



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

July 26, 2019

Dear Governor Ducey:

As you know, Arizona has not carried out an execution since 2014. For roughly three years, executions were stayed during the pendency of litigation challenging Arizona's lethal injection protocol. The conclusion of that litigation by settlement lifted the stay and removed any legal impediment to carrying out executions in the state. As part of the settlement, the Department of Corrections adopted a one-drug execution protocol, under which it may use either sodium thiopental or pentobarbital.

The Arizona Department of Corrections, however, has been unable to obtain either drug. In 2015, the Department attempted to import sodium thiopental from an overseas supplier, but United States Customs seized the chemicals at the direction of the FDA, relying in large part on a 2013 D.C. Circuit Court of Appeals decision holding that the FDA must prohibit the importation of that specific drug.¹ The Department unsuccessfully challenged that seizure in an administrative proceeding.

In May 2019, the United States Department of Justice issued an opinion concluding that the FDA lacks jurisdiction to regulate the importation of drugs for the purposes of lethal injection. I believe that opinion clears the path for states to import pentobarbital. And a statement issued by the Department of Justice this week indicates that Attorney General Barr has directed the Federal Bureau of Prisons to adopt a lethal injection protocol using pentobarbital and that the federal government intends to carry out several executions in the coming months. This suggests that the federal government has successfully obtained pentobarbital.

These recent developments establish that it is now time to resume executions in Arizona, where 14 death row inmates have exhausted all automatic avenues to appeal their sentences. Justice must be done for the victims of these heinous

¹ *Cook v. FDA*, 733 F.3d 1 (D.C. Cir. 2013).

crimes and their families. Those who commit the ultimate crime deserve the ultimate punishment.

In order to administer the lawfully imposed death sentences in accordance with the Arizona Constitution, my office respectfully requests your assistance in obtaining pentobarbital. We stand ready to vigorously defend you and the Department of Corrections in this effort and urge you to act without delay.

Sincerely,

A handwritten signature in blue ink that reads "Mark Brnovich". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mark Brnovich
Arizona Attorney General