

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMENIA LEVI CUDJO, JR.,)
) CA No. 08-99028
Petitioner-Appellant,)
v.) D.C. No. CV-99-08089-JFW
)
VINCENT CULLEN, Warden,)
)
Respondent-Appellee.)
)
_____)

APPELLANT’S REQUEST FOR JUDICIAL NOTICE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE JOHN F. WALTER
United States District Judge

SEAN K. KENNEDY
Federal Public Defender
MARK R. DROZDOWSKI
JOHN LITTRELL
Deputy Federal Public Defenders
321 East 2nd Street
Los Angeles, California
Telephone: (213) 894-2854
Facsimile: (213) 894-0081

Attorneys for Petitioner-Appellant
ARMENIA LEVI CUDJO, JR.

Petitioner and Appellant Armenia Cudjo requests that the Court take judicial notice of two orders in *Morales v. Cates*, N.D. Cal. case nos. 5-6-cv-219-JF-HRL, 5-6-cv-926-JF-HRL: Order Setting Joint Status Conference dated September 2, 2010; and Order Following Regulatory Action dated August 4, 2010.

Federal Rule of Evidence 201(b)(2) permits this Court to take judicial notice of a fact that is “not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” This Court “may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases.” *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980). A court must take judicial notice when requested by a party and supplied with the correct information, Fed. R. Evid. 201(d), and judicial notice may be taken at any time during the proceeding. Fed. R. Evid. 201(f).

Cudjo requests that the Court take judicial notice of these orders because they provide background information on the current state of California’s lethal injection regulations, and the state of legal challenges to them. The sole claim that the district court certified in this appeal is Cudjo’s lethal injection challenge. The district court order certifying the claim for appeal states: “In light of the fact that the issue is not thoroughly settled, and the identical claim is already being litigated in the Northern District of California, the Court denies relief on the claim, but

grants a certificate of appealability. This will allow Armenia's claim to be reviewed by the Ninth Circuit Court of Appeals after the litigation before the district court in *Morales v. Tilton*, on the issue of the constitutionality of the lethal injection method, is completed." Excerpts of Record filed with Appellant's Brief ("ER") 191.

The orders are a proper subject of judicial notice under Fed. R. Evid. 201(b)(2). They are "not subject to reasonable dispute" and originate from a source whose "accuracy cannot reasonably be questioned." *Wilson*, 631 F.2d at 119; Fed. R. Evid. 201(b). Cudjo has supplied this Court with the necessary information to take judicial notice and thus judicial notice is mandatory. Fed. R. Evid. 201(d).

A copy of the orders has been filed in Appellant's Supplemental Excerpts of Record, filed concurrently herewith and with Appellant's Reply Brief, at pages 1-3.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: September 15, 2010

By /s/ Mark R. Drozdowski
MARK R. DROZDOWSKI
Deputy Federal Public Defender

Attorneys for Petitioner-Appellant
ARMENIA LEVI CUDJO JR.

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By /s/ Mark R. Drozdowski
MARK R. DROZDOWSKI
Deputy Federal Public Defender