

Nicole Owens
Executive Director
Jonah J. Horwitz, Idaho Bar No. 10494
Assistant Federal Defender
Federal Defender Services of Idaho
702 W. Idaho Street, Suite 900
Boise, ID 83702
Telephone: (208) 331-5530
Facsimile: (208) 331-5559
ECF: Jonah_Horwitz@fd.org

*Attorneys for Petitioners Gerald Ross Pizzuto, Jr.
and Thomas Eugene Creech*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**IN RE: DIRECTOR OF THE IDAHO
DEPARTMENT OF CORRECTION'S
DETERMINATION APPROVING
STANDARD OPERATING
PROCEDURE 135.001,
VERSION 6.0**

**GERALD ROSS PIZZUTO, JR. and
THOMAS EUGENE CREECH,**

Petitioners,

v.

**BREE DERRICK, in her official capacity
as Director of the Idaho Department of
Correction,**

Respondent.

CASE NO. CV01-26-13737

**PETITION FOR
JUDICIAL REVIEW OF
AGENCY ACTION**

**CATEGORY FEE: L.3
FEE AMOUNT: \$221.00**

NATURE OF THE PETITION

1. This is a Petition for Judicial Review concerning the Director of the Idaho Department of Correction's execution duties under the Idaho Administrative Procedure Act.

2. When unelected administrators exercise powers delegated by the legislature, bedrock administrative law principles require that they exercise those powers reasonably. A core component of that requirement is providing a reasoned explanation, justifying the choices made and disclosing the basis for the decision. That requirement should take on heightened importance when the decisionmaking concerns matters of life and death—not less.

3. The Director evidently believes otherwise. In a push to roll out the state's newest method of execution—the firing squad, which became the state's primary method of execution on July 1, 2026—the Director approved new policies for preparing to carry out the death penalty. But the Director has not provided any explanation for her choices, disclosed the facts or information considered when doing so, or offered the barest of justifications.

4. Gerald Ross Pizzuto, Jr. and Thomas Eugene Creech, two condemned prisoners waiting to be executed at the state's maximum security prison, bring this action to set aside the Director's unreasoned and unexplained decisionmaking. The law demands more from administrative actors insulated from the electoral process who take actions that affect private rights and privileges. The same is true for state officials in charge of executions.

5. Because a reasoned explanation for the state's new execution policies is entirely absent here—and because the execution policies are otherwise fatally arbitrary and capricious, pose unacceptable risks to the condemned, and prejudice substantial rights—the Court must set aside the Director's decisionmaking and remand for further proceedings.

6. The contents required under Idaho Rule of Civil Procedure 84(c) are set forth at the end of the Petition.

AGENCY ACTION FOR JUDICIAL REVIEW

7. This action challenges Idaho Department of Correction (“IDOC”) Director Bree Derrick’s determination approving Standard Operating Procedure 135.001, Version 6.0, dated June 8, 2026 (“SOP 135”), and certain of the policies contained therein. SOP 135 is a publicly available document that sets forth the state’s policies concerning executions by firing squad and lethal injection.

8. As set forth below, the Director’s determination approving SOP 135 was arbitrary, capricious, or an abuse of discretion, and in excess of the statutory authority of the agency, because (1) the Director failed to provide a reasoned explanation, or any explanation at all, justifying the approval of SOP 135 and the rejection of reasonable alternatives, and/or to disclose any of the facts, information, or alternatives considered when making that determination; and (2) certain of the policies fail to consider critical facts and circumstances, are irrational or unreasonable, and/or are subject to misuse or abuse by IDOC.

9. The specific policies challenged concern the following:
- a. qualifications for serving on the Firing Squad Team;
 - b. qualifications for serving on the Medical Team;
 - c. qualifications for serving on the Administrative Team;
 - d. training and rehearsal requirements;
 - e. restrictions on witness access;
 - f. restrictions on attorney access;
 - g. restrictions on recording and documenting;
 - h. the condemned person’s right to engage in spiritual activity;
 - i. the condemned person’s sedation prior to the execution;

- j. the ability of execution volunteers to withdraw from the execution process;
- k. the sourcing, inspection, and testing requirements for supplies and equipment prior to the execution;
- l. the role of emergency medical services;
- m. the Director's certification of the method of execution; and
- n. the Director's discretion to amend any policies or procedures at will.

10. SOP 135, including the two attached procedural protocols incorporated by reference, "Firing Squad Administration" and "Execution Chemicals Preparation and Administration," is attached to the Petition as Exhibit 1. Unless otherwise noted, "SOP 135" refers to the main document and all attachments.

JURISDICTION & VENUE

11. The Court has subject matter jurisdiction to review the Director's determination approving SOP 135 and the policies challenged under the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.* (the "APA").

12. The APA contains a private right of action authorizing judicial review of "final agency action." Idaho Code § 67-5270(2).

13. The APA authorizes the district courts to set aside agency action that is "[i]n violation of constitutional or statutory provisions," "[i]n excess of the statutory authority of the agency," "[m]ade upon unlawful procedure," or "[a]rbitrary, capricious, or an abuse of discretion." Idaho Code § 67-5279(2).

14. The APA defines an "agency" to include state boards, commissions, departments, and officers authorized by law to "make rules" or "determine contested cases." Idaho Code § 67-5201(4).

15. The APA defines “agency action” to include “[a]n agency’s performance of, or failure to perform, any duty placed on it by law.” Idaho Code § 67-5201(5).

16. Director Derrick’s determination approving SOP 135 and the policies contained therein is “final agency action” and therefore subject to judicial review under the APA.

17. Director Derrick is an “agency” because she is a state officer authorized by law to make rules or determine contested cases. *See, e.g.*, Idaho Code § 67-2405; *see also* Idaho Code §§ 67-2403, 67-2406.

18. Director Derrick’s determination approving SOP 135 and the policies contained therein is “agency action” because the Director’s determination performed statutory duties placed on her by law.

19. For example, Idaho Code § 67-2405(1)(a) commands Director Derrick to supervise, direct, account for, organize, plan, administer, and execute the functions vested within IDOC, which functions include responsibility for the incarceration and execution of persons sentenced to death. Director Derrick’s determination approving SOP 135 and the policies contained therein carries out that command by establishing policies concerning that function.

20. Idaho Code § 67-2405(1)(b) also commands Director Derrick to establish policy to be followed by her department and the department’s employees. Director Derrick’s determination approving SOP 135 and the policies contained therein carries out that command by establishing policies for her department and the department’s employees concerning executions by firing squad and lethal injection.

21. Director Derrick’s determination approving SOP 135 and the policies contained therein is final. SOP 135 represents the consummation of Director Derrick’s decisionmaking setting forth policies concerning executions by firing squad and lethal injection, and no further

agency action is required before those policies take effect. SOP 135 is binding on IDOC, condemned persons, and all other persons to whom it applies, and it governs all executions of death sentenced persons in the custody of IDOC.

22. In 2026, the Idaho Legislature amended Idaho Code § 19-2716(6) to provide that “the procedures to be used in any execution” “shall not be subject to the provisions of chapter 52, title 67, Idaho Code.”

23. Consistent with that amendment, this action does not challenge “the procedures to be used in any execution.”

24. The action challenges:

- a. the Director’s decisionmaking approving SOP 135; and
- b. certain of the Director’s policies that concern substantive qualifications, standards, requirements, and rights.

25. “[T]he procedures to be used in any execution” are set forth exclusively in SOP 135’s attached procedural protocols entitled “Firing Squad Administration” and “Execution Chemicals Preparation and Administration.”

26. The Firing Squad Administration protocol establishes the procedures to be used in an execution by firing squad, setting forth the required manner of accomplishing the killing of the condemned prisoner by that method. For example, the Firing Squad Administration protocol sets forth procedures for:

- a. restraining the condemned person and moving him to the Execution Chamber;
- b. securing the condemned person to the execution chair;
- c. adhering electrocardiogram leads to the condemned person;
- d. adhering the target to the condemned person’s chest;
- e. reading the death warrant;

- f. providing an opportunity for the condemned person's last words;
- g. loading the weapons;
- h. beginning the cadence of fire; and
- i. firing.

27. The Execution Chemicals Preparation and Administration protocol establishes the procedures to be used in an execution by lethal injection, setting forth the particular manner of accomplishing the killing of the condemned prisoner by that method. For example, the Execution Chemicals Preparation and Administration protocol sets forth procedures for:

- a. restraining the condemned person and moving him to the Execution Preparation Room;
- b. securing the condemned person to the medical gurney;
- c. determining sites for inserting intravenous catheters;
- d. establishing intravenous access in a peripheral line in the arms, hands, ankles, or feet, or establishing intravenous access using a central line;
- e. attaching the intravenous lines and beginning a flow of saline;
- f. moving the condemned person to the Execution Chamber;
- g. reading the death warrant;
- h. providing an opportunity for the condemned person's last words; and
- i. dispensing the chemicals.

28. For the avoidance of doubt, this action does not challenge any of the above procedures, or any of the other "procedures to be used in any execution" contained in the protocols, which challenge would be foreclosed by the jurisdictional bar in § 19-2716(6).¹

¹ Neither Mr. Pizzuto nor Mr. Creech concede the constitutionality of the legislature's adoption of the jurisdictional bar in § 19-2716(6).

29. Instead, as set forth above, this action exclusively challenges the Director's decisionmaking approving SOP 135 and certain of the substantive, non-procedural policies contained therein.

30. The Director's decisionmaking approving SOP 135 is not a procedure to be used in any execution, and therefore it is not covered by the jurisdictional bar in § 19-2716(6).

31. Also, the policies challenged are not procedures to be used in any execution, and therefore they are not covered by the jurisdictional bar in § 19-2716(6). *First*, the policies challenged are not *procedures*. Unlike the procedures set forth in the Firing Squad Administration and Execution Chemicals Preparation and Administration protocols, the policies challenged here are not procedural, they do not set forth procedural steps, and they do not set forth a particular way of accomplishing a specific act (*e.g.*, the particular steps taken by the Firing Squad Team or Medical Team to cause the death of the condemned person). Instead, the policies challenged are substantive. They establish or define substantive qualifications, standards, requirements, and rights (*e.g.*, the required qualifications for serving on the Firing Squad Team or Medical Team). *Second*, the policies challenged are not procedures that will be used *in* any execution. The policies challenged do not concern the procedural steps that take place *during* or *within* the execution itself. Each of the policies challenged concerns substantive qualifications, standards, requirements, and rights *prior* or *ancillary* to the process of killing the condemned person (*e.g.*, the required content of trainings and rehearsals that take place before the execution).

32. Section 19-2716(6)'s jurisdictional bar is the only exemption from the APA that the legislature created that applies to the Director. As reflected by the legislature's creation of that exemption, the Director is otherwise generally subject to the provisions of the APA.

33. The legislature created certain exemptions from the APA for the Board of Correction. *See* Idaho Code § 67-5201(4).

34. This action is not challenging any decision by the *Board* of Correction, which did not approve and is not responsible for approving SOP 135 or the policies contained therein. This action challenges decisionmaking by the Director, in her official capacity as the head of the Idaho *Department* of Correction, an entirely different administrative agency than the Board of Correction.

35. Venue in the District Court of the Fourth Judicial District of the State of Idaho is proper because the final agency action took place in Ada County, and Mr. Pizzuto and Mr. Creech reside in Ada County.

36. The final agency action took place on June 8, 2026, when the Director approved SOP 135 and the policies challenged. As a result, this action is timely.

PARTIES

37. **Petitioner Gerald Ross Pizzuto, Jr.** is an indigent, death sentenced prisoner. Since 1986, Mr. Pizzuto has been confined at the Idaho Maximum Security Institution (“IMSI”), an IDOC facility that houses Idaho’s male death row inmates, in Kuna, Idaho. Mr. Pizzuto is 70 years old and suffers from a host of critical health conditions, including complex coronary artery disease, which has caused a series of heart attacks and has required multiple stents. When the State of Idaho seeks and obtains a death warrant for Mr. Pizzuto’s execution, Mr. Pizzuto’s execution will be governed by the policies challenged in this action.

38. **Petitioner Thomas Eugene Creech** is an indigent, death sentenced prisoner. Mr. Creech is confined at IMSI, an IDOC facility that houses Idaho’s male death row inmates, in Kuna, Idaho. Mr. Creech is 75 years old and suffers from a host of critical health conditions, including Type II diabetes, edema, and a large abdominal aneurysm. When the State of Idaho seeks and

obtains a death warrant for Mr. Creech's execution, Mr. Creech's execution will be governed by the policies challenged in this action.

39. **Respondent Bree Derrick** is Director of IDOC. IDOC is an executive department and administrative agency with headquarters in Boise, Idaho. IDOC is vested with responsibility for carrying out court-ordered death sentences and executing condemned persons. Director Derrick, as head of IDOC, is charged with supervising, directing, accounting for, organizing, planning, administering, and executing that function. Director Derrick, as head of IDOC, is also charged with establishing policy for IDOC and prescribing rules for the administration and performance of IDOC's functions. Director Derrick approved the policies challenged in this action on June 8, 2026. She is sued in her official capacity.

FACTUAL BACKGROUND

40. In Idaho, executions of persons sentenced to suffer the death penalty are scheduled by death warrants issued under the provisions of the Idaho Code.

41. The method of execution to be used to carry out a condemned person's death sentence is determined according to the provisions of Idaho Code § 19-2716.

42. Idaho Code § 19-2716(1) authorizes executions by firing squad and lethal injection. Effective July 1, 2026, execution by firing squad is the presumptive and primary method of execution for all persons sentenced to death in Idaho.

43. Under Idaho Code § 19-2716(2), the Director of IDOC is required to "determine" and then "certify by affidavit to the court that issued the death warrant" whether execution by firing squad is "available" at a time no later than five days after the death warrant is issued.

44. Under Idaho Code § 19-2716(3), if the Director certifies that execution by firing squad is "available," the condemned person's execution will be carried out by firing squad.

45. Under Idaho Code § 19-2716(4), if the Director does not certify that firing squad is “available” or “fails to file a certification as required,” the condemned person’s execution will be carried out by lethal injection.

46. Under Idaho Code § 19-2716(5), if a court holds that execution by firing squad is unconstitutional or otherwise determines that lethal injection is constitutionally required, the condemned person’s execution will be carried out by lethal injection.

47. Under Idaho Code § 19-2716(6), the Director is required to “determine the procedures to be used in any execution.”

48. SOP 135’s Firing Squad Administration and Execution Chemicals Preparation and Administration protocols set forth the procedures to be used in executions by firing squad and lethal injection.

49. Multiple versions of SOP 135 have been promulgated and approved over time, including in the period immediately preceding a scheduled execution.

50. Since 2021, the Director has promulgated and approved three different versions of the document.

51. On March 30, 2021, then-Director Josh Tewalt approved Standard Operating Procedure 135, Version 4.0 (hereafter “Version 4.0”).

52. Version 4.0 contained the policies and procedures in effect when IDOC attempted to carry out the lethal injection execution of Mr. Creech on February 28, 2024. At the time of that execution attempt, lethal injection was the presumptive and primary method of execution in Idaho.

53. Mr. Creech’s execution would have been Idaho’s first execution in more than a decade, but it ended in failure when IDOC’s executioners repeatedly tried and failed to establish intravenous access to deliver the lethal substance. Over the course of almost an hour, while Mr.

Creech remained forcibly restrained to a gurney inside the Execution Chamber at IMSI, executioners struggled to insert the intravenous catheters necessary to deliver the substance on at least eight different occasions, jabbing Mr. Creech with a needle in his arms, hands, legs, and feet as witnesses in an adjoining room viewed the process. The execution attempt was aborted 58 minutes after it began.

54. Similar botched lethal injection executions have occurred across the country. Witnesses have reported watching executioners struggle to establish intravenous access as they subject the condemned person to multiple, prolonged, and painful attempts to find a suitable vein. Witnesses have also reported watching condemned persons vomit, writhe, gasp, choke, and cry out in pain after the lethal substance or substances have been administered, and compelling scientific evidence confirms that death by lethal injection can be excruciatingly painful and akin to torture.

55. Following IDOC's botched execution of Mr. Creech, then-Director Tewalt issued Standard Operating Procedure 135, Version 5.0 (hereafter, "Version 5.0"), which he approved on October 11, 2024, and which established new policies and procedures concerning lethal injection executions.

56. Among other things, Version 5.0 contained new policies and procedures concerning the use of a "central line" when carrying out an execution by lethal injection, and it moved the process for establishing intravenous access to the Execution Preparation Room, a room outside the Execution Chamber and beyond direct view of witnesses. Establishing intravenous access using a central line typically involves accessing veins deep inside the body, such as the subclavian vein located in the chest, the jugular vein located in the neck, and the femoral vein located in the groin. Before Version 5.0, the entire lethal injection process, including the process for establishing intravenous access, was carried out in full view of witnesses inside the Execution Chamber.

57. On March 12, 2025, Governor Brad Little signed House Bill 37, which amended Idaho Code § 19-2716 to establish the firing squad as the presumptive and primary method of execution, effective July 1, 2026.

58. On June 8, 2026, Director Derrick approved SOP 135, and IDOC published SOP 135 on its website. SOP 135 is the first publicly available document establishing policies and procedures related to executions by firing squad in Idaho, and it replaces the policies and procedures contained in Version 5.0.

59. Before determining, approving, and publishing SOP 135, Director Derrick did not publicly disclose or reveal any of the drafting or decisionmaking concerning SOP 135 or the policies or procedures contained therein.

60. Director Derrick also has not publicly disclosed or revealed the basis for SOP 135 or the policies or procedures contained therein, including the facts, information, or alternatives considered, and has not provided any explanation, reasoned or otherwise, for approving SOP 135 or the policies or procedures contained therein.

61. SOP 135 is not accompanied by any publicly available policy memorandum, guidance document, or other document reflecting the basis for the approval of SOP 135 or any of the policies or procedures contained therein.

62. Idaho is the only state in the nation that designates the firing squad as the primary method of execution of death sentenced prisoners, and executions by firing squad are exceedingly rare in the United States. Since the modern era of the death penalty began in 1976, 1,670 people have been executed in the United States. Only six of those people have been executed by firing squad. Those executions have occurred in only two states: South Carolina and Utah.

63. To date, IDOC has not executed any prisoner by firing squad, and no executions by any method have been attempted since the botched execution of Mr. Creech on February 28, 2024.

64. No state court has reviewed Director Derrick's decision approving SOP 135, or the policies challenged in this action, under the APA.

ISSUES FOR JUDICIAL REVIEW

65. The issues for judicial review are:

- a. whether Director Derrick's determination approving SOP 135, including the policies contained therein, was arbitrary, capricious, or an abuse of discretion; and
- b. whether Director Derrick's determination approving SOP 135, including the policies contained therein, was in excess of the statutory authority of the agency.

66. The grounds for setting aside Director Derrick's determination approving SOP 135 as arbitrary, capricious, or an abuse of discretion, and/or as in excess of the statutory authority of the agency, include but are not limited to those set forth below.²

Director Derrick Failed to Provide a Reasoned Explanation or Disclose the Basis for Approving SOP 135

67. SOP 135 governs executions by firing squad and lethal injection.

68. SOP 135's provisions concerning executions by firing squad are brand new. IDOC has never before carried out an execution by firing squad, and the Director of IDOC has never before promulgated or approved any guidance concerning executions by firing squad.

69. SOP 135 also contains new provisions concerning executions by lethal injection, replacing the provisions that existed in Version 5.0.

² Under Idaho Rule of Civil Procedure 84(c)(5), Mr. Pizzuto and Mr. Creech reserve the right to assert other issues later discovered and/or amend the Petition for Judicial Review. The grounds stated herein are not exhaustive of the grounds for setting aside the agency action as arbitrary, capricious, or an abuse of discretion, or as in excess of the statutory authority of the agency, and Mr. Pizzuto and Mr. Creech reserve the right to brief those grounds at the appropriate time.

70. Director Derrick's promulgation and approval of SOP 135 took place in secret, without any input from the general public.

71. When Director Derrick approved SOP 135, she did not provide any public explanation, reasoned or otherwise, for approving the document or any of the provisions contained therein.

72. SOP 135 does not contain any explanation, reasoned or otherwise, for the document's approval or the approval of any of the provisions contained therein.

73. No publicly available document exists providing an explanation, reasoned or otherwise, for the document's approval or any of the provisions contained therein.

74. Director Derrick has not disclosed the basis for approving SOP 135 or any of the provisions contained therein, including the facts, information, or alternatives considered, if any.

75. SOP 135 does not disclose the basis for the document's approval or the approval of any of the provisions contained therein, including the facts, information, or alternatives considered, if any.

76. No publicly available document exists disclosing the basis for the document's approval or the approval of any of the provisions contained therein, including the facts, information, or alternatives considered, if any.

77. Director Derrick's failure to provide a reasoned explanation for approving SOP 135 and the provisions contained therein is arbitrary, capricious, and an abuse of discretion.

78. Director Derrick's failure to disclose the basis for approving SOP 135 and the provisions contained therein, including the facts, information, or alternatives considered, if any, is arbitrary, capricious, and an abuse of discretion.

79. Director Derrick's failure to provide a reasoned explanation for approving SOP 135 and the provisions contained therein, and her failure to disclose the basis for approving SOP 135 and the provisions contained therein, prejudice Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; their rights to be executed in accordance with policies and procedures that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion; and their rights to meaningfully challenge the policies and procedures that will be used to carry out their executions.³

**Director Derrick's Firing Squad Qualifications Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

80. Director Derrick approved policies concerning the qualifications of the Firing Squad Team (hereafter, the "Firing Squad Qualifications Policy").

81. Under Director Derrick's Firing Squad Qualifications Policy, volunteers selected to serve on the Firing Squad Team must "[d]emonstrate firearm proficiency." According to the policy, "proficiency" means the ability to (1) "[f]ire each IDOC-provided firearm at a minimum of 21 feet, with 100% accuracy"; (2) "[h]it a target of the same size, shape, and dimension that will be used during an execution"; and (3) "[h]it a target at a substantially similar height to the height at which the target will be attached to the condemned during an execution." The policy does not specify what constitutes "100% accuracy," how many rounds the volunteer must accurately fire from "each IDOC-provided firearm," or whether "each IDOC-provided firearm" includes the

³ For the avoidance of doubt, this action does not raise any constitutional challenges, state or federal, to SOP 135 or the policies or procedures contained therein. This action also is not challenging Mr. Pizzuto's or Mr. Creech's executions under any constitutional provision, state or federal. The constitutional rights referenced above and throughout the Petition are only referenced in connection with Mr. Pizzuto's and Mr. Creech's obligation to show prejudice to their substantial rights under the APA, not as freestanding constitutional claims.

firearm that will be used during an execution, but the policy states that “failure to accurately hit the specific target with one round from each IDOC-provided firearm disqualifies the volunteer from selection.” The policy also requires that volunteers not have any personnel disciplinary actions in the past 12 months concerning use of a firearm, use of force, or similar conduct.

82. The Firing Squad Qualifications Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Firing Squad Qualifications Policy’s proficiency test does not substantially replicate conditions similar to those present during an execution. For example, the Firing Squad Qualifications Policy does not require proficiency in a multi-shooter environment, with simultaneous discharge by multiple active shooters, even though executions by firing squad are to be carried out by three shooters firing simultaneously; does not require proficiency in determining when a target has moved or shifted and adjusting aim accordingly, even though executions by firing squad involve shooting a target affixed to a living human being who cannot be completely incapacitated or immobilized during the execution and such target may move or shift during the execution; does not require proficiency in back-to-back volleys of fire, even though executions by firing squad may require multiple volleys of fire in order to kill the condemned person; does not require proficiency in loading and reloading magazines, even though Firing Squad Team members will be provided three separate magazines containing one live round each for the purpose of carrying out an execution by firing squad; does not require proficiency in firing under conditions that may include loud noises, such as shouting or screaming, or large numbers of spectators, even though executions by firing squad may involve those same conditions; and does not require proficiency in responding to any unforeseen problems with the IDOC-provided firearms, like responding to a jammed firing mechanism or a misfire, or other unforeseen problems.

83. The Firing Squad Qualifications Policy also does not establish standards, guidelines, or criteria of any kind to account for the expected physiological and psychological stress of shooting to kill a living human being, including having to potentially fire successive volleys of ammunition in view of witnesses or while watching the condemned person struggle against the restraints, cry out in pain, or bleed out. The Firing Squad Qualifications Policy does not include any psychological screening requirements for the Firing Squad Team, or account for the psychological impact caused by participation in multiple executions or a botched execution and the effect that psychological impact may have on a volunteer's performance at subsequent executions.

84. Under the Medical Team Qualifications Policy, discussed below, volunteers selected to participate in lethal injection executions must be "certified in cardiopulmonary resuscitation (CPR)." The Firing Squad Qualifications Policy arbitrarily, and without any explanation, does not contain any such requirement for the Firing Squad Team.

85. The Firing Squad Qualifications Policy also does not establish qualifications of any kind whatsoever for the position of Firing Squad Team Leader. The Firing Squad Team Leader is charged with various Firing Squad Team-related duties, including preparing the Firing Squad Team's equipment on the day of the scheduled execution, supervising all activities related to the Firing Squad Team's equipment preparation, loading the firearms to be used by the Firing Squad Team during an execution, and directing the Firing Squad Team to begin the volley of fire during an execution. The Firing Squad Team Leader is to be designated by the Deputy Chief of Prisons. But there are no qualifications or criteria for this critical role.

86. Moreover, the Administrative Team is responsible for identifying the volunteers who will serve on the Firing Squad Team, including by verifying professional qualifications,

training, and experience. But the Administrative Team itself is not required to possess proficiency with respect to the Firing Squad Team, firearms, or firearm-related operations.

87. In addition, Director Derrick has not disclosed the basis for the Firing Squad Qualifications Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

88. For at least the reasons set forth above, the Firing Squad Qualifications Policy is arbitrary, capricious, and an abuse of discretion.

89. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Medical Team Qualifications Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

90. Director Derrick approved policies concerning the qualifications of the Medical Team (hereafter, the "Medical Team Qualifications Policy").

91. Under Director Derrick's Medical Team Qualifications Policy, volunteers selected to serve on the Medical Team must (1) have three years of "medical experience"; (2) have "current peripheral line venous access proficiency through ongoing training, education and experience, and/or current job duties"; and (3) have "current proficiency" in "understanding medical orders, reading and understanding medical orders and labels, drawing chemicals, and understanding the effect of a chemical or pharmaceutical on the human body." The Medical Team Qualifications Policy further requires that a volunteer "[b]e a licensed physician" and "[h]ave current central venous line catheter placement proficiency" in order "to establish central venous line IV access."

92. The Medical Team Qualifications Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Medical Team Qualifications Policy does not establish any standards, guidelines, or criteria for determining whether a person has current proficiency in establishing a peripheral or central line, or determining whether a person has current proficiency in establishing a peripheral or central line under conditions similar to those present during an execution. The Medical Team Qualifications Policy does not define “current proficiency.”

93. The Medical Team Qualifications Policy arbitrarily, and without any explanation, fails to include any proficiency test, even though the Firing Squad Qualifications Policy expressly provides for a proficiency test to determine whether a person may be selected to serve on the Firing Squad Team. The Medical Team Qualifications Policy also arbitrarily, and without any explanation, fails to include any requirement that a person selected to serve on the Medical Team not have any personnel disciplinary actions in the past 12 months concerning relevant duties, even though the Firing Squad Qualifications Policy expressly includes a requirement that a person selected to serve on the Firing Squad Team not have any personnel disciplinary actions in the past 12 months concerning use of a firearm, use of force, or similar conduct.

94. The Medical Team Qualifications Policy also does not establish standards, guidelines, or criteria of any kind to account for the expected physiological and psychological stress of establishing intravenous access to kill a living human being, including having to establish intravenous access in view of witnesses or while the condemned person struggles against the restraints, cries out in pain, bleeds, or suffers a medical emergency. The Medical Team Qualifications Policy does not include any psychological screening requirements for the Medical Team, or account for the psychological impact caused by participation in multiple executions or a

botched execution and the effect that psychological impact may have on a volunteer's performance at subsequent executions.

95. The Medical Team Qualifications Policy also arbitrarily, and without any explanation, includes additional qualifications and requirements for a person who “establish[es] central venous line IV access” while failing to require the same or similar qualifications and requirements for any other member of the Medical Team who assists that person in “establish[ing] central venous line IV access.”

96. The Medical Team Qualifications Policy also does not establish qualifications of any kind whatsoever for the position of Medical Team Leader. The Medical Team Leader is charged with various lethal injection-related duties, including supervising all activities related to chemical preparation and syringe preparation, determining whether intravenous access will be established by a peripheral line or central line procedure, and attaching intravenous lines to the established catheter access sites and ensuring that they are flowing appropriately. The Medical Team Leader is to be designated by the Deputy Chief of Prisons. But there are no qualifications or criteria for this critical role.

97. Moreover, the Administrative Team is responsible for identifying the volunteers who will serve on the Medical Team, including by verifying professional qualifications, training, and experience. But the Administrative Team is not required to possess proficiency with respect to the Medical Team, such as establishing intravenous access, understanding medical orders and labels, drawing and administering chemicals, or other lethal injection-related operations.

98. In addition, Director Derrick has not disclosed the basis for the Medical Team Qualifications Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

99. For at least the reasons set forth above, the Medical Team Qualifications Policy is arbitrary, capricious, and an abuse of discretion.

100. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Administrative Team Qualifications Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

101. Director Derrick approved policies concerning the qualifications of the Administrative Team (hereafter, the "Administrative Team Qualifications Policy").

102. Under the Administrative Team Qualifications Policy, the Administrative Team is selected by role and consists exclusively of the Chief and Deputy Chief of Prisons, the IMSI Warden, and any additional IDOC staff the Director or the Chief of Prisons may appoint.

103. The Administrative Team Qualifications Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Administrative Team Qualifications Policy does not establish any requirements to ensure that the members of the Administrative Team possess the qualifications, expertise, or proficiency needed for planning, preparing, and implementing executions by firing squad or lethal injection, even though the Administrative Team is charged with various firing squad and lethal injection-related operations, including but not limited to "[p]lan[ning], direct[ing], and implement[ing] all pre-execution and post-execution activities," and "ensur[ing] the execution process is conducted in accordance with th[e] SOP." The Administrative Team Qualifications Policy does not include any training, education, or experience concerning executions by firing squad or lethal injections. The

Director, arbitrarily and without any explanation, also is not required to have any relevant training, education, or experience, or any qualifications, expertise, or proficiency needed for planning, preparing, and implementing executions by firing squad or lethal injection.

104. In addition, Director Derrick has not disclosed the basis for the Administrative Team Qualifications Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

105. For at least the reasons set forth above, the Administrative Team Qualifications Policy is arbitrary, capricious, and an abuse of discretion.

106. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Training and Rehearsal Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

107. Director Derrick approved policies concerning the training and rehearsal of the Firing Squad Team and Medical Team (hereafter, the "Training and Rehearsal Policy").

108. Under Director Derrick's Training and Rehearsal Policy, training and rehearsal sessions for the Firing Squad "will include fire and dry fire training," and training and rehearsal sessions for the Medical Team "shall include the placement of peripheral line IV catheters and administering IV fluids through peripheral lines in a minimum of two live volunteers." According to the Training and Rehearsal Policy, "[t]he specific training requirement will be based on the method of execution certified by the Director," and the Director has discretion to "suspend or

modify the number and frequency of training sessions if no execution is anticipated in that calendar year.”

109. The Training and Rehearsal Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Training and Rehearsal Policy fails to include training or rehearsal requirements that substantially replicate conditions similar to those present during an execution by firing squad or lethal injection, such as requiring the Firing Squad Team to practice multi-shooter, back-to-back volleys of live fire on a target that may move or shift, or requiring the Medical Team to practice establishing intravenous access using a central line or on a live person who may be moving or struggling against the restraints. The Training and Rehearsal Policy also fails to consider that the Director does not certify a method of execution until after a death warrant has been issued, even though “[t]he specific training requirement” is purportedly “based on the method of execution certified by the Director.”

110. The Training and Rehearsal Policy also fails to establish any benchmarks for performance or proficiency during the trainings and rehearsals to ensure that the Firing Squad Team and Medical Team are adequately prepared to safely and humanely carry out an execution that complies with constitutional guarantees, and fails to establish requirements concerning how issues that are identified during training and rehearsal sessions are evaluated, studied, and learned from so that such issues are not repeated during an actual execution.

111. The Training and Rehearsal Policy arbitrarily, and without any explanation, provides the Director with discretion to suspend or modify the number and frequency of training sessions at will, even though a suspended or modified training schedule may compromise the Firing Squad Team’s and Medical Team’s ability to safely and humanely carry out an execution that complies with constitutional guarantees.

112. Although the Training and Rehearsal Policy applies to the Firing Squad Team and Medical Team, there are no specific training or rehearsal policies of any kind for the Administrative Team or Escort Team. SOP 135 even references the Escort Team's need to be "well-trained in the escort procedures," but there are no specific Escort Team training or rehearsal policies of any kind. For example, the Escort Team is responsible for restraining the condemned person and is required to tighten the restraints to the point where the condemned person cannot move, but the restraints may not be so tight that the restraints impede circulation. However, there are no training or rehearsal requirements concerning this process, even though sufficient circulation is necessary to ensure accurate electrocardiogram monitoring during an execution.

113. At least three days before a scheduled execution, the Administrative Team must "obtain technical assistance" for the purpose of "observ[ing] the Medical Team place peripheral venous access IV catheters and establish an IV drip line in a live body," and then the person conducting this "technical review" is required to "meet with the Administrative Team to review the findings," with the Director "mak[ing] the final determination regarding compliance with th[e] SOP." But the Training and Rehearsal Policy, arbitrarily and without any explanation, does not contain any such technical assistance or review during any of the prior trainings or rehearsals, does not contain any such technical assistance or review process for executions by firing squad, and fails to consider that the Director is not required to have any education, training, or experience with the medical procedures necessary to establish intravenous access such that the Director may not be qualified to determine or capable of determining "compliance with th[e] SOP."

114. In addition, Director Derrick has not disclosed the basis for the Training and Rehearsal Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

115. For at least the reasons set forth above, the Training and Rehearsal Policy is arbitrary, capricious, and an abuse of discretion.

116. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Witness Access Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

117. Director Derrick approved policies concerning restrictions on witness access to executions (hereafter, the "Witness Access Policy").

118. Under Director Derrick's Witness Access Policy, witnesses to an execution by firing squad are not permitted any view of the Escort Team's or Medical Team's movement or preparation of the condemned person inside the Execution Chamber until the condemned person is ready to be executed by the Firing Squad Team, and witnesses to an execution by lethal injection are not permitted direct view of the Escort Team's or Medical Team's movement or preparation of the condemned person inside the Execution Preparation Room, where the Medical Team determines intravenous access sites and attempts to establish intravenous access. At most, witnesses to an execution by lethal injection will be permitted to view the Escort Team's and Medical Team's movement and preparation of the condemned person inside the Execution Preparation Room by video feed.

119. The Witness Access Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Witness Access Policy fails to consider the condemned person's interest in ensuring that his or her family members

and attorney may view the Escort Team's or Medical Team's movement or preparation of the condemned person inside the Execution Chamber or Execution Preparation Room. The Witness Access Policy also fails to consider other witnesses' interests in viewing the Escort Team's or Medical Team's movement or preparation of the condemned person inside the Execution Chamber or Execution Preparation Room, including the media witnesses' interests in viewing such movements and preparation of the condemned person so as to be able to report on those movements and preparation.

120. In the case of executions by firing squad, the Witness Access Policy arbitrarily, and without any explanation, fails to include any provision concerning broadcasting of sounds from inside the Execution Chamber to the Witness Areas. In the case of executions by lethal injection, microphones inside the Execution Chamber broadcast the utterances or noises made by the condemned person to the Witness Areas, and an audio feed continues to transmit to the Witness Areas throughout the execution. The absence of any provision concerning audio broadcasting for firing squad executions deprives witnesses, including the condemned person's family members, attorney, and the media from hearing the condemned person's execution and ensuring that the condemned person does not suffer a cruel and unusual execution.

121. By shielding the execution from witnesses, the Witness Access Policy, arbitrarily and without any explanation, also fails to consider reasonable, less restrictive alternatives that would serve any of the purported interests of the Witness Access Policy.

122. In addition, Director Derrick has not disclosed the basis for the Witness Access Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

123. For at least the reasons set forth above, the Witness Access Policy is arbitrary, capricious, and an abuse of discretion.

124. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, the equal protection of the laws, and access to the courts; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Attorney Access Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

125. Director Derrick approved policies concerning restrictions on attorney access to the condemned person (hereafter, the "Attorney Access Policy").

126. Under Director Derrick's Attorney Access Policy, only one "attorney of record" is permitted to be present inside the Execution Unit to witness the condemned person's execution.

127. The Attorney Access Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Attorney Access Policy fails to consider the condemned person's interest in having more than one legal representative present to observe the execution, in addition to a family member, as well as the condemned person's interest in ensuring that counsel simultaneously is able to accurately perceive and document the execution process and seek emergency judicial or executive relief in the event that the execution is botched or otherwise does not proceed as planned, in order to protect the condemned person's constitutional and legal rights. A single attorney cannot simultaneously serve as a witness to events that take place inside the Execution Chamber and observe all aspects of the execution process while contemporaneously seeking emergency relief from the courts or the Governor.

128. By excluding additional counsel from the Execution Unit, the Attorney Access Policy, arbitrarily and without any explanation, also fails to consider reasonable, less restrictive alternatives that would serve any of the purported interests of the Attorney Access Policy.

129. In addition, Director Derrick has not disclosed the basis for the Attorney Access Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

130. For at least the reasons set forth above, the Attorney Access Policy is arbitrary, capricious, and an abuse of discretion.

131. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, the equal protection of the laws, and access to the courts; their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion; and their rights to meaningfully challenge the policies and procedures that will be used to carry out their executions.

**Director Derrick's Recording Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

132. Director Derrick approved a policy concerning restrictions on recording and documenting the execution (hereafter, the "Recording Policy").

133. Under Director Derrick's Recording Policy, members of the public are prohibited from "[f]ilming, taping, recording, broadcasting, or otherwise electronically documenting the execution."

134. The Recording Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Recording Policy fails to consider the public's interest in executions by firing squad and lethal injection,

including viewing executions by firing squad and lethal injection, to ensure that the death penalty is carried out humanely, complies with constitutional guarantees, and serves the purposes of capital punishment. The Recording Policy also fails to consider the interests of the condemned person in enabling the viewing of his or her execution by the public, including to ensure that the execution is carried out humanely, complies with constitutional guarantees, and serves the purposes of capital punishment. Preventing any electronic documenting or recording of the execution process also overlooks the media's interest in documenting and recording the execution process. An electronic recording of the execution process ensures an accurate record of the execution, including a record that would permit a determination of whether the execution was carried out in a humane and constitutionally compliant manner. An electronic recording of the execution process would also ensure an accurate record of the execution for training, rehearsal, and other purposes.

135. By prohibiting all methods and means of electronically documenting or recording the execution process, the Recording Policy, arbitrarily and without any explanation, also fails to consider reasonable, less restrictive alternatives that would serve any of the purported interests of the Recording Policy.

136. In addition, Director Derrick has not disclosed the basis for the Recording Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

137. For at least the reasons set forth above, the Recording Policy is arbitrary, capricious, and an abuse of discretion.

138. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, the equal protection of the laws, and access to the

courts; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Spiritual Activity Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

139. Director Derrick approved a policy concerning the condemned person's right to engage in spiritual activity (hereafter, the "Spiritual Activity Policy").

140. Under Director Derrick's Spiritual Activity Policy, the IMSI Warden is vested with discretion to determine a condemned person's "specific requested conduct" concerning spiritual activity and religious accommodations in the Execution Unit and Execution Chamber, including concerning any spiritual advisor, religious items, religious practices, and presence in the Execution Unit and Execution Chamber.

141. SOP 135's Spiritual Activity Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Spiritual Activity Policy does not establish standards governing how the IMSI Warden will render a determination concerning the condemned person's requested religious advisor, items, practices, or presence in the Execution Unit or Execution Chamber; does not set criteria or factors that the IMSI Warden will consider when making that determination; and does not provide for any administrative appeal of the IMSI Warden's determination once delivered.

142. In addition, Director Derrick has not disclosed the basis for the Spiritual Activity Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

143. For at least the reasons set forth above, the Spiritual Activity Policy is arbitrary, capricious, and an abuse of discretion.

144. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion. The policy also prejudices Mr. Pizzuto's and Mr. Creech's constitutional rights to the free exercise of religion guaranteed by the First Amendment to the U.S. Constitution and Article I, § 4 of the Idaho Constitution.

**Director Derrick's Sedation Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

145. Director Derrick approved policies concerning the condemned person's sedation prior to the execution (hereafter, the "Sedation Policy").

146. Under Director Derrick's Sedation Policy, IMSI healthcare services staff will "offer" the condemned person a "mild sedative" the night before the execution and again no later than four hours before the execution. Pursuant to the policy, an exception may be made to the four-hour limit when "medically necessary."

147. The Sedation Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Sedation Policy does not establish any standards, factors, guidelines, criteria, or qualifications for administering the mild sedative, including the type or dosage, and does not account for the effect that any such sedative may have on the condemned person's ability to participate in the execution process, to communicate with counsel or a spiritual advisor during the execution process, or to accurately apprehend what is happening during the execution. The Sedation Policy does not define medical necessity and fails to address whether the condemned person's consent is required in order to provide a sedative to the condemned person if deemed "medically necessary."

148. In addition, Director Derrick has not disclosed the basis for the Sedation Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

149. For at least the reasons set forth above, the Sedation Policy is arbitrary, capricious, and an abuse of discretion.

150. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, the equal protection of the laws, and access to the courts; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion. The policy also prejudices Mr. Pizzuto's and Mr. Creech's constitutional rights to the free exercise of religion guaranteed by the First Amendment to the U.S. Constitution and Article I, § 4 of the Idaho Constitution.

**Director Derrick's Withdrawal Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

151. Director Derrick approved policies concerning the ability of execution volunteers to withdraw from the execution process (hereafter, the "Withdrawal Policy").

152. Under Director Derrick's Withdrawal Policy, any IDOC staff member or contractor may elect to "withdraw from the process at any time and a replacement will be appointed in accordance with Idaho law and this SOP."

153. The Withdrawal Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Withdrawal Policy fails to consider the risk that allowing IDOC staff members or contractors to withdraw from the execution process at any time may result in inadequate training or rehearsal prior to an execution, or result in a botched execution that subjects the condemned person to a cruel and

unusual execution. For example, if the Medical Team Leader were to withdraw from the process during an execution by firing squad, the Execution Team would lack the person responsible for accurately “adher[ing] the target to the condemned person’s chest directly over the heart,” “adher[ing] the EKG leads to the condemned person,” and “maintain[ing] constant observation of the EKG monitor and determin[ing] if ... the electrical and mechanical activity of the condemned person’s heart has ceased.” Alternatively, for example, if the member of the Medical Team responsible for establishing intravenous access using a central line were to elect to withdraw from the process while attempting to insert the intravenous catheters or place the intravenous lines, there would be no qualified person with “current central venous line catheter placement proficiency” to safely complete the process or abort it.

154. In addition, Director Derrick has not disclosed the basis for the Withdrawal Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

155. For at least the reasons set forth above, the Withdrawal Policy is arbitrary, capricious, and an abuse of discretion.

156. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto’s and Mr. Creech’s substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Sourcing, Inspection, and Testing Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

157. Director Derrick approved policies concerning sourcing, inspection, and testing requirements for supplies and equipment used by the Firing Squad Team and Medical Team (hereafter, the "Sourcing, Inspection, and Testing Policy").

158. Under Director Derrick's Sourcing, Inspection, and Testing Policy, the Administrative Team is responsible for "ensur[ing] that execution ammunition or chemicals have been purchased or that sources have been established" and "monitor[ing] to ensure compliance with manufacturer specifications." In the case of executions by firing squad, the Administrative Team must "[c]onsult with Firing Squad Team Members regarding the equipment" and ensure that the equipment is "functioning properly." In the case of executions by lethal injection, the Administrative Team must "[c]onsult with Medical Team Members regarding the equipment" and ensure that the equipment is "functioning properly." Executions by lethal injection also require the Administrative Team to ensure that there is "backup medical equipment, including a backup electrocardiograph (EKG) machine and instruments," that is "functioning properly." The Administrative Team must further "[c]heck applicable dates on medical supplies to ensure they are useable on the execution date."

159. The Sourcing, Inspection, and Testing Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Sourcing, Inspection, and Testing Policy fails to provide any standards, factors, guidelines, criteria, or qualifications for sourcing the ammunition, chemicals, or other equipment or supplies to be used to carry out an execution by firing squad or lethal injection, leaving the sourcing to arbitrary, capricious, unreasoned, or irrational choices by the Administrative Team that may increase the risk of a botched execution or other unforeseen problems during the execution process. The Sourcing,

Inspection, and Testing Policy also fails to provide any standards, factors, guidelines, criteria, or qualifications for how the Administrative Team will ensure that execution equipment and supplies meet “manufacturer specifications,” what to do if there are no “manufacturer specifications,” or what to do in the event execution equipment or supplies fail to meet “manufacturer specifications.” The Sourcing, Inspection, and Testing Policy also fails to consider that the Administrative Team is not required to be qualified by education, training, or experience to ensure that execution equipment and supplies are safe or effective for use.

160. In the case of executions by lethal injection, the Sourcing, Inspection, and Testing Policy also includes additional provisions requiring the Administrative Team to “obtain technical assistance for the purpose of reviewing the lethal substances” and “review chemical test results and certificate of analysis, the amounts, the methods of delivery and injection, and the condemned person’s physical and historical characteristics to evaluate compliance with th[e] SOP.” According to the Sourcing, Inspection, and Testing Policy, the person conducting the technical review “will meet with the Administrative Team to review the findings,” and the Director “will make the final determination regarding compliance with th[e] SOP.” But the Sourcing, Inspection, and Testing Policy contains no standards, factors, guidelines, criteria, or qualifications for how that technical review will be conducted, and fails to consider that the Director is not required to have any education, training, or experience with lethal substances or chemicals such that the Director may not be qualified to determine or capable of determining “compliance with th[e] SOP.” The Sourcing, Inspection, and Testing Policy also does not define “compliance with th[e] SOP.”

161. Moreover, the Sourcing, Inspection, and Testing Policy arbitrarily, and without any explanation, fails to include any provisions concerning checks of medical supplies during executions by firing squad, even though there are such provisions for executions by lethal

injection. Checks of medical supplies are necessary for executions by firing squad, and the failure to include provisions concerning checks of medical supplies for executions by firing squad increases the risk that a condemned person may suffer cruelly in the event of a medical emergency during an execution by firing squad.

162. In addition, Director Derrick has not disclosed the basis for the Sourcing, Inspection, and Testing Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

163. For at least the reasons set forth above, the Sourcing, Inspection, and Testing Policy is arbitrary, capricious, and an abuse of discretion.

164. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick's Emergency Medical Services Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

165. Director Derrick approved policies concerning the role of emergency medical services personnel (hereafter, the "Emergency Medical Services Policy").

166. Under Director Derrick's Emergency Medical Services Policy, emergency medical services may provide "resuscitation efforts" to the condemned person "as needed."

167. The Emergency Medical Services Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Emergency Medical Services Policy does not define when resuscitation efforts may be "needed"; does not establish standards governing when resuscitation efforts may be "needed"; does not set

criteria or factors to be considered when determining whether resuscitation efforts may be “needed”; and does not identify the official or officials with authority to determine whether resuscitation efforts may be “needed.”

168. The Emergency Medical Services Policy also does not provide any guidance whatsoever concerning when the goal of the execution—killing the condemned person—will give way to lifesaving resuscitation efforts—saving the condemned person—or how critical decisions concerning lifesaving resuscitation efforts will be made or by whom.

169. In addition, Director Derrick has not disclosed the basis for the Emergency Medical Services Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

170. For at least the reasons set forth above, the Emergency Medical Services Policy is arbitrary, capricious, and an abuse of discretion.

171. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto’s and Mr. Creech’s substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick’s Method Certification Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

172. Director Derrick approved a policy concerning her certification of the method of execution pursuant to Idaho Code § 19-2716 (hereafter, the “Method Certification Policy”).

173. Under Director Derrick’s Method Certification Policy, the Director will “[f]ile declaration to certify the method of execution that is available” upon the service of a death warrant.

174. The Method Certification Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. The policy lacks standards, guidelines, or criteria of any kind that the Director will use to determine whether firing squad is or is not available, and does not explain how the Director determines “availability” or what “availability” means in this context.

175. In addition, Director Derrick has not disclosed the basis for the Method Certification Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

176. For at least the reasons set forth above, the Method Certification Policy is arbitrary, capricious, and an abuse of discretion.

177. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto’s and Mr. Creech’s substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, and the equal protection of the laws; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

**Director Derrick’s Amendment Policy
Is Arbitrary, Capricious, and an Abuse of Discretion**

178. Director Derrick approved policies concerning the Director’s discretion to amend the execution policies and procedures at will (hereafter, the “Amendment Policy”).

179. Under Director Derrick’s Amendment Policy, IDOC staff and contractors who participate in the planning, preparation, or implementation of the execution process may deviate from SOP 135’s requirements with “prior consent from the Director.”

180. The Amendment Policy fails to consider important factors, is irrational or unreasonable, and is subject to misuse or abuse by IDOC. Among other things, the Amendment

Policy fails to consider the importance and necessity of fixed execution policies and procedures that cannot be changed at will, at any time, or for any reason at all at the sole discretion of the Director. The Amendment Policy also fails to consider that execution policies and procedures that can be changed at will, at any time, or for any reason at all at the sole discretion of the Director deprives condemned persons and their legal representatives of the ability to know what those policies and procedures may be in advance of an execution, and to review them and meaningfully challenge them in court if constitutionally or otherwise legally deficient.

181. The Amendment Policy vests the Director with de facto unlimited and unchecked power over the condemned in the weeks leading up to and during the execution, and therefore over the life and death of the condemned person. That power is patently unreasonable, irrational, arbitrary, capricious, and an abuse of discretion.

182. No statute vests the Director with the power to amend the policies and procedures concerning executions of death sentenced persons at will, at any time, or for any reason at all. To the contrary, the Director is required to determine fixed policies and procedures concerning executions.

183. In addition, Director Derrick has not disclosed the basis for the Amendment Policy, including the facts, information, or alternatives considered, if any, and has not provided any explanation, reasoned or otherwise, for approving the policy.

184. For at least the reasons set forth above, the Amendment Policy is arbitrary, capricious, and an abuse of discretion, and in excess of the statutory authority of the agency.

185. For at least the reasons set forth above, the policy prejudices Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, due process, the equal protection of the laws, and access to the

courts; and their rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion. To the extent the Amendment Policy permits the Director to alter or amend the Spiritual Activity Policy at will, at any time, or for any reason at all, the Amendment Policy also prejudices Mr. Pizzuto's and Mr. Creech's constitutional rights to the free exercise of religion guaranteed by the First Amendment to the U.S. Constitution and Article I, § 4 of the Idaho Constitution. The policy also prejudices Mr. Pizzuto's and Mr. Creech's substantial rights to meaningfully challenge the policies and procedures that will be used to carry out their executions.

PREJUDICE TO SUBSTANTIAL RIGHTS

186. For the reasons set forth above, Director Derrick's determination approving SOP 135 and the policies contained therein prejudiced Mr. Pizzuto's and Mr. Creech's substantial rights, including but not limited to their constitutional rights to be free from cruel and unusual punishment, to due process, to the equal protection of the laws, to access the courts, and to the free exercise of religion.

187. Director Derrick's determination approving SOP 135 and the policies contained therein also prejudiced Mr. Pizzuto's and Mr. Creech's substantial rights to be executed in accordance with policies that were lawfully adopted and are not arbitrary, capricious, or an abuse of discretion.

188. Director Derrick's determination approving SOP 135 and the policies contained therein also prejudiced Mr. Pizzuto's and Mr. Creech's substantial rights to meaningfully challenge the policies and procedures that will be used to carry out their executions.

PRAYER FOR RELIEF

189. Mr. Pizzuto and Mr. Creech respectfully request that the Court:

- a. find Director Derrick's determination approving SOP 135 arbitrary, capricious, and an abuse of discretion, and in excess of the statutory authority of the agency, in violation of the APA, including by finding that Director Derrick's decisionmaking and the policies that resulted from that decisionmaking was arbitrary, capricious, and an abuse of discretion, and in excess of the statutory authority of the agency;
- b. find Director Derrick's determination approving SOP 135, including Director Derrick's execution policies, prejudiced Mr. Pizzuto's and Mr. Creech's substantial rights;
- c. set aside Director Derrick's determination approving SOP 135, including Director Derrick's execution policies, and remand the determination for further proceedings not inconsistent with the Court's findings;
- d. issue an order, pursuant to Idaho Code § 67-5274 and Idaho Rule of Civil Procedure 84(m), staying Director Derrick's determination approving SOP 135 and the policies contained therein and any enforcement of SOP 135 pending the Court's final decision on the merits; and
- e. grant any additional relief that the Court may deem just or proper.

* * *

REQUIRED CONTENTS UNDER IDAHO RULE OF CIVIL PROCEDURE 84

1. Name of the agency for which judicial review is sought. Director of the Idaho Department of Correction.

2. Title of the district court to which the petition is taken. District Court of the Fourth Judicial District of the State of Idaho.

3. Date and heading, case caption, or other designation of agency and action for which judicial review is sought. Director of the Idaho Department of Correction's determination approving Standard Operating Procedure 135.001, Version 6.0, dated June 8, 2026.

4. Statement whether there was a hearing or oral presentation before the agency that was recorded or reported. There was no hearing or oral presentation before the agency.

5. Statement of issues for judicial review. Mr. Pizzuto and Mr. Creech hereby incorporate by reference paragraphs 65 through 185 of this Petition for Judicial Review.

6. Designation as to whether transcript is requested. A transcript is not requested.

7. Attorney's certification. I, Jonah J. Horwitz, certify that, on July 6, 2026, I will cause service of the Petition to be made upon the Director of the Idaho Department of Correction. Because a transcript is not requested, the estimated fee for the preparation of the transcript has not been paid. I will contact the Attorney General's Office regarding payment of the estimated fee for the preparation of the record. Payment of the estimated fee, if any, will be made upon Respondent's directions as to the appropriate payee.

DATED this 6th day of July 2026.

/s/ Jonah J. Horwitz
Jonah J. Horwitz
Federal Defender Services of Idaho

*Attorney for Petitioners Gerald Ross Pizzuto, Jr.
and Thomas Eugene Creech*