

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
)
ROBERT AYERS, JR., Warden,)
)
Respondent-Appellee.)
)
_____)

APPELLANT’S SECOND 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

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ARMENIA LEVI CUDJO, JR.

Petitioner and Appellant Armenia Cudjo requests that the Court take judicial notice of an additional and more recent order in *Morales v. Cates*,¹ 757 F. Supp. 2d 961 (N.D. Cal. 2010) Stipulation and Order Schedule for Completing Discovery, dated November 3, 2011, and the final order on Summary Judgment in the case of *Mitchell Sims v. California Department of Corrections and Rehabilitation, et al.*, CIV 1004019, Superior Court, State of California, Marin County, filed December 10, 2011. Copies of these court orders are attached hereto for the Court's convenience.

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(c)(2), and judicial notice may be taken at any time during the proceeding. Fed. R. Evid. 201(d).

Cudjo requests that the Court take judicial notice of these orders because they provide background information on the current state of California's lethal

¹Petitioner's prior request for judicial notice of pleadings from the *Morales* litigation is before this Court.

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." ER 191.

The order in *Morales* indicates that discovery is ongoing in that case until at least August 15, 2012 concerning the new California lethal injection protocol, Cal. Code Regs. tit. 15 § 3349 et seq, adopted on July 30, 2010, effective August 29, 2010, which replaced OP 770. The *Sims* order invalidates this revised lethal injection protocol, which was promulgated after OP 770, was invalid.

Given the COA issued by the district court in this case, these two court orders will be of assistance to the Court in connection with the disposition of the appeal and ruling on the lethal injection issue.

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(c)(2).

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: January 27, 2012

By /s/ John L. Littrell
JOHN L. LITTRELL
Deputy Federal Public Defender

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ARMENIA LEVI CUDJO JR.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2012, I electronically filed the foregoing Appellant's Second Request for Judicial Notice 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.

/s/ John L. Littrell
JOHN L. LITTRELL