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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13
14

15 **THE UNITED STATES OF AMERICA,**

16 Plaintiff,

17
18 v.

19 **THE STATE OF CALIFORNIA; EDMUND
20 GERALD BROWN JR., Governor of
California, in his official capacity; and
21 XAVIER BECERRA, Attorney General of
California, in his official capacity,**

22 Defendants.
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Case No. 2:18-cv-00490-JAM-KJN

**DECLARATION OF HOLLY S.
COOPER IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Honorable John A. Mendez
Action Filed: March 6, 2018

1 I, Holly S. Cooper, declare as follows:

2 1. I am a resident of the State of California. I have personal knowledge of the facts
3 set forth in this declaration. If called as a witness, I could and would testify competently to the
4 matters set forth below.

5 2. I have knowledge of the conditions in many immigration detention centers within
6 the State of California. I have been a lawyer for almost 20 years and for the majority of my
7 career, I have provided free legal representation and consultations to individuals in immigration
8 detention centers. Over the course of my career, I have interviewed thousands of men and
9 women in the custody of Immigration and Customs Enforcement (ICE) and unaccompanied
10 children in the custody of the Office of Refugee Resettlement. I have also been permitted special
11 access to certain detention centers to inspect detention centers in my capacity as the Co-director
12 of the University of California, Davis School of Law's Immigration Law Clinic, counsel for the
13 *Flores v. Reno* Settlement Agreement (Case No. CV85 4544 (C.D.Cal. 1996), and in my capacity
14 as a former member and advisor of the American Bar Association's Immigration Commission.

15 3. I regularly visit with clients in the Yuba County Jail, the Rio Cosumnes
16 Correctional Center ("RCCC") in Elk Grove, and the Contra Costa County Jail—sometimes as
17 frequently as twice a week. For the 12 years that I have been visiting immigration detainees in
18 Yuba County Jail and the Sacramento County Jail (both formerly at the downtown jail and
19 currently at the RCCC jail), immigration detainees' information has been publicly available.
20 Yuba County has maintained a webpage that makes available personal information of detainees
21 such as names, booking date, ages, weight, gender, height, and whether the person is in county
22 custody or immigration custody (or as Yuba County refers to it as "INS" custody). See Exhibit
23 A, a true and correct redacted copy of a screenshot of the Yuba County website where detainee
24 information is made available.

25 4. Sacramento County also lists whether the person is in county or immigration
26 custody on its roster that is kept at the jail. The roster is publicly available on a desk in front of
27 the jail's reception area. Anyone from the public can access this roster. I frequently use the
28 publicly available lists to get an accounting of how many persons are in immigration custody at

1 each facility, to help families find loved ones, and to determine lengths of detention for my
2 clients.

3 5. Department of Homeland Security (“DHS”) also runs a program called Victims of
4 Immigrant Crime Engagement (“VOICE”). VOICE releases detainees’ information to: (1) a
5 victim of crime(s); (2) a witness of crime(s); (3) an individual with a legal responsibility to act on
6 behalf of a victim or witness (e.g., attorneys, parents, legal guardians, etc.); or (4) individuals
7 acting at the request of a victim or witness.

8 6. DHS also maintains a publicly available online locator for every ICE detainee.
9 One needs the “A” number (located in many public records like Ninth Circuit orders), and the
10 person’s country of birth; or one can search with the individual’s name and country of birth.

11 7. For almost 18 years, I have documented, witnessed, and listened to detainees
12 recount their experiences enduring systemic, sub-human conditions in immigration custody in
13 public and private California immigration detention centers. I visit immigration detention centers
14 in California almost every week and interview at least 30 individuals in immigration custody
15 every month. The following are my observations and experiences from my visits and
16 investigations of detention centers throughout my career:

- 17 • Spoken to detainees on the telephone who are contemplating suicide while they are describing
18 feces smeared on their segregated cell;
- 19 • Inspected rape phone hotlines only to realize the phone was not even connected to a phone
20 line;
- 21 • Witnessed almost universally inadequate law libraries;
- 22 • Witnessed retaliation against clients for demanding humane medical treatment;
- 23 • Witnessed many detention centers with attorney-client visit rooms that are not sound proof,
24 where clients are afraid to speak for fear of being overheard;
- 25 • Heard detainees recount life threatening medical issues that are not being treated;
- 26 • Some detainees have told me they have been raped while in detention (one even as recent as
27 last month);
- 28 • Some detainees have witnessed guards performing oral sex on other guards;

- 1 • Witnessed clients (both adults and children) suffer from inadequate food sources in detention
2 centers;
- 3 • Clients and detainees have complained about being transported in shackles—which can be
4 extraordinarily painful for elderly detainees and detainees with disabilities;
- 5 • Children have also been shackled during asylum interviews and suffered injuries from
6 shackles being too tight around the wrists; and
- 7 • Women detainees had inferior recreational facilities at Mesa Verde Detention Center.
- 8 The issues are systemic, pervasive, and have not abated throughout the 18 years I have been
9 working with adults and children in immigration detention centers.

10 8. Unsanitary and unsafe conditions continue to exist in detention facilities in
11 California. For instance, during a visit to RCCC in January 2014, I observed that the facility was
12 old, loud, and dirty. As we walked down the halls, the concrete was wet and dirty—like a thin
13 sludge on the ground. Men were detained with other county inmates who were in criminal
14 custody. Some pods were open with bunks out in the open, and other pods were double-tiered
15 with locked down cells. Last year around March 2017, detainees at RCCC were evacuated due to
16 high levels of lead and copper in the drinking water was discovered by local government
17 inspection officials.

18 **Inadequate Mental Health Care**

19 9. Suicidal ideation is a major issue for persons and children in prolonged detention.
20 Children have called me from detention during the Christmas holidays crying in total despair that
21 they just want to be with their mothers. Most detained children are hundreds of miles from family
22 and often are only able to speak with parents less than an hour per week. Mothers and fathers who
23 are detained have particularly profound trauma at being separated from their children. Detainees
24 are not permitted to touch their children throughout their detention, and walking through the
25 family visitation rooms I often see children and parents crying, placing their hands over the
26 plexiglass dividers trying to touch. One very unique aspect of immigration detention is that many
27 individuals are applying for immigration defenses that require them to provide detailed narratives
28 about their past traumas. Many asylum seekers, abused children, and crime victims must provide

1 sworn testimony regarding their past rapes, past torture, past child abuse, and past traumas.
2 Detailing past traumatic experiences in a public court takes a tremendous psychological toll on
3 immigration detainees. This trauma is compounded by the fact that most do not have their
4 traditional support networks to sustain them because they are detained. For example, a woman
5 may be required to provide specific, graphic detail of all past rapes for her asylum hearing, and
6 then must return alone to her cell at the detention center. Detainees have shown me where they
7 self-mutilate due to the despair of prolonged detention and tell me of their suicidal thoughts. It is
8 not uncommon to have to counsel individuals who are having suicidal ideations. One detainee
9 told me how he witnessed one detainee cut his wrists and watched the blood spill out from the
10 bathroom stall. He cried to me as he recounted how people were in complete despair and not
11 getting adequate psychological care.

12 10. I have also represented clients with severe psychological issues who face extreme
13 medical neglect. In one case, we obtained the client's prior psychiatric history evincing severe
14 psychiatric history that was being treated with psychotropic medications. After receiving notice
15 of the client's prior medical treatment, the advice nurse at the detention center prescribed Tylenol
16 and more outdoor time, and ignored the client's prior treatment plan. When he was released from
17 detention months later, neither his family nor I was notified. He was released in downtown San
18 Francisco in a patient gown made from paper. It took hours for me and his family to find him.
19 After he was found, he told us he had to beg for money so he could take the Bay Area Rapid
20 Transit system home to Oakland.

21 **Inadequate Medical Care**

22 11. *Medical indifference to immigration detainees is pervasive and unabated.*
23 Detainees with medical or psychological issues rarely receive adequate medical care. Throughout
24 my 18 years visiting immigration detention centers I have observed that detention centers: (1) fail
25 to meet health care needs of individuals in a timely manner; (2) often fail to refer individuals to
26 higher-level medical care providers when necessary (and in some cases this failure has resulted in
27 death); (3) fail to provide adequate staff and medical personnel; (4) fail to communicate critically
28

1 important information about individuals' medical conditions between staff and especially during
2 transfers; and (5) fail to adequately screen individuals for illnesses.

3 12. Almost every time I visit an immigration detention center, detainees complain of
4 medical neglect. On a recent visit a man told me that he had severe pain in his mouth and
5 believed his tooth was infected. He told me was going to pull out the tooth himself because he
6 was not receiving medical attention and feared the infection would spread.

7 13. On or around May 11, 2015, I inspected the Mesa Verde Detention Facility in
8 Bakersfield, California, because it had recently opened and a delegation of civil rights lawyers
9 wanted to inspect the facility. I inspected the facility in my capacity as Co-director of the UC
10 Davis Immigration Law Clinic. A prison official and ICE officers lead the "tour" of the facility
11 and answered questions. I was concerned to learn that medical staffing included only 20 hours a
12 week of a contract physician rather than having a doctor at the facility at all times. The planned
13 20 hours per week of psychiatric care on-site was also a concern given that approximately 400
14 detainees were in custody there. After our tour, we learned that there was a waiting list for
15 appointments with the psychiatrist.

16 14. On or around May 22, 2015, I inspected the Otay Mesa Detention Facility near
17 San Diego, California with a delegation from the American Bar Association. On this inspection,
18 we were not permitted to speak with the ICE detainees, but we were permitted to ask questions to
19 the detention center spokesperson and medical staff. Therefore, we had no access to the
20 detainees' perspective on this visit. One issue of concern was the lack of confidentiality of
21 medical records. We were told by the detention center spokesperson that ICE officers as well as
22 the Office of Chief Counsel could access and inspect a detainee's medical file. This raised
23 concerns that information that was given to medical staff for treatment purposes could be used to
24 a person's detriment in deportation proceedings.

25 Language Barriers

26 15. The overwhelming majority of immigration detainees do not speak, write, or read
27 English. Spanish is the predominant language of most detainees. Other languages spoken by
28 detainees are Tagalog, Vietnamese, Mandarin, Punjabi, French, Wolof, Somali, Haitian Creole,

1 Hindi, Urdu, Farsi, and indigenous languages from Guatemala and Mexico. Language barriers
2 create enormous obstacles for non-English speakers. Although detainees have simultaneous
3 translations during their removal hearings, they are not afforded a translator to prepare the legal
4 forms required by the court. Immigration detainees also do not have the right to appointed
5 counsel unless they have a serious mental disorder pursuant to *Franco-Gonzalez v. Holder*, No.
6 CV 10-102211 DG (C.D. Cal). The vast majority of immigration detainees (most of whom do not
7 speak, read, or write English) represent themselves without the assistance of a lawyer. In some
8 California detention centers, only around 15% of the detainees have the assistance of a lawyer.

9 16. Most defenses in immigration court are enormously complicated and require
10 submitting lengthy legal forms to the court. The immigration legal forms are akin to Internal
11 Revenue Service tax forms—they are lengthy and incomprehensible to most persons. For
12 example, if an immigration detainee asked an immigration judge for the opportunity to apply for
13 political asylum, she would be given the Form I-589, a 10-page form in English that asks
14 complex questions regarding persecution in her home country. The Form I-589 is required of
15 anyone wishing to seek political asylum. If, for example, the detainee was a monolingual
16 Mandarin speaker from China, she would need to complete the Form I-589 in English. If the
17 person cannot read or write in English, they cannot complete the form. Most detainees who
18 cannot afford a lawyer have no choice but to ask other detainees to assist them with the forms.
19 This forces immigration detainees to disclose very personal details about their persecution, sexual
20 orientation, or rape histories to other detainees. Detainees helping non-English speakers usually
21 have no legal training—and even though well-intended—often miss critical details or facts that
22 *can have a serious prejudicial effect on the person's asylum application*. Even as a trained
23 lawyer, I can spend a minimum of 15 hours completing a Form I-589 with my clients—if I need
24 to use a translator that timeframe can easily be doubled. Moreover, if a pro se detainee who
25 cannot read or write in English must author a legal brief to the court of appeals, the legal process
26 becomes a farce. To properly write a legal appellate brief, the detainee must be able to read
27 lengthy transcripts in English, research case law in English, read relevant court cases in English,
28 and write legal briefs in English analyzing the transcripts and case law applicable to their case.

1 Immigration detainees often stare at me in confusion, as I describe the appellate process in the
2 Board of Immigration Appeals and Ninth Circuit and what will be required in their legal briefs. I
3 can confidently say that a person who does not read or write English cannot represent themselves
4 in a court of appeals without assistance. Many immigration detainees give up valid claims for
5 relief because the language barriers make it extremely difficult to represent themselves in pro se.

6 17. Language barriers also stymie access to medical treatment, as most detainees must
7 fill out “kites” or medical request forms in English to receive medical treatment. If an
8 immigration detainee cannot speak English, again they must rely on the benevolence of
9 immigration detainees who can write the medical requests in English for them. They must
10 disclose very personal information to complete strangers to request medical treatment.

11 **Lack of Access to Telephones**

12 18. Telephone access has historically been an enormous issue for detainees and
13 lawyers who are trying to reach their clients. One near-common characteristic of immigration
14 detention is its remoteness from California’s urban centers or distance from free legal service
15 providers. Over the years, ICE has contracted with detention centers located in El Centro,
16 Marysville, Elk Grove, California City, Bakersfield, and Adelanto, among other cities. Most of
17 these are distant from free legal services and major cities. Thus, phone access is critical to an
18 individual’s legal case as many lawyers and nonprofit lawyers cannot afford the time and expense
19 to travel to remote detention centers. A part of this issue has been remediated through a class
20 action settlement called *Lyon, et al. v. United States Immigration Customs Enforcement*, No. 13-
21 cv-5878, that covers Northern California detention centers; however, many detention centers in
22 Southern California are not covered by the settlement. Persistent issues for Southern California
23 facilities are: (1) inability to call numbers with automated attendants; (2) inability to call legal
24 counsel on a confidential phone line; (3) inability of lawyers to reach clients on confidential
25 phone lines; (4) inability to leave messages (most detention center phones disconnect the detainee
26 call if no “live” person is there to receive the call); and (5) the high cost of phone calls. The lack
27 of inadequate phone access impedes a person’s ability to gather evidence in support of their
28 claim, impacts a lawyer’s ability to effectively represent their client, and impacts California

1 residents who must pay the high costs of the collect telephone calls from their family in friends in
2 detention.

3 Inadequate Access to Legal Resources and Counsel

4 19. Immigration law is extraordinarily complex yet law libraries in immigration
5 detention centers are universally inadequate. Rarely are relevant forms available in immigration
6 detention centers' law libraries. Immigrants in removal proceedings often apply for relief from
7 removal. Typical forms used to apply for relief are: (1) applications for political asylum; (2)
8 applications for U visas; (3) applications for cancellation of removal; (4) fee waivers; and (5)
9 applications for adjustment of status. It is common for law libraries not to have any of these
10 forms.

11 20. Immigrants also bear the burden of proof in applications for relief. For example,
12 for political asylum, an applicant must show an objectively reasonable fear of persecution in her
13 home country. This is typically demonstrated through human rights reports, newspaper articles,
14 and State Department reports submitted by the applicant. However, law libraries in detention
15 centers rarely contain relevant human rights materials and applicants cannot meet their burden
16 without assistance outside of the detention center.

17 21. Legal materials are generally out-of-date and inadequate. Typically, the situation
18 is so dire, that I donate my old legal treatises and compilations of current human rights reports to
19 detention centers. I have even asked publishers to send me defective books (i.e. books with torn
20 pages or spines) so that I can donate them to the detainees.

21 22. During my visit to Mesa Verde Detention Center in 2015, I noted that the law
22 library was *inadequate*. During the inspection, I had the opportunity to log in and run a search on
23 the legal database available to detainees, and had three concerns about the system. First, given
24 that I – a trained attorney with considerable experience using different legal search engines –
25 could not figure out how to conduct a search without significant guidance from the librarian, I
26 doubted that most detainees could do the same. I queried the system on a basic deportation
27 question and the system told me it could not find any cases that met a basic criteria. Detainees
28 often do not have access to recent, critical information pertaining to their cases. Immigration law

1 can change from week-to-week and having up-to-date legal information is critical. Moreover,
2 there were no immigration forms or relevant human rights reports available in the law library. A
3 large number of immigration detainees apply for asylum, withholding of removal, and relief
4 under the Convention Against Torture, all of which usually require immigrants to bear the burden
5 of proof and present evidence about conditions in their home countries. Without access to current
6 human rights reports, immigrants cannot present such evidence and meet their burdens. Further,
7 we were told if a detainee wanted to print any documents, they had to be mailed to the law
8 librarian and she would print them. This raised concerns about the privacy of the data as many
9 detainees are recounting private information about torture and persecution that would have to be
10 emailed to a third party for printing.

11 23. Around January 2014, I was given a "tour" of RCCC in Elk Grove. The law
12 library was in a large cage in the middle of a larger room. The library had no relevant
13 information for ICE detainees. The library appeared catered to persons in criminal custody.

14 24. The ability to confer with counsel in immigration detention centers is also limited.
15 For instance, Mesa Verde Detention Facility did not have sound-proof rooms for attorneys. The
16 attorney-client visitation rooms at RCCC were of varying sizes and were "first-come-first-serve."
17 The smaller visitation rooms could not reasonably accommodate more than one person, thus, if
18 the lawyer needed a translator, he or she would have to wait for the larger room. At the Otay
19 Mesa Detention Facility, I also had concerns of the adequacy of the law library due to lack of
20 relevant forms and legal resources, and concerns over phone access.

21
22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct and that this declaration was executed on April 30, 2018 in
24 Woodland, California.

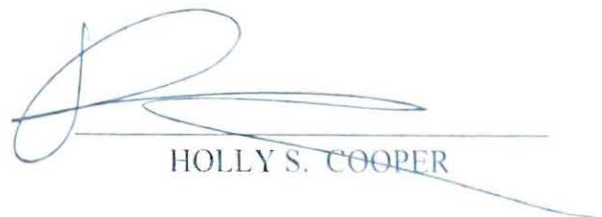
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HOLLY S. COOPER

EXHIBIT A



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Yuba County Sheriff
720 Yuba St
Marysville, CA 95901
[Contact Us](#) | [View Map](#)
Business Hours
M-F 8:00 AM - 4:30 PM
Phone Number
(530) 749-7777

Animal Care Services



Individuals In Custody

Last Updated: 4/16/2018 at 12:00 PM

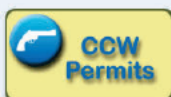
Name	Age	Booking Date
[Redacted]		



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Yuba County Sheriff
720 Yuba St
Marysville, CA 95901
[Contact Us](#) | [View Map](#)
Business Hours
M-F 8:00 AM - 4:30 PM
Phone Number
(530) 749-7777

Animal Care Services



Inmate Information

Last Updated: 4/16/2018 at 12:15 PM

Age:		Booking #:	
Height:		Booking Date:	
Weight:		Arresting Agency:	INS
Eyes:		Bail Amount:	No Bail
Hair:			
Race:			
Sex:			

*Actual Bail should be confirmed by contacting the Yuba County Jail at (530) 749-7740.

Visiting Schedule:
Sunday 1:30 PM to 2:30 PM
Friday 3:30 PM to 5:30 PM

CHARGES:

Charge	Disposition

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