

1 Mr. David Randolph Smith-Bey (C)
2 Sovereign Secured Party Creditor,
3 Authorized Representative,
4 Attorney-In-Fact in behalf of
5 DAVID RANDOLPH SMITH (C), Ens Legis
6 DEBTOR, CDCR # K-17050
7 FACILITY E-530-2013005LP
8 c/o P.O.Box 900
9 Avenal, California (93204)
10 united States of America
11

FILED

OCT 21 2013

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

12
13 IN THE UNITED STATES DISTRICT COURT
14 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION

16 1:13 CV 001693 - MJS PC

13 DAVID RANDOLPH SMITH,)
14)
15 Plaintiff,)
16 v.)
17 Edmund G. Brown, Governor,)
18 Jeffrey Beard, Secretary of)
19 CDCR, Carl Wofford, Warden)
20 of Avenal State Prison, et al,)
21)
22 Defendants.)
23

Case No. _____
EMERGENCY COMPLAINT FOR AN
INJUNCTION AGAINST AN OUT
OF STATE TRANSFER AGAINST
MY WILL IN VIOLATION OF A
FEDERAL COURT ORDER TO EXP-
AND MY GOOD TIME CREDITS AS
ORDERED BY THE FEDERAL COURT

(PC) Smith v. Brown, et al

Doc. 6 Att. 2

RECEIVED

OCT 21 2013

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID RANDOLPH SMITH (C)

(Name of Plaintiff)
c/o P.O. Box 900

(Address of Plaintiff)
DAVID RANDOLPH SMITH (C)

(Case Number)

vs.

Edmund G. Brown, Jr. Governor

Jeffrey Beard, Secretary of CDCR

Carl Wofford, Warden Avenal Prison

(Names of Defendants)

COMPLAINT

MOTION FOR AN INJUNCTION
AGAINST OUT-OF-STATE TRANS-
FER AGAINST MY WILL IN VIO-
LATION OF A FEDERAL COURT
ORDER TO EXPAND MY GOOD TI-
ME CREDITS AS SO ORDERED.

I. Previous Lawsuits:

A. Have you brought any other lawsuits while a prisoner: Yes No

B. If your answer to A is yes, how many?: 2 Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff Mr. David Randolph: of the Smith-Bey Family

Defendants James B. Pierce, Steve Cooley, Ronald Geltz, Ida-Thedford, James D. Hartley, Matthew Cate, Kamala D. Harris and Edmund G. Brown, Jr.

FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Rev'd 5/99

ATTACHMENT TO PAGE ONE"

From 1. Previous Lawsuites:

The parties to the first lawsuit are as follows:

Ira Kristal, Doctor who was employed by Avenal state Prison about the year of 2009; Kathy Mendoza-Powers, Warden who was also employed by Avenal State Prison in the year of 2009. This case was filed due to the doctors faliure to treat me in a timely manner causing great injury to my right foot.

The case was later dismissed because I did not file a timely response to a motion that the District Attorney claimed that he sent me but I never received it.

The Judge in this case was the Honorable Peter M. Schultz of the Hanford Superior Court, and the District Attorney was James C. Philips, Deputy District Attorney of Sacramento

The most resent lawsuit is an on going issue in which James B. Pierce, Judge of the Superior Court of Los angeles County, Long beach Division; Steve cooley, Ronald Geltz Ida Thedford, Jame D. Hartley Matthew Cate Kamala D. Harris and Governor, Edmund G. Brown have all failed to respond to my Private Administrative Process for over a year.

I Will be filing this matter in the Central District Court of Los angeles once this honorable District Court grants my injunction and stay the out of state move

Executed this 7th day of october, 2013, at Avenal

2. Court (if Federal Court, give name of District; if State Court, give name of County)

SUPERIOR COURT OF THE STATE OF CALIFORNIA, SOUTH DISTRICT

3. Docket Number NAO2237603

4. Name of judge to whom case was assigned James B. Pierce

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

The Court claimed the no action would be taken. It is Pending

6. Approximate date of filing lawsuit June 24th, 2009

7. Approximate date of disposition All parties failed to Respond

II. Exhaustion of Administrative Remedies

A. Is there a grievance procedure available at your institution? Yes No

B. Have you filed a grievance concerning the facts relating to this complaint? Yes No

If your answer is no, explain why not N/A
N/A

C. Is the grievance process completed? Yes No

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

A. Defendant Edmund G. Brown, Jr. is employed as Governor
State Capital at Sacramento, California

B. Additional defendants Jeffrey Beard, Secretary of CDCR in Sacramento,
Carl Wofford, Warden of Avenal State Prison, B. Sunamoto, Captain
of Facility E Yard Avenal State Prison, F. Aguiar, CCI; Trujillo-Vi-
lla, CCI; Mrs. Hatten, CCI; Richards, CCI Mrs. Mendez CCI and
CCII Aguire. et al. All employed at Avenal State Prison In Kings
County, California Other Defendant (s) will be added at a later
date pending their names.

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

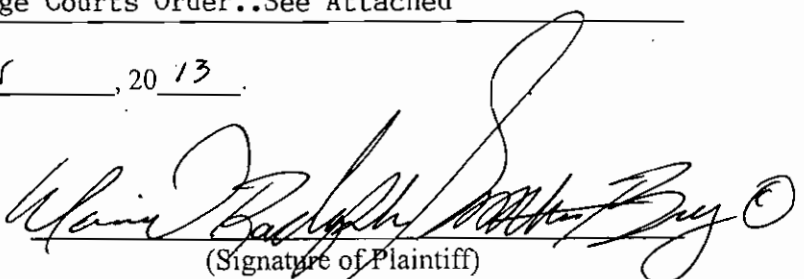
On September 12th, 2013, Counselor CCI Mr. Trujillo-Villa issued a document threatening to force California Inmates with out of State Transfers. On September 18th, I was interviewed by CCI Counselor Mr. F. Aguilar, who informed me that I would be going through a classification hearing to be sent out of State. This counselor also told me that the threat of sending inmates to other States was pending on the Three (3) Judge Court if they would allow it. The State was ordered by the three (3) Judge Court to release and greatly "Increase the time credits for all inmates across the Board Prospective and Retroactive from the time of Sentence. Over

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

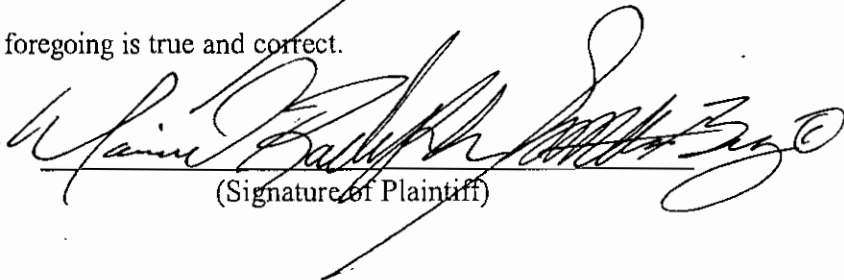
I am requesting from this Honorable Court an Injunction and Exemption from being moved to another State or Prison in California for at least one Year of this Courts Order. The State, All named parties to this matter have failed to Honor the Three (3) Judge Court Order to Release. Due to my Case factors and the Nature of my crime any move would place me at risk as I have made this very clear to all staff in this matter.. I am seeking relief from the Superior Court due to the faliure of the State and its actors not following the Three (3) Judge Courts Order..See Attached

Signed this 7th day of October, 2013.


(Signature of Plaintiff)

I declare under penalty of perjury that the foregoing is true and correct.

10/7/13
(Date)


(Signature of Plaintiff)

CONTINUED FROM IV. STATEMENT OF CLAIM

Please see Exhibit A, which is a copy of the order from the Three (3) Judge Court. The State is in violation of this order and attempting to force the Court to allow them to send inmates out of State and away from our families.

This would mean high phone bills calling from another State to my kids and other family and friends.

I am only asking this Court for a year to complete my Superior Court Habeas Corpus on the U.S. Supreme Court's Ruling against the State and its Order to Greatly Increase all inmates time credits back to the time each of us were sentenced.

CONTINUED FROM V. RELIEF.

As stated in this complaint above. I only seek relief for an injunction for no more than one year from this Honorable Court just to complete my Superior Court Process. I ask that the Order from the Court make very clear to all staff at Avenal State Prison not Threaten, nor Harass me while I am appealing the above matter. I request that this Injunction last only until the date of this filing next year date ending.

Executed this 7th day of October, 2013, at Avenal California..

1 Mr. David Randolph Smith-Bey (C)
2 Sovereign Secured Party Creditor,
3 Authorized Representative,
4 Attorney-In-Fact in behalf of
5 DAVID RANDOLPH SMITH (C), Ens legis
6 DEBTOR, CDCR # K-17050
7 FACILITY E-530-2013005LP
8 c/o P.O.Box 900
9 Avenal, California (93204)
10 united States of America
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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

13 DAVID RANDOLPH SMITH,
14 Plaintiff,
15 v.
16 Edmund G. Brown, Governor,
17 Jeffrey Beard, Secretary of
18 CDCR, Carl Wofford, Warden
19 of Avenal State Prison, et al,
20 Defendants.

Case No. _____
EMERGENCY COMPLAINT FOR AN
INJUNCTION AGAINST AN OUT
OF STATE TRAFERS AGAINST
MY WILL IN VIOLATION OF A
FEDERAL COURT ORDER TO EXP-
AND MY GOOD TIME CREDITS AS
ORDERED BY THE FEDERAL COURR

21 TO: THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT:

22 Comes now Mr. David Randolph: of the smith-Bey Family, Petitioner,
23 in whose behalf this complaint is applied for, who is confined from libe-
24 rty at Avenal State Prison in Kings county, California in the custody of
25 Warden Carl Wofford as a result of a judgment of the Superior Court of
26 the State of California, County of Los Angeles on or about the 20th day
27 of June, 1996 in case # NA02237603.

28 Sentencing the petitioner to a term of imprisonment not to exceed.

1 36 Years.

2 Said sentencing was carried out pursuant to a plea of 9 years whi-
3 ch is not the subject of this action, but this action is in clear violat-
4 ion of a Federal Three 93) Judge court Order handed down June 20th, 2013.

5 The purpose of this petition is to bring this matter to the Court
6 in order to remedy the on going violations and threats of a transfer by
7 the defendants against the plaintiff.

8 FACTS IN SUPPORT OF THE COMPLAINT

9 The attached certification of the plaintiff is hereby fully
10 incorporated by reference and along with the transcripts of the Federal
11 Court Orders as evidence against the State and all actors in this matter.

12 On June 20th, 2013 the Federal Three Judge Court Ordered the
13 State of California to release 9,636 inmates to reduce its prison popula-
14 tion by December 31st, 2013. Please See exhibit A, attachment Order of
15 federal three Judge Court, pages 48-51.

16 On or aout the month of September, 2013, Governor Edmund G. Brown
17 claimed that instead of release he would send the 9,636 inmates out of
18 State and to Private Prisons within the State.

19 The Three Judge court made it clear to the Governor that he had
20 no authority to send inmates out of State because he terminated his own
21 authority to do so when he terminated Ex-Governor Schwarzenegger's Emer-
22 gency Proclamation to forece inmates out of state. Please see Exhibit B,
23 page 27 lines 12- 18 and pages 29 lines 24-28 and page 30 lines 1-6.

24 The Governor was Ordered to greatly expaned the good time credits
25 for all inmates across the board prospectively and retroactively for all
26 prisoners. Please see Exhibit C, page 37 lines 8-9.

27 On September 12th, 2013, I was informed that the Administration
28 of the Department of Corrections and Rehabilitation would start moving-

1 inmates out of State pending the the okay from the three judge court.

2 Please see Exhibit D Which is a copy of the Notice of Class-
3 ification Hearing.

4 This document claims that I could appeal once I am put up for
5 transfer by the committee, in which I was during this hearing and was
6 told that I was placed on the list for out of state transfer.

7 On September 20th, 2013, the classification committee
8 held a hearing to determine if I was eligibale to be sent out of Sta-
9 te stating that due to the Federal Court Order to reduce the prison
10 population they had to send me. I told them of my concerns of being
11 sent out of State due to my case factors, but they told me that they
12 could only do what they were told to do by Secramento and the depart-
13 ment of corrections told them to do. Please see Exhibit E, CDCR 128-G
14 Classification Chrono.

15 On September 22nd, 2013 I filed an Emergency appeal (602) in
16 response to the decision of the classification committee to put me
17 up for transfer against my will and in violation of the Federal three
18 Judge Court Order. Please see Exhibits A, B, and C.

19 On September 24th, 2013, the Federal Three Judge Court Order-
20 ed the State and Governor Edmund G. Brown not to send any inmates out
21 of State nor lease any more jail space out of State.

22 The Governor and his administriation has continued to violate
23 every Federal Court Order from the time the cases started.

24 The Department of Corrections and Rehabilitation has told all
25 staff to continue interviewing inmates for out of State even after
26 the September 24th, 2013 Court ruling. This is in violation of my
27 Constitutional right to be free from all harm against my preson.

28 ///

1 The plaintiff is seeking a Federal Court Injunction from this
2 Honorable District Court from any movement or Transfer to another State
3 or Prison for no less than one year.

4 I am requesting an injunction to remain at this Institution for
5 one year so that I can complete my Administrative Remedy against a Def-
6 ault of the District Attorneys office and the Superior Court of Los an-
7 geles County. I have to file a Complaint with the Central District
8 Court and will need time to complete this matter.

9
10 PRAYER FOR RELIEF

11 WHEREFORE, Good cause having been shown, the Honorable Court
12 should grant the complaint as follows:

13 1. Declare the plaintiff's rights;
14 2. Order and grant the request for an Injunction for one year.
15 3. Order that the plaintiff be given the right to exercise the
16 option of enforcing his liens in the Central District Court without any
17 delay, harassment; and harm from any staff, officer, or Administrative
18 body at Avenal State Prison while each case is pending.

19 4. Appoint Plaintiff counsel if necessary to assist in his lit-
20 igation to remedy the subject of this complaint;

21 5. That this Honorable District Court may grant other and
22 further relief that is just and proper to remedy the Federal and State
23 Constitutional violations against the plaintiff.

24 ///

25 ///

26 ///

27 ///

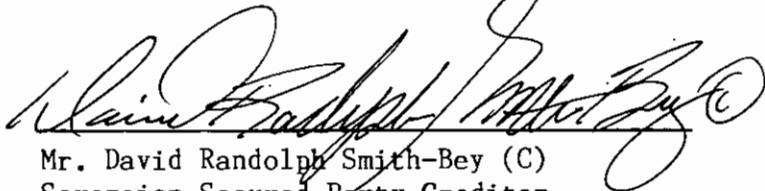
28 ///

VERIFICATION

I am the plaintiff in the above cause of action, having read the statements herein, and certify under Penalty of Perjury that upon information and belief these statements are true, correct and complete to the best of my first hand knowledge.

Executed on this 7th day of October, 2013

RESPECTFULLY SUBMITTED WITHOUT PREJUDICE



Mr. David Randolph Smith-Bey (C)
Sovereign Secured Party Creditor
Authorized Representative in behalf of
DAVID RANDOLPH SMITH (C), Ens Legis

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CERTIFICATION OF Mr. David Randolph Smith-Bey (C)

I, Mr. David Randolph Smith-Bey (C), hereby certify:

1. That I am the plaintiff in the above cause of action.

2. That I am incarcerated within the California Department of Corrections and Rehabilitation (CDCR) at Avenal State Prison in the County of Kings, California. As a result of an illegal negotiated plea in the Superior Court of the State of California in and for the County of Los Angeles in case number NA02237603.

3. That I was sentenced in violation of the agreement and had no understanding of the term which turned out to be more onerous than that negotiated to;

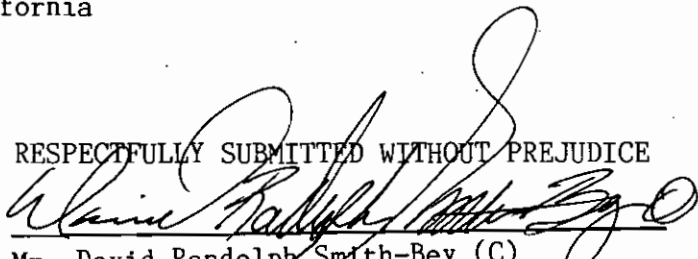
4. That I am a lay person untrained in the law.

5. That without intervention by this Honorable Court I will be subject to the illegal transfer into another State against my will or consent which is described in the above complaint and/or the likelihood of harm by other inmates due to my case factors.

I am the plaintiff in this action, have read the certification, and swear under Penalty of Perjury that upon information and belief this certification to be true, correct and complete to the best of my first hand knowledge.

Executed this 7th day of October, 2013 at Avenal State Prison in Kings county, California

RESPECTFULLY SUBMITTED WITHOUT PREJUDICE


Mr. David Randolph Smith-Bey (C)

MEMORANDUM OF POINTS AND AUTHORITIES

1
2
3 The infliction of punishment in violation of the Eighth
4 Amendment requires prison officials to protect prisoners from violence
5 at the hands of other prisoners. See Farmer v. Brennan, 511 U.S 825,-
6 833 (1994). "Being violently assaulted in prison is simply not a part
7 of the penalty that criminal offenders pay for their offenses against
8 society.

9 Plaintiff has made it very clear to prison staff during his
10 classification hearing that if they transferred him to an out of State
11 Institution it will place his life in danger.

12 Failure to protect the claims of the plaintiff are governed
13 by the deliberate indifference standard. See Odom v. South Carolina-
14 Dept. of Corr., 349 F.3d 765, 772 (4th Cir. 2003); See also Scicluna-
15 v. Wells, 345 F.3d 441, 445 (6th Cir. 2003).

16 It is illegal to send an inmate out of State against his/her
17 will unless Re-sentence by a Court of law of the Federal Three Judge
18 Court that Ordered the State not to send any inmates out of State.

19 **CONCLUSION**

20 The plaintiff is entitled to enforcement of his claims,
21 because he did not agree to be illegally sent out of State against his
22 will which would be in violation of all of his rights under the State
23 and Federal constitution.

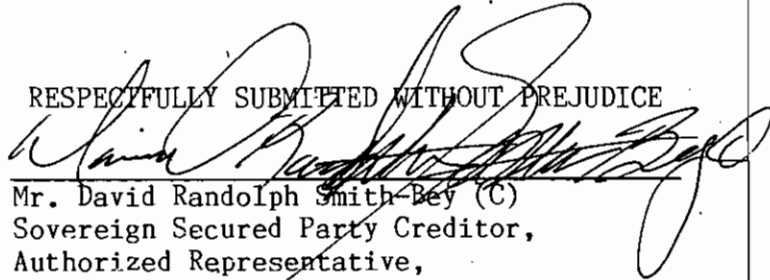
24 The relief prated for should be granted and the complaint
25 for an injunction should be issued.

26 I the undersigned certify under the Penalty of Perjury under
27 the laws of the State of California that the foregoing, and the State-
28 ments in the attached complaint for an injunction, are true, correct,-

1 and complete to the best of my first hand knowledge, except as to the
2 matters that are stated on my information and belief, and as to those
3 matters, I believe them to be true.

4
5 Executed this 7th day of October, 2013 at Avenal State
6 Prison in Kings County, California.

7
8 RESPECTFULLY SUBMITTED WITHOUT PREJUDICE



9
10 Mr. David Randolph Smith-Bey (C)
11 Sovereign Secured Party Creditor,
12 Authorized Representative,
13 Attorney-In-Fact in behalf of
14 DAVID RANDOLPH SMITH (C), EnsLegis

11 Authorized Representative

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15 ///

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18 ///

EXHIBIT "A"

1 It will be necessary to see how these many factors affect the 137.5% design capacity
2 ratio that is necessary to achieve constitutional compliance. This Court will retain
3 jurisdiction for at least some reasonable period of time to determine how the Amended Plan
4 and the various factors will affect the prison population and the design capacity ratio. This
5 Court may have to determine, based on information to be provided by defendants, what
6 additional steps may be necessary to maintain that ratio, and whether defendants have an
7 adequate plan for doing so. Sometime before the end of the year, defendants shall provide
8 this Court with updated population projections for 2014-2015 under various conditions,
9 including those contemplated in the Blueprint and the Amended Plan, and with whatever
10 other information may be useful to this Court in assessing the conditions inside and outside
11 the state prison system that explain why and how the prison population is changing. We will
12 inform defendants when this information should be submitted and the precise nature of the
13 information we desire to receive at a later date.

14 **E. Order**

15 Defendants are hereby ordered to implement the Amended Plan that shall consist of:

- 16 (a) the measures proposed in defendants' Plan submitted on May 2, 2013;²⁹ and
17 (b) a measure consisting of the expansion of good time credits, prospective and
18 retroactive, set forth in Item 4 of defendants' List submitted on May 2, 2013.

19 If for any reason the implementation of the measures in the Amended Plan does not result in
20 defendants reaching the 137.5% population ceiling by December 31, 2013, defendants shall
21 release enough additional prisoners to do so by using the Low-Risk List. Defendants are
22 ordered to take all steps necessary to implement the measures in the Amended Plan,
23 commencing forthwith, notwithstanding any state or local laws or regulations to the contrary.
24 18 U.S.C. § 3626(a)(1)(B). All such state and local laws and regulations are hereby waived,
25 effective immediately. This includes all laws that defendants identified in their May 2, 2013

26
27 ²⁹ Defendants are not required, however, to implement the "Contingency Measures"
28 listed in their Plan because, as defendants acknowledge, these measures cannot be
implemented by December 31, 2013. Defs.' Resp. to Apr. 11, 2013 Order at 33 (ECF No.
2609/4572).

1 filing as impeding the implementation of the measures in the Amended Plan. We list those
2 laws in Appendix A. To the extent that waiver of any laws and regulations other than those
3 listed in Appendix A is necessary to effectuate the Amended Plan, those laws are also
4 waived, and defendants shall provide us with a list of such laws within 20 days of this Order.

5 Instead of submitting monthly reports, defendants shall hereafter submit reports every
6 two weeks that shall include all the information that we have previously ordered given in the
7 monthly reports as well as the specific steps defendants have taken toward implementing
8 each measure in the Amended Plan, and the status of the development of the Low-Risk List.
9 The first report shall be submitted two weeks from the date of this Order. Defendants shall
10 also submit a benchmark report, as explained *supra* at 43-44, by December 15, 2013.

11 This Court desires to continue to afford a reasonable measure of flexibility to
12 defendants, notwithstanding their failure to cooperate with this Court or to comply with our
13 orders during the course of these proceedings. Accordingly, defendants may, if they wish,
14 make any or all of three substitutions. First, in place of subsection (b) defendants may, if
15 they prefer, revise the expanded good time credit program such that it does not result in the
16 release of violent offenders, so long as the revision results in the release of at least the same
17 number of prisoners as would the expanded good time credit program. We leave it to
18 defendants to determine the particular modifications they wish to make. Defendants must
19 inform this Court, however, of their decision to make such changes.

20 Second, defendants may substitute for any group of prisoners who are eligible for
21 release under the Amended Plan a different group consisting of no less than the same number
22 of prisoners pursuant to the Low-Risk List. Any substitution or release of prisoners from the
23 Low-Risk List shall be in the order in which they are listed, individually or by category.
24 Defendants need not obtain prior approval for such a substitution, but they must inform this
25 Court that they intend to make it.

26 Third, defendants may, with this Court's approval, substitute any group of prisoners
27 from the List (i.e., the list of all population reduction measures identified in this litigation,
28 submitted by defendants on May 2, 2013) for any groups contained in a measure listed in the

1 Amended Plan, should defendants conclude by objective standards that they are no greater
2 risk than the prisoners for whom they are to be substituted. Defendants must provide this
3 Court with incontestable evidence that the substitution will be completed by December 31,
4 2013. An example of such a substitution would be the substitution of those "Lifers" who,
5 due to age or infirmity, are adjudged to be "low risk" by CDCR's risk instrument. See Apr.
6 11, 2013 Op. & Order at 67-69 (ECF No. 2590/4541). Another example is prisoners who
7 have nine months or less to serve of their sentence and, rather than being sent to state prison,
8 could serve the duration of their sentences in county jails. See Aug. 4, 2009 Op. & Order at
9 149-52 (ECF No. 2197/3641). ~~Or to the extent that defendants are able to reassign prisoners~~
10 ~~to leased jail space before December 31, 2013,~~ they can substitute members of this group of
11 prisoners for an equal number of prisoners on the Amended Plan.

12 Absent the three categories of substitutions described above, defendants are ordered to
13 implement the Amended Plan as is. This Court retains jurisdiction over these proceedings
14 pending further order of the Court.


16 III. CONTEMPT

17 Plaintiffs have again requested that this Court issue an order to show cause why
18 defendants should not be held in contempt. Pls.' Resp. & Req. for Order to Show Cause
19 Regarding Defs.' Resp. to Apr. 11, 2013 Order at 2 (ECF No. 2626/4611). Their request has
20 considerable merit. We explained at length in our April 11, 2013 Opinion & Order how
21 defendants' conduct between June 2011 and March 2013 has included a series of
22 contumacious actions. Apr. 11, 2013 Op. & Order at 63-65 (ECF No. 2590/4541). The most
23 recent, and perhaps clearest, example of such an action is defendants' failure to follow the
24 clear terms of our April 11, 2013 order, requiring them to submit a Plan for compliance with
25 our Order, not a Plan for non-compliance. This Court would therefore be within its rights to
26 issue an order to show cause and institute contempt proceedings immediately. Our first
27 priority, however, is to eliminate the deprivation of constitutional liberties in the California
28 prison system. To do so, we must first ensure a timely reduction in the prison population to

1 137.5% design capacity by December 31, 2013. We will therefore **DEFER** ruling on
2 plaintiffs' motion, and defer instituting any contempt proceedings related to defendants' prior
3 acts until after we are able to determine whether defendants will comply with this order,
4 including the filing of bi-weekly reports reflecting the progress defendants have made toward
5 meeting the requirements of the Order issued June 30, 2011. The Supreme Court has stated
6 that contempt proceedings must be a remedy of last resort. *Spallone v. United States*, 493
7 U.S. 265, 276 (1990) (stating that a federal court must "use the least possible power adequate
8 to the end proposed" in exercising its remedial powers (internal citations omitted)). We
9 leave that problem for another time. Today, we order defendants to immediately take all
10 steps necessary to implement the measures in the Amended Plan, notwithstanding any state
11 or local laws or regulations to the contrary, and, in any event, to reduce the prison population
12 to 137.5% design capacity by December 31, 2013, through the specific measures contained in
13 that plan, through the release of prisoners from the Low Risk List, or through the substitution
14 of prisoners due to other measures approved by this Court. Failure to take such steps or to
15 report on such steps every two weeks shall constitute an act of contempt.

16
17 **IT IS SO ORDERED.**

18
19 Dated: 06/20/13


STEPHEN REINHARDT
UNITED STATES CIRCUIT JUDGE
NINTH CIRCUIT COURT OF APPEALS

20
21
22
23 Dated: 06/20/13


LAWRENCE K. KARLTON
SENIOR UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF CALIFORNIA

24
25
26
27 Dated: 06/20/13

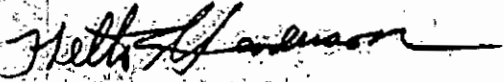

THELTON E. HENDERSON
SENIOR UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

EXHIBIT "B"

EXHIBIT "B"

1 design capacity rather than 137.5%.¹⁹ Accordingly, we directed defendants in our April 11,
2 2013 order to propose a new Plan that would reduce the state prison population by 9,636
3 more prisoners by December 31, 2013.

4 It is clear that defendants failed to comply with our April 11, 2013 order, and they
5 have now conceded as much: Defs.' Resp. to April 11, 2013 Order at 5 n.3, 37 (ECF No.
6 2609/4572) (acknowledging that its latest Plan will not achieve the 137.5% figure by
7 December 31, 2013). Defendants, however, understate the extent of their own non-
8 compliance. Defendants assert that their Plan would achieve a prison population of 140.7%
9 design capacity by December 31, 2013. In fact, however, at best defendants' latest Plan
10 would result in a prison population of 142.6% design capacity by December 31, 2013,
11 assuming that the out-of-state prisoners are actually not to be returned (despite the
12 Governor's termination of his authority to order them housed outside of California). In other
13 words, Defendants submitted a Plan that at best would achieve essentially only half of the
14 prisoner reduction required by our April 11, 2013 order. Demonstrating the discrepancy
15 between defendants' assertions and the reality of their proposed Plan requires some
16 explanation.

17 Defendants' Plan has five components: (1) expanding the use of fire camps; (2)
18 leasing jail capacity from Los Angeles and Alameda county; (3) expanding good time credits

19
20 ¹⁹ The calculations throughout this Opinion & Order are based on projections for
21 prison population and design capacity that defendants have either reported to us in various
22 filings or stated in published reports (e.g., the Blueprint). We accept defendants' reported
23 figures, but also plaintiffs have not objected to these numbers. Accordingly, we credit
24 defendants fully with the additional design capacity resulting from construction to be
25 completed between now and December 31, 2013.

26 We note, however, that defendants' previous estimate for the shortfall between the
27 Blueprint and the 137.5% population figure was 8,790 prisoners. App. A to Grealish Decl. in
28 Supp. of Defs.' Resp. to Oct. 11, 2012 Order (ECF No. 2512/4285). Based on defendants'
29 May 2, 2013 filing, it is apparent that the shortfall is now 9,636 prisoners. Defendants have
30 failed to explain why or how this estimate has changed by almost 1,000 prisoners. It appears
31 to be attributable to an upward revision in the State's general population projections.
32 Defendants' Spring 2013 population projections show the prison population to be higher than
33 was expected in the Fall 2012 projections. Spring 2013 Adult Population Projections at 11,
34 [http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/
35 Projections/S13Pub.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Projections/S13Pub.pdf).

1 for non-violent offenders prospectively (despite the agreement of all experts that the full
 2 expansion of good-time credits, retroactively and for all prisoners, was the most promising
 3 population reduction measure); (4) expanding some parole categories; and (5) slowing the
 4 return of out-of-state prisoners. Defendants estimate the prisoner reduction from each of
 5 these measures as follows:²⁰

Component	Reduction by December 31, 2013
1) Fire camps	1,250
2) Leasing jail space	1,600
3) Good-time credits (limited)	247
4) Expanding parole	400
5) Out-of-state prisoners not to be returned	3,569
Total achieved by Plan	7,066
Shortfall relative to 9,636 reduction required by population reduction order	2,570

15 Thus, if defendants were able to implement all the measures included in its Plan and if these
 16 estimates accurately reflected the prisoner population reduction that would be achieved under
 17 those measures, defendants would fail to comply with our April 11, 2013 order by a total of
 18 2,570 prisoners – i.e., it would fall 27% short of the 9,636 reduction required by that order.
 19 Put another way, it would result in a prison population of 140.7% design capacity on
 20 December 31, 2013.

21 Defendants' estimates, however, include reductions that would not be attainable by
 22 December 31, 2013. Specifically, the second item on defendants' Plan is not attainable by
 23 that date because defendants concede that, even with complete authorization, they will need
 24 nine months to negotiate the necessary contracts and thus cannot fully implement this
 25 measure by the end of the year. Defs.' Resp. to April 11, 2013 Order at 7 (ECF No.

26
 27 ²⁰ Because our April 11, 2013 opinion ordered defendants to ensure that the estimated
 28 reductions from the measures in its Plan did not double count the same prisoners, Apr. 11,
 2013 Op. & Order at 3 (ECF No. 2591/4542), we assume that the total reduction from the
 Plan is the simple sum of the individual measures in the Plan.

1 2609/4572). In fact, defendants do not assert that by December 31, 2013 their Plan would
 2 achieve any specific reduction in the prison population as a result of the reassignment of
 3 prisoners to leased jail space. Consequently, we cannot credit the Plan with the 1,600
 4 prisoner reduction as a result of leasing jail capacity by December 31, 2013. With this
 5 adjustment, defendants' Plan is as follows:

Component	Reduction by December 31, 2013
1) Fire camps	1,250
2) Leasing jail space (1,600)	0
3) Good time credits (limited)	247
4) Expanding parole	400
5) Out-of-state prisoners not to be returned	3,569
Total achieved by Plan	5,466
Shortfall relative to 9,636 reduction required by population reduction order	4,170

15 Eliminating the effect of the proposed jail leasing measure, defendants' Plan fails to comply
 16 with our April 11, 2013 order by a total of 4,170 prisoners – i.e., it falls 43% short of the
 17 9,636 reduction required by that order. Put another way, defendants' Plan would actually
 18 result in a prison population of 142.6% design capacity on December 31, 2013. In short,
 19 defendants' Plan clearly fails to meet the design capacity limit ordered by this Court – and
 20 affirmed by the Supreme Court – by a significant amount.

21 Although defendants' Plan does not come close to meeting the population reduction
 22 required by our order, defendants also advise us that this deficient Plan cannot be
 23 immediately implemented because all but one of the measures included therein are contrary
 24 to state law. This includes the measure to slow the return of out-of-state prisoners, even
 25 though the legal authorization to house these prisoners out of state in the first place was
 26 provided by Governor Schwarzenegger's Emergency Proclamation, which Governor Brown
 27 terminated earlier this year on the erroneous legal ground that no constitutional violation
 28 existed any longer in the California prison system. In other words, defendants must now

1 seek authorization (from the Legislature or from this Court in the form of a waiver of state
2 law) for a new measure that is required only because of the Governor's own prior action in
3 terminating his own emergency authority, and his refusal to reinstate this authority.

4 Defendants' June 17, 2013 status report indicates that they have proceeded no further in
5 making the necessary preparations to implement the measures in the Plan other than to draft
6 proposed legislation.²¹ Defs.' June 2013 Status Report (ECF No. 2651/4653). Moreover,

7 with regard to all measures that require authorization, the leader of the State Senate has
8 declared them DOA, dead on arrival. Hardy Decl., ¶ 3, Ex. B (ECF No. 2628/4612). In sum,
9 there is more than merely a substantial numerical deficiency with regard to defendants'
10 Plan.²²

11 **B. The Need for Further Relief**

12 In responding to defendants' submission of a "Plan" that fails to comply with our
13 Order, we begin again with the Supreme Court's prior decision:

14 If government fails to fulfill its obligation [to provide care
15 consistent with the Eighth Amendment], the courts have a
16 responsibility to remedy the resulting Eighth Amendment
17 violation. *See Hutto v. Finney*, 437 U.S. 678, 687, n. 9, 98 S. Ct.
18 2565, 57 L. Ed.2d 522 (1978). Courts must be sensitive to the
State's interest in punishment, deterrence, and rehabilitation, as
well as the need for deference to experienced and expert prison
administrators faced with the difficult and dangerous task of
housing large numbers of convicted criminals. *See Bell v.*

19
20 ²¹ The two exceptions are that they have (a) continued with construction of the
21 California Health Care Facility in Stockton and the DeWitt Nelson Correctional Annex in
22 Stockton; and (b) revised the 2013-2014 budget to include appropriations to increase fire
camp capacity. Defs.' June 2013 Status Report 1-2 (ECF No. 2651/4653).

23 ²² There are many other, although more minor, examples of how defendants have
24 failed to follow the clear terms of our April 11, 2013 order. For example, defendants failed
25 to list the total number of prisoners who would be released as a result of the Plan (violating
26 provision (2)(d) of the order); cited an excluded reason for failing to include various
27 measures on the Plan (e.g., cited public safety as reason for not including expansion of good
28 time credits for all prisoners) (violating provision (2)(e) of the order); failed to provide a
substantive explanation as to how the Plan would provide a durable solution to the problem
of overcrowding (violating provision (2)(f) of the order); failed to provide an estimate
regarding the effect on durability of slowing the return of out-of-state prisoners (violating
provision (2)(g) of the order); and failed to use their "best efforts" to implement the Plan.
Additionally, defendants failed to provide the necessary information in their May monthly
report required by provision (4)(b) of our order.

EXHIBIT "C"

EXHIBIT "C"

1. Expansion of Good Time Credits

A single measure is sufficient to remedy the 4,170 prisoner deficiency: the full expansion of good time credits set forth in Item 4 of defendants' List, submitted on May 2, 2013. The Plan defendants propose to implement includes a highly limited version of good time credits that applies prospectively only and applies to a limited number of prisoners. This limited version would result in the reduction of only 247 prisoners by December 31, 2013. Defs.' Resp. at 35 (ECF No. 2609/4572). If, however, defendants were to implement the full expansion of good time credits set forth in Item 4 of their List – i.e., prospectively and retroactively, for all prisoners – the measure would result in the additional reduction of as many as 5,385 prisoners by December 31, 2013. This is more than sufficient to remedy the 4,170 prisoner deficit and achieve the reduction in the prison population to 137.5% design capacity by December 31, 2013.

Defendants state their reasons for not including the full expansion of good time credits in their Plan as follows: (1) retroactive expansion results in the immediate release of some prisoners, threatening public safety; and (2) expansion of good time credits to prisoners convicted of violent offenses threatens the public safety. Defs.' Resp. at 35 (ECF No. 2609/4572).

We reject these arguments because they are contrary to the express factual findings that this Court has already made and that have been affirmed by the Supreme Court. As explained at length *supra* Section I.B, this Court carefully considered the question of whether the expansion of good time credits was consistent with public safety in our August 2009 Opinion & Order. We heard extensive testimony from the leading experts in the country, all of whom – including the now Secretary of CDCR Dr. Beard – testified that the expansion of good time credits could be implemented safely, both prospectively and retroactively. Even defendants' expert agreed that there was no statistically significant relationship between early release through good time credits and recidivism. Furthermore, many jurisdictions (including a number of counties in California) had safely used the expansion of good time credits to reduce their prison populations. We therefore concluded that the expansion of

EXHIBIT "D"

EXHIBIT "D"

STATE OF CALIFORNIA
NOTICE OF CLASSIFICATION HEARING

DEPARTMENT OF CORRECTIONS AND REHABILITATION

INMATE NAME SMITH	CDC NUMBER K-17050	DATE SEPTEMBER 11, 2013	HOUSING E-530
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YOU WILL APPEAR BEFORE A UNIT/INSTITUTIONAL CLASSIFICATION COMMITTEE WITHIN THE NEXT 30 DAYS FOR REVIEW AND CONSIDERATION OF THE FOLLOWING:

You are being provided this written notice to advise that you will be seen by a classification committee if determined eligible for housing in a correctional facility within California or a prison facility out of state. You have the right to appeal the committee's decision. These transfers are required to comply with a federal court order to reduce the prison population within California prisons. Due to the number of transfers required to meet the court's order, an appeal may not be responded to prior to your transfer.

ANY DECISION TO TRANSFER BASED ON THIS NOTICE IS CONSIDERED A NON-ADVERSE ACTION TAKEN TO ACCOMMODATE THE FEDERAL COURT ORDER.

YOU HAVE THE RIGHT TO APPEAL THIS ACTION AFTER A CLASSIFICATION COMMITTEE REFERS YOU FOR TRANSFER. THE APPEAL PROCESS WILL NOT PREVENT TRANSFER IN MOST CASES.

Effective Communication:

- No disabilities or issues requiring equally effective communication
- S' TABE score: RGPL date:
- S' has been identified with a disability / communication issue, and as such a personal interview is being conducted in order to ensure effective communication. After reviewing the DEC for primary method of communication and querying S' the assistance noted below was provided:

S' was identified with (check all that apply):

- Hearing Vision Speech Learning Disability
- TABE 4.0 or lower / no TABE Developmental Disability EOP
- CCCMS Foreign Language Speaking

Assistance provided to ensure effective communication (check all that apply):

- S' stated he did not need any assistance for Effective Communication
- Use of Text Magnifier Large Print Material Read documents to S'
- Language Interpreter Simple English Spoken Slowly & Clearly S' was wearing his hearing aids
- Sign Language Interpreter Lip Reading
- Written Notes (See attached notes)
- Other:

Method used to determine communication was effective (check all that apply):

- S' reiterated in his own words what was explained S' provided appropriate, substantive responses to questions asked
- S' asked appropriate questions regarding the information provided S' did not appear to understand the communication, even though the primary method of communication was used
- Other:

Inmate Waives Right to Appeal in Person

Inmate Waives Right to 72 Hour Notification

Name of Staff Assistant: _____ (e.g. when necessary for DDP, EOP, Foreign Language, etc.)

STAFF: AGUIAR	TITLE:	INSTITUTION:
SIGNATURE:		ASP

ROUTING INSTRUCTIONS:

ORIGINAL: OFFENDER-FILE

COPY: INMATE

Revised: 8/2013

AGUIAR
 EXTENDED
 EXEMPTION # 53453099
 United States the same to
 CHARGE THE
 RANDOLPH SMITH
 564-15-3099
 CCI

EXHIBIT "E"

EXHIBIT "E"

CDCR #: K17050	Name: SMITH	Placement Score: 19 Level: II GP/SNY: GP	Type and Release Date: EPRD 10/11/25 Housing: FAC E 530-2-13-5L
Custody: MED A R	Assignment: PIA MET FAB COMPAS: V.4; Not Required.	WG/PG: A1A 1/1/98	RGPL:0.0 / GED CSRA: LOW (1)

Subject appeared before Facility E UCC on this date for involuntary special transfer & annual review for alternate placement due to Court Ordered Population Reductions. Subject's CDCR 812, 812C, 127 and 840 have been reviewed and updated. Subject's full case factors are noted on CDCR 128-G, Initial Classification Chrono dated 10/22/03. The following case factors changes are noted: Any case factors that have changed since S's ASP's Initial Classification Chrono has been updated on this review. Per CDCR 128B, Eligibility Chrono for Court Ordered Population Reduction dated 9/9/13, Subject is eligible for COCF but not MCCF due to TTS/MED RISK MCC and not CCF due to TTS/MED RISK MCC/MO/SEX. S was given 72 hours notice prior to committee per CDC 128B-1 dated 9/11/13. Archive D65137 reviewed on 7/24/03.

Effective Communication: Subject does not have case factors requiring effective communication assistance despite Subject having a TABE of below 0.0. Subject speaks/understands English without need any assistance. S stated he didn't need assistance. The following was used to ensure effective communication: S reiterated in his own words what was explained, S provided appropriate substantive responses to questions asked, and S asked appropriate questions regarding the information provided.

Committee action: Refer this case to the CSR for a non adverse transfer to COCF ALT ASP-II as determined by availability. Upon transfer MED A R custody, A1A WG/PG and D/C approved.

Inmate Comments: Subject participated in today's committee action and he stated that he does not want to transfer out of state under the COCF program and that transferring him would put his life in danger due to the type of case he's incarcerated for currently (a sex case). Subject was informed of his right to appeal.

Pertinent Case Factors for Transfer:

Medical CDC 128 C3: dated 7/2/13 reflects: Permanent, OP, 2. Infreq Basic Consultation, 2. Full Duty, 2. Medium Risk, 2. Uncomplicated Nursing, FH Clear.

Medical Restrictions: Cocci II restricted however S signed a Cocci II transfer waiver on 7/19/13 and 7410 dtd 8/30/12 is noted.

DPP: N/A. DDP: NCF dtd 3/3/03. Dental Priority Code: #3 dtd 9/12/13.

TB Alert code is 22 dated 4/29/13.

Mental Health chrono dated 8/8/96 reflects: not a participant in the MHSDS.


B. SUNAMOTO, FC(A)

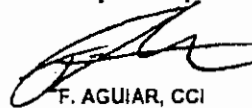
CHAIRPERSON

ADDITIONAL COMMITTEE MEMBERS

H. HATTEN, CCI

N. MENDEZ, CCI

~~M. EDWARDS, EDUCATION~~ EA


F. AGUIAR, CCI

RECORDER

E. ARAIZA, CCII

J. TRUJILLO, CCI

XXX, XXX

INST: ASP

CLASSIFICATION: UCC

DATE: 9/20/13

DISTRIBUTION:
INMATE
OFFENDER FILE

ANNUAL & TRANSFER REVIEW

SEP 20 2013 14:08

Proof of Service by Mail

I declare that:

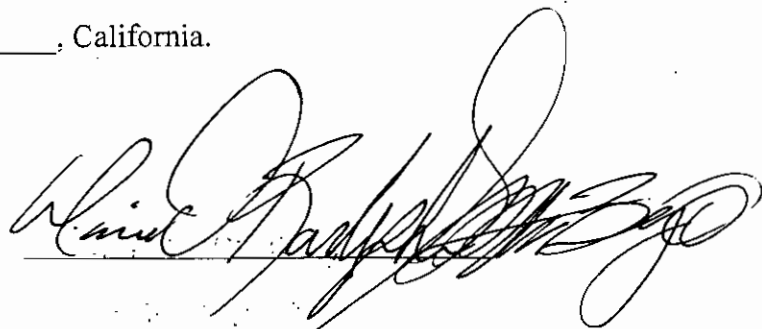
I am a resident of Avenal State Prison in the county of Kings,
California. I am over the age of 18 years. My residence address is:
P.O.Box 900., Avenal, California 93204

On 10/7/2013, I served the attached To All parties to this Matter on the
_____ in said case by placing a true copy thereof enclosed in a
sealed envelope with postage thereon fully paid, in the United States mail at
Avenal State Prison

addressed as follows:

State Capital, Governor Brown, Secretary of CDCR, Mr. Beard. Carl Wofford,
Warden. B. Sunamoto, Captain and all other named parties to this matter.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct, and that this declaration was executed on the date of
October 7th, 2013, at Avenal, California.



David Randolph Smith