of the State of California in the case of *In re Tiequon Aundray Cox*, Case Number S082898 was denied;

WHEREAS, on March 15, 2007, the defendant's petition for writ of habeas corpus to the United States District Court, Central District of California in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. CV 92-3370-CBM was denied;

WHEREAS, on appeal from the judgment entered by United States District Court, Central District of California, the United States Court of Appeals, Ninth Circuit in the published decision of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 07-99010 (cited as 613 F.3d 883), affirmed the District Court's judgment on December 10, 2009;

WHEREAS, on July 22, 2010, defendant's petition for hearing and rehearing en banc to the United States Court of Appeals, Ninth Circuit regarding the published decision in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No 07-99010 was denied;

WHEREAS, on July 22, 2010, the United States Court of Appeals, Ninth Circuit amended its published decision without altering its judgment in *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 07-99010, cited as 613 F.3d 883 and issued a memorandum disposition denying three claims that had been certified for appeal but were not specifically addressed in the Court's published opinion;

WHEREAS, on February 9, 2011, the United States Court of Appeals, Ninth Circuit in the case of *Tiequon Aundray Cox v. Robert L. Ayers,* Case No. 07-99010, cited as 414 Fed. Appx. 80, amended its

July 22, 2010 memorandum disposition without altering its judgment and denied defendant's petition for hearing and rehearing en banc directed at the three claims addressed in the memorandum disposition. On October 3, 2011, defendant's petition for writ of certiorari to the United States Supreme Court in the case of *Tiequon Aundray Cox v. Robert L. Ayers*, Case No. 11-5255 was denied;

WHEREAS, the judgment and sentence herein has now become final and the remittitur from the Supreme Court of the State of California has been returned to this court;

WHEREAS, there is at this time no stay of execution pending in any court of the State of California, Supreme Court of the United States, or Circuit Court of the United States;

IT IS HEREBY ORDERED AND ADJUDGED THAT FOR THE CRIME OF MURDER IN THE FIRST DEGREE WITH SPECIAL CIRCUMSTANCES, THE DEFENDANT, TIEQUON AUNDRAY COX, SHALL SUFFER THE DEATH PENALTY, TO BE INFLICTED WITHIN THE WALLS OF THE STATE PRISON AT SAN QUENTIN, CALIFORNIA, IN THE MANNER AND MEANS PRESCRIBED BY LAW. **DEFENDANTS SHALL, ON THE _____ DAY OF _____, 2012, CARRY OUT THE EXECUTION USING ONLY A BARBITURATE OR ANESTHETIC, OR SHALL SHOW CAUSE WHY SAID EXECUTION CANNOT BE PERFORMED.**

Therefore, this is to command you, the Warden of the California State Prison at San Quentin, California, to hold in your custody inmate Tiequon Aundray Cox, pending the decision of this cause on appeal, and upon the judgment here becoming final, to carry into effect the judgment of said Court at a time and on a date to be hereafter fixed by order of this Court, within the state Prison, at which time and place you shall then and there put to death Tiequon Aundray Cox in the manner and means prescribed herein.

In Witness Whereof, I have hereunto set my hand as Judge of the Superior Court, and have caused the seal of the Court to be affixed hereto.

Done in open court this _____ day of _____, 2012.

_____

Judge of the Superior Court
State of California
County of Los Angeles

DECLARATION OF SERVICE BY MAIL

I, the undersigned, hereby declare under penalty of perjury, that the following is true and correct:

I am over 18 years of age, not a party to the within cause and employed by the District Attorney of Los Angeles County, with principal offices located at the Clara Shortridge Foltz Criminal Justice Center, 210 W. Temple Street, Suite 18000, Los Angeles, California 90012; that the District Attorney is one of the attorneys for the People of the State of California in the above-entitled matter.

On May 1, 2012, I served the attached documents:

COMMITMENT AND JUDGMENT OF DEATH, NOTICE OF MOTION AND MOTION FOR ORDER OF EXECUTION USING SINGLE DRUG METHOD AND ORDER TO SHOW CAUSE

by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

Governor Edmund G. Brown Jr.
State Capitol
Sacramento, California 95814

Kamala Harris, Attorney General
Attn: Jamie L. Fuster, Deputy
300 South Spring Street
Los Angeles, California 90013

Mary Jameson, Supervisor
Automatic Appeals Unit
Supreme Court of California
350 McAllister Street
San Francisco, California 94102

Dane R. Gillette
State Attorney General's Office
455 Golden Gate Avenue
Suite 11000
San Francisco, California 94102-7004

Matthew Cate, Secretary
CDCR
1515 S Street
Sacramento, California 95814

Kevin Chappell, Warden
San Quentin State Prison
San Quentin, California 94964

Kelly Lynn McClease
CDCR
PO Box 942883
1515 S. Street, Suite 319-S
Sacramento, California 94283-5448

Jeannie R. Sternberg
Habeas Corpus Research Center
303 Second Street
Suite 400 south
San Francisco, California 94107

John R. Grele, Esq.
Law Offices of John R. Grele
703 Market Street
Suite 550
San Francisco

John R. Grele, Esq.
149 Natoma St., 3rd Floor
San Francisco, California 94015

Tiequon Aundray Cox #D29801
San Quentin State Prison
San Quentin, California 94964

[redacted]nd correct.
[redacted]s, California.