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8  
 9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN JOSE DIVISION

12	HOWARD THOMAS AND SHIRLEY	)	Case No. C 10-00001 JF
13	THOMAS,	)	
14	Plaintiffs,	)	<b>E-FILING CASE</b>
15	v.	)	STIPULATION AND <del>PROPOSED</del>
16	UNITED STATES OF AMERICA, et al,	)	ORDER TO TRANSFER CASE TO
17	Defendants.	)	SOUTHERN DISTRICT OF CALIFORNIA

19 Whereas, this action arises under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. Sections  
20 2671, et seq.

21 Whereas, actions under the FTCA may be prosecuted either where the plaintiff resides or  
22 where the act or omission occurred. 28 U.S.C. Section 1402(b); see *Del Raso v. United States*,  
23 244 F.3d 567, 570 fn.1 (7<sup>th</sup> Cir. 2001).

24 Whereas, plaintiffs reside in the Southern District of California.

25 Whereas, the acts and omissions alleged in the Complaint occurred at the United States  
26 Penitentiary in Atwater, California, which is located in the Eastern District of California.

27 Whereas, venue lies in either the Southern District of California or the Eastern District of  
28 California and not in the Northern District of California, where this case is currently pending.

1 Whereas, defendant USA appears specially for the sole and limited purpose of objecting to  
2 venue and entering into this stipulation.

3 Therefore, the parties stipulate, through counsel, that this action be transferred to the United  
4 States District Court for the Southern District of California.

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6 Respectfully submitted,

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8  
9 DATED: March 8, 2010

JOSEPH P. RUSSONIELLO  
United States Attorney

10  
11 By: \_\_\_\_\_ /S/ \_\_\_\_\_

JAMES A. SCHARF  
Assistant United States Attorney

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14 DATED: March 8, 2010

MILLER & JAMES, LLP


15 By: \_\_\_\_\_ /S/ \_\_\_\_\_

16 Patricia I. James, Attorneys for Plaintiffs

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18 Pursuant to the stipulation of the parties, and good cause appearing, it is hereby ordered  
19 that this action be transferred to the United States District Court for the Southern District of  
California.

20 IT IS SO ORDERED.

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23 DATED: March 10, 2010

  
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Hon. Jeremy Fogel D. Fogel  
United States District Court Judge  
Northern District of California