

Harold J. McElhinny*
Kevin M. Coles*
Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
Email: EBalassone@mofo.com

Attorneys for Plaintiffs

* *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

Additional counsel listed on next page

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jane Doe # 1; Jane Doe # 2; Norlan Flores,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
Commissioner, United States Customs &
Border Protection, in his official capacity;
Michael J. Fisher, Chief of the United States
Border Patrol, in his official capacity;
Jeffrey Self, Commander, Arizona Joint
Field Command, in his official capacity;
Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

Defendants.

Case No. 4:15-cv-00250-TUC-DCB

**BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

CLASS ACTION

Oral Argument Requested

**(Assigned to the
Honorable David C. Bury)**

Action Filed: June 8, 2015

PARTIALLY REDACTED

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)

** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	2
II. BACKGROUND.....	3
A. The Conditions of Confinement in Tucson Sector Stations are Inhumane and Punitive.....	3
B. Defendants’ Policies and Procedures, Recently Amended, Formalize and Systematize the Harm.....	7
III. LEGAL STANDARD	8
IV. ARGUMENT	9
A. Plaintiffs are Likely to Succeed On Their Claim That Defendants Violate Their Fifth Amendment Due Process Rights.....	9
1. Governing Law.....	9
2. Failure to Provide Beds and Deprivation of Sleep.....	10
3. Failure to Provide Warmth.....	13
4. Failure to Provide a Safe and Sanitary Environment.....	14
5. Failure to Provide Adequate and Sufficient Food.....	16
6. Failure to Provide Potable Water	17
7. Failure to Provide Adequate Medical Screening and Care	18
B. Plaintiffs are Likely to Succeed on Their Claim That Defendants Have Failed to Enforce Mandatory Statements of Policy.....	20
1. Governing Law.....	20
2. Defendants Fail to Abide by the TEDS Standards.....	21
C. Plaintiffs Will Suffer Irreparable Harm If This Court Does Not Grant An Injunction.....	22
D. The Balance of Equities Tips Sharply in Plaintiffs’ Favor.	23
E. A Preliminary Injunction Serves the Public Interest.....	23
V. CONCLUSION	24

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Albright v. Oliver</i> , 510 U.S. 266 (1994)	21
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011)	9
<i>Anela v. City of Wildwood</i> , 790 F.2d 1063 (3d Cir. 1986)	10
<i>Angov v. Lynch</i> , 788 F.3d 893 (9th Cir. 2015)	4
<i>Antonelli v. Sheahan</i> , 81 F.3d 1422 (7th Cir. 1996)	12
<i>Atkins v. County of Orange</i> , 372 F. Supp. 2d 377 (S.D.N.Y. 2005)	14
<i>Board v. Farnham</i> , 394 F.3d 469 (7th Cir. 2005)	15
<i>Bowers v. City of Philadelphia</i> , No. 06-CV-3229, 2007 WL 219651 (E.D. Pa. Jan. 25, 2007)	11, 15
<i>Campbell v. Cauthron</i> , 623 F.2d 503 (8th Cir. 1980)	17
<i>Dawson v. Kendrick</i> , 527 F. Supp. 1252 (S.D. W.Va. 1981)	14
<i>Defenders of Wildlife v. Tuggle</i> , 607 F. Supp. 2d 1095 (D. Ariz. 2009)	20
<i>DeShaney v. Winnebago Cty. Dep't of Soc. Servs.</i> , 489 U.S. 189 (1989)	9
<i>Estate of Prasad ex rel. Prasad v. County of Sutter</i> , 958 F. Supp. 2d 1101 (E.D. Cal. 2013)	19
<i>Farris v. Seabrook</i> , 677 F.3d 858 (9th Cir. 2012)	9

1	<i>Fischer v. Winter</i> ,	
2	564 F. Supp. 281 (N.D. Cal. 1983).....	16
3	<i>Flynt Distributing Co., Inc. v. Harvey</i> ,	
4	734 F.2d 1389 (9th Cir. 1984).....	9
5	<i>Foster v. Runnels</i> ,	
6	554 F.3d 807 (9th Cir. 2009).....	16
7	<i>Friendly House v. Whiting</i> ,	
8	846 F. Supp. 2d 1053 (D. Ariz. 2012).....	23
9	<i>Gates v. Cook</i> ,	
10	376 F.3d 323 (5th Cir. 2004).....	16
11	<i>Gibson v. Cty. of Washoe, Nev.</i> ,	
12	290 F.3d 1175 (9th Cir. 2002).....	18
13	<i>Graves v. Arpaio</i> ,	
14	48 F. Supp. 3d 1318	18, 19
15	<i>Harris v. Bd. of Supervisors, L.A. Cty.</i> ,	
16	366 F.3d 754 (9th Cir. 2004)	22, 23
17	<i>Helling v. McKinney</i> ,	
18	509 U.S. 25 (1993).....	15, 18
19	<i>Henderson v. DeRobertis</i> ,	
20	940 F.2d 1055 (7th Cir. 1991), <i>cert. denied</i> , 503 U.S. 966 (1992).....	14
21	<i>Hernandez v. County of Monterey</i> ,	
22	-- F. Supp. 3d --, No. 5:13-CV-2354-PSG,	
23	2015 WL 3868036 (N.D. Cal. Apr. 14, 2015)	19, 22
24	<i>Hoptowit v. Ray</i> , 682 F.2d 1237, 1253 (9th Cir. 1982), <i>abrogated on other grounds</i>	
25	<i>by Sandin v. Conner</i> , 515 U.S. 472 (1995)	19
26	<i>Jones v. Blanas</i> ,	
27	393 F.3d 918 (9th Cir. 2004)	10, 14, 17
28	<i>Jordan v. Gardner</i> ,	
	986 F.2d 1521 (9th Cir. 1993)	24
	<i>Keenan v. Hall</i> ,	
	83 F.3d 1083 (9th Cir. 1996), <i>amended on other grounds</i> ,	
	135 F.3d 1318 (9th Cir. 1998).....	12, 14, 17

1	<i>King v. Frank,</i>	
2	328 F. Supp. 2d 940 (W.D. Wis. 2004)	12
3	<i>Klein v. City of Laguna Beach,</i>	
4	381 F. App'x 723 (9th Cir. 2010)	9
5	<i>Knop v. Johnson,</i>	
6	667 F. Supp. 467 (W.D. Mich. 1987),	
7	<i>aff'd in pertinent part</i> , 977 F.2d 996 (6th Cir. 1992)	14
8	<i>Lareau v. Manson,</i>	
9	651 F.2d 96 (2d Cir. 1981)	10, 15, 18
10	<i>Madrid v. Gomez,</i>	
11	889 F. Supp. 1146 (N.D. Cal. 1995)	18
12	<i>Majors v. Jeanes,</i>	
13	48 F. Supp. 3d 1310 (D. Ariz. 2014)	22
14	<i>Melendres v. Arpaio,</i>	
15	695 F.3d 990 (9th Cir. 2012)	22, 24
16	<i>Norton v. S. Utah Wilderness All.,</i>	
17	542 U.S. 55 (2004)	20
18	<i>Pure Wafer, Inc. v. City of Prescott,</i>	
19	14 F. Supp. 3d 1279	22
20	<i>Rhodes v. Chapman,</i>	
21	452 U.S. 337 (1981)	8
22	<i>River Runners for Wilderness v. Martin,</i>	
23	593 F.3d 1064 (9th Cir. 2010)	20
24	<i>Rodriguez v. Robbins,</i>	
25	715 F.3d 1127 (9th Cir. 2013)	22, 23, 24
26	<i>Rosado v. Alameida,</i>	
27	349 F. Supp. 2d 1340 (S.D. Cal. 2004)	23, 24
28	<i>Sandlin v. Conner,</i>	
	515 U.S. 1237 (1974)	19
	<i>Shorter v. Baca,</i>	
	-- F. Supp. 3d --, No. 12-cv-7337-DOC,	
	2015 WL 1809282 (C.D. Cal. Apr. 21, 2015)	19

1	<i>Sierra Forest Legacy v. Rey</i> ,	
2	577 F.3d 1015 (9th Cir. 2009).....	8
3	<i>Smith v. Sullivan</i> ,	
4	553 F.2d 373 (5th Cir. 1977).....	17
5	<i>Thompson v. City of Los Angeles</i> ,	
6	885 F.2d 1439 (9th Cir. 1989).....	10
7	<i>Toussaint v. McCarthy</i> ,	
8	597 F. Supp. 1388 (N.D. Cal. 1984), <i>aff'd in part, rev'd in part on other</i>	
9	<i>grounds</i> , 801 F.2d 1080 (9th Cir. 1986)	12, 13, 14, 15
10	<i>U.S. v. Raines</i> ,	
11	362 U.S. 17 (1960)	24
12	<i>United States v. Wilson</i> ,	
13	344 F. App'x 134 (6th Cir. 2009).....	14
14	<i>University of Texas v. Camenisch</i> ,	
15	451 U.S. 390 (1981)	9
16	<i>V.L. v. Wagner</i> ,	
17	669 F. Supp. 2d 1106 (N.D. Cal. 2009).....	22
18	<i>Wakefield v. Thompson</i> ,	
19	177 F.3d 1160 (9th Cir. 1999).....	19
20	<i>Winter v. Nat. Res. Def. Counsel</i> ,	
21	555 U.S. 7 (2008).....	23
22	<i>Wong Wing v. United States</i> ,	
23	163 U.S. 228 (1896)	10
24	<i>Young v. Quinlan</i> ,	
25	960 F.2d 351 (3rd Cir. 1992).....	16
26	<i>Zadvydas v. Davis</i> ,	
27	533 U.S. 678 (2001)	10
28	<i>Zepeda v. U.S. INS</i> ,	
	753 F.2d 719 (9th Cir. 1984).....	22, 23

CONSTITUTION

U.S. CONST. amend. V 9, 10, 12, 24

U.S. CONST. amend. VIII *passim***STATUTES****5 U.S.C.**

§ 551(4) 20

§ 706(1) 2, 20

RULES

Fed. R. Civ. P. 65 1

OTHER AUTHORITIES

Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y. Times, August 5, 2009, available at <http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&r=1> 1

Pope Francis, *Address to the Joint Session of the United States Congress*, Sept. 24, 2015, available at https://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html 1

Tucson Sector Arizona, U.S. Customs & Border Protection, available at <http://1.usa.gov/1vuFTNw> 4

U.S. President Barack Obama, *Remarks by the President in Address to the Nation on Immigration*, Nov. 20, 2014, available at <https://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration> 1

U.S. Dep't of State, *Report on Int'l Prison Conditions*, May 22, 2013, available at <http://www.state.gov/j/drl/rls/209944.htm> 3, 11

1 In his recent address to Congress, Pope Francis appealed to Americans' shared
 2 history. "We, the people of this continent, are not fearful of foreigners, because most of
 3 us were once foreigners. I say this to you as the son of immigrants, knowing that so many
 4 of you are also descended from immigrants."¹ Pope Francis called on the United States to
 5 treat the "thousands of persons [that] are led to travel north in search of a better life for
 6 themselves and for their loved ones" in a way that is "humane, just and fraternal."²
 7 Publicly, at least, the government concurs. "Scripture tells us," President Obama said in
 8 his much-touted speech on immigration, "that we shall not oppress a stranger, for we
 9 know the heart of the stranger—we were strangers once, too."³

10 Yet oppress is not too strong a word for what the federal government does, day in
 11 and day out, to immigrants detained at short-term civil detention facilities along the
 12 southern border. In U.S. Border Patrol "stations" in Arizona, the government—which
 13 years ago pledged to transform immigration detention into a "truly civil detention
 14 system"⁴—routinely and systematically denies immigrants the minimal civilized measure
 15 of life's necessities. It forces immigrants to sleep on cold, trash-strewn concrete floors; it
 16 detains immigrants for days in crowded cells without soap, showers, or hot water; it
 17 punishes immigrants who complain by lowering cell temperatures and threatening to
 18 confiscate food. These actions are as shameful as they are unconstitutional.

19 Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Jane Doe #1, Jane Doe
 20 #2, and Norlan Flores and putative Class Members (together "Plaintiffs") hereby move for
 21 a preliminary injunction (1) enjoining Defendants and their agents and employees from
 22

23 ¹ Pope Francis, *Address to the Joint Session of the United States Congress*, Sept. 24, 2015,
 24 available at [https://w2.vatican.va/content/francesco/en/speeches/2015/september/
 documents/papa-francesco_20150924_usa-us-congress.html](https://w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html).

25 ² *Id.*

26 ³ U.S. President Barack Obama, *Remarks by the President in Address to the Nation on
 Immigration*, Nov. 20, 2014, available at [https://www.whitehouse.gov/the-press-
 office/2014/11/20/remarks-president-address-nation-immigration](https://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration).

27 ⁴ See, e.g., Nina Bernstein, *U.S. to Reform Policy on Detention for Immigrants*, N.Y.
 28 Times, August 5, 2009, available at [http://www.nytimes.com/2009/08/06/
 us/politics/06detain.html?pagewanted=all&_r=1](http://www.nytimes.com/2009/08/06/us/politics/06detain.html?pagewanted=all&_r=1).

1 subjecting Plaintiffs to conditions of confinement in Tucson Sector stations that violate
 2 Plaintiffs' Due Process rights by depriving Plaintiffs of sleep, warmth, a safe and sanitary
 3 environment, and medical screening and care; and (2) compelling Defendants, pursuant to
 4 5 U.S.C. § 706(1), to enforce certain minimal standards related to Plaintiffs' detention.

5 **I. INTRODUCTION**

6 Tucson Sector stations are designed for the short-term civil detention and
 7 processing of immigrant detainees, "not . . . for long-term care and detention." (ECF No.
 8 39-1, Ex. 1 ¶ 11.) Because they were not intended to be long-term detention centers—
 9 and, specifically, because they were "not intended for sleeping" (Ex. 81 at USA00091)—
 10 detention that exceeds 12 hours inevitably creates harsh and punitive conditions that
 11 violate the constitutional rights of the detained individuals.⁵ Yet detention for days on end
 12 is the norm. Between June 10, 2015, and September 28, 2015, over 1000 people were
 13 detained for longer than 48 hours. (Declaration of Joseph Gaston ("Gaston Decl.") ¶ 20.)
 14 Defendants' repeated statements that these stations are "short-term facilities" for the
 15 purpose of "brief initial processing," portray what stations are supposed to be, not what
 16 they are. (ECF No. 52 at 2, 8-9.)

17 This gap between purpose and practice creates the harm. Detained individuals are
 18 deprived of sleep, warmth, sanitation, food and water because Tucson Sector stations are
 19 neither meant nor equipped to keep detained individuals for more than a few hours, let
 20 alone for days. Aside from a steel door, cement benches, and a metal "sink/toilet unit,"
 21 Tucson Sector "hold rooms" are bare, concrete cells. (Declaration of Eldon Vail ("Vail
 22 Decl.") ¶ 208.) There are no beds; there is no bedding. Bright overhead lights are kept on
 23 day and night. There are no kitchens to prepare meals, no showers, no recreational
 24 spaces. Designed to be temporary "waiting rooms," they are being used as makeshift
 25 dormitories—only without the most fundamental component of a dormitory: beds.

26
 27 ⁵ Twelve hours is not arbitrary. Chief Padilla himself testified that "border patrol seeks to
 28 process and transfer all aliens out of their custody within 12 hours from apprehension." (ECF No.
 39-1, Ex. 1 ¶ 11.)

1 The harm is compounded because Border Patrol agents were never supposed to be,
 2 nor were they trained to be, jailers. Their job, as they themselves note, is the
 3 “apprehension, processing, and temporary custody of aliens.” (ECF No. 39-1, Ex. 1 ¶ 3.)
 4 The reality, however, is that Tucson Sector stations have become jails and Tucson Sector
 5 agents have become jailers. The result is a national embarrassment.

6 The fix is clear: Defendants should process and transfer detained individuals
 7 promptly or hold them in facilities that are designed for detention. What Defendants may
 8 not do is continue to detain Plaintiffs under conditions of confinement that are degrading,
 9 punitive, and unconstitutional—conditions that the U.S. government routinely condemns
 10 when they occur elsewhere in the world.⁶

11 Plaintiffs will continue to suffer irreparable injury if preliminary relief is not
 12 granted. The evidence—which includes video stills, photos, station logs, detainee
 13 declarations, and expert opinion—demonstrates that Plaintiffs are likely to succeed on the
 14 merits of their claims. Defendants’ mistreatment of Plaintiffs is profoundly inequitable
 15 and serves no conceivable public interest. The relief Plaintiffs respectfully seek from this
 16 Court is appropriate and urgent.

17 **II. BACKGROUND**

18 **A. The Conditions of Confinement in Tucson Sector Stations are** 19 **Inhumane and Punitive.**

20 Detained individuals are apprehended following lengthy, grueling, and perilous
 21 journeys across the Sonoran Desert. (Vail Decl. ¶ 122.) They are, overwhelmingly,
 22 exhausted, hungry, and thirsty. (*Id.* ¶ 140.) Many are sick or injured and in need of
 23 immediate medical care. (*Id.*) Some fled their native land out of fear for their safety or
 24 the safety of their loved ones. (*Id.* ¶ 152.) Others have U.S. citizen children and spouses.
 25 (*Id.* ¶ 152.) Those detained include parents with young children (Declaration of Kevin
 26 Coles (“Coles Decl.”) ¶ 37; Vail Decl. ¶ 61) and pregnant women (Vail Decl. ¶ 61).

27 ⁶ See, e.g., Dep’t of State, *Report on Int’l Prison Conditions*, May 22, 2013, available at
 28 <http://www.state.gov/j/drl/rls/209944.htm>.

1 They are “question[ed] in the field” (ECF No. 39-1, Ex. 1 ¶ 7) before being brought
 2 to one of eight Tucson Sector stations: the Brian A. Terry Station (formerly Naco Station),
 3 Casa Grande Station, Douglas Station, Nogales Station, Sonoita Station, Tucson Station,
 4 Ajo Station, and Willcox Station.⁷ If these stations functioned as designed, CBP agents
 5 would “expeditiously process individuals before they are either [*sic*] transferred, removed,
 6 or released.” (ECF No. 39-1, Ex. 1 ¶ 18.) Instead, these “tired, poor, huddled masses,”
 7 *Angov v. Lynch*, 788 F.3d 893, 909 (9th Cir. 2015), are imprisoned for days in bare
 8 concrete cells, often for many days (Gaston Decl. ¶ 20).

9 Detained individuals are not medically screened on arrival (Vail Decl. ¶ 138;
 10 Declaration of Joe Goldenson M.D. (“Goldenson Decl.”) ¶¶ 18-23), their medication is
 11 confiscated (Vail Decl. ¶ 139; Goldenson Decl. ¶¶ 47-52), and those who ask for medical
 12 assistance are ignored or rebuffed (Vail Decl. ¶ 139; Goldenson Decl. ¶¶ 43-46). As a
 13 matter of policy, they are stripped of all outer layers of clothing, they are not permitted to
 14 wash or change, and they are locked into cells—all of them, including pregnant women
 15 and children. (Vail Decl. ¶¶ 104-105, 116, 123; ECF No. 39-1, Ex. 1 ¶ 12; Powitz Decl.
 16 ¶ 92.)

17 They are usually, but not always (Vail Decl. ¶ 106), given “Mylar blankets” (ECF
 18 No. 39-1, Ex.1 ¶ 15). These paper-thin sheets of plastic are demonstrably inadequate to
 19 keep them warm in cells that, at times, drop to 58.8° Fahrenheit. (Vail Decl. ¶ 107.)
 20 Surveillance video footage shows detainees huddled together, wrapped head-to-toe in
 21 these flimsy plastic sheets, even during the hot Arizona summers:

22
 23
 24
 25
 26
 27

 ⁷ See *Tucson Sector Arizona*, U.S. Customs & Border Protection, available at
 28 <http://1.usa.gov/1vuFTNw>.



VTCC000004

(Ex. 173 (photograph dated September 22, 2015); Vail Decl. ¶ 106; Powitz Decl. ¶ 95.) Detainees look cold, because, as they have testified, they *are* cold. (Vail Decl. ¶¶ 107-108; Powitz Decl. ¶ 100.) This cold is exacerbated because cells are made of concrete and metal. Unless they stand for 24 hours or more, they must sit or lie on heat-draining concrete floors and benches. (Vail Decl. ¶¶ 47, 109.) When detainees request more heat, guards refuse or, sometimes, make the cells *colder*. (Vail Decl. ¶ 108; Powitz Decl. ¶ 100.)

Some spend days in cells so crowded that they must sit or lie on every inch of floor space: next to toilets, wastebaskets, overlapping with one another. (Coles Decl. ¶ 109; Vail Decl. ¶¶ 32, 33, 52.) Some are forced to try to sleep sitting upright. (Vail Decl. ¶¶ 34, 35, 52.) They are given no beds, cots, or mattresses. (Vail Decl. ¶¶ 54, 56; Powitz Decl. ¶ 46, 48.) Stations have mats, but not nearly enough for the number of detainees regularly kept overnight. (Vail Decl. ¶ 57, 60, 62; Powitz Decl. ¶ 47, 48.) Moreover, Defendants provide mats only to juveniles (Vail Decl. ¶ 58; *see also* Ex. 87 at USA00634), which explains surveillance video footage showing detainees lying on

1 concrete floors while mats go unused in adjacent cells. (Vail Decl. ¶ 59; Coles Decl.
2 ¶ 59.) Hold room lights are always on (Vail Decl. ¶ 63; ECF No. 39-1, Ex. 1 ¶ 8; Powitz
3 Decl. ¶ 49), and detainees can be seen shielding their faces under Mylar sheets (Vail Decl.
4 ¶ 64).

5 Hold rooms often lack potable water because none is provided or because the
6 drinking fountains (or “bubblers”) attached to the toilet/sink units do not work properly.
7 (Vail Decl. ¶¶ 80, 83, 85.) Detainees are often (and inexplicably) not given cups, despite
8 ample disposable cups on site. (Vail Decl. ¶¶ 77, 79; Powitz Decl. ¶ 75.) As a result,
9 detainees are forced to share drinking cups (Vail Decl. ¶ 77; Powitz Decl. ¶ 75) or recycle
10 used juiceboxes (Vail Decl. ¶ 80). Surveillance footage from Casa Grande Station shows
11 at least a dozen different detainees drinking from the same one-gallon plastic water jug
12 over the course of five days. (*Id.* ¶ 81.) Even though the cell in question was twice
13 cleaned by maintenance, no attempt was made to clean the jug. (*Id.* ¶ 82.)

14 Defendants regularly fail to feed detainees: between June 10, 2015, and
15 September 28, 2015, there were 1,400 instances in which someone was not fed for 24 or
16 more hours. (Gaston Decl. ¶ 45.) When they are fed, detainees are given some
17 combination of a microwavable burrito, crackers, and juice for every meal and every
18 snack. (Vail Decl. ¶ 90; Powitz Decl. ¶ 74.) Aside from baby food and formula, Tucson
19 Sector stations stock no other food. (Vail Decl. ¶ 91.) Despite providing irregular and
20 nutritionally inadequate “meals,” Border Patrol agents threaten to confiscate detainees’
21 food to keep detainees quiet. (*Id.* ¶ 100.)

22 Detainees are confined with perfect strangers, but are afforded no privacy. Toilets
23 are inadequately shielded from view by “low screening walls” and agents constantly
24 monitor detainees through surveillance cameras mounted in each cell (ECF No. 39-1,
25 Ex. 1 ¶ 14; Vail Decl. ¶ 50; Powitz Decl. ¶ 63). Because hold rooms are often
26 overcrowded, there are insufficient toilets, and these are often in disrepair. (Vail Decl.
27 ¶ 51; Powitz Decl. ¶¶ 51-52.)

28 Detainees are only sometimes provided with soap, but never towels, toothbrushes,

or toothpaste, and only rarely hot water and showers. (Vail Decl. ¶¶ 116, 117, 119, 120, 122; Powitz Decl. ¶¶ 58-60.) As a result, detainees are unable to wash their hands at any time, even after using the toilet or before eating. (Vail Decl. ¶ 115; Powitz Decl. ¶¶ 64, 73.) Hold rooms are cleaned infrequently. (Powitz Decl. ¶¶ 23, 27, 28, 29.) Surveillance footage from Casa Grande station indicates that they are cleaned once every 48 hours, if that (Vail Decl. ¶ 52), forcing mothers to care for their children on cell floors surrounded by days of accumulated trash (Powitz Decl. ¶ 30):



(Ex. 148.)

B. Defendants’ Policies and Procedures, Recently Amended, Formalize and Systematize the Harm.

Until very recently, the conditions of confinement in CBP stations nationwide were governed by CBP’s 2008 Hold Rooms and Short Term Custody Policy (“2008 Policy”). (Ex. 87.) The 2008 Policy recognized that CBP stations were designed for short-term detention. “Whenever possible,” it reads, “a detainee should not be held for more than 12 hours.” (*Id.* at USA000325.) Two months ago, however, Defendants issued new policies and procedures. The newly minted *National Standards on Transport, Escort, Detention, and Search* (“TEDS standards”) have all but abandoned the pretense that CBP stations are

1 used for short-term detention. Now, Defendants have decided, “[d]etainees should
2 generally not be held for longer than 72 hours” in these same facilities. (Ex. 95 at
3 USA00631.)

4 While significantly lengthening the duration of permissible detention, the TEDS
5 standards permit even worse conditions for detainees. The 2008 Policy stated that
6 “[d]etainees requiring bedding will be given clean bedding.” (Ex. 87 at USA000330.)
7 Despite now endorsing overnight detention, the TEDS standards permit only juveniles to
8 have beds or bedding. (Ex. 95 at USA000634.) Adults are supposed get “clean blankets
9 . . . upon request,” but only “when available.” (*Id.*) The 2008 Policy guaranteed detainees
10 soap to wash their hands after using the toilet or before eating. (Ex. 87 at USA000330.)
11 But under the TEDS standards—and despite assurances from Chief Patrol Agent Padilla
12 that the Tucson Sector “takes the health and safety of aliens within [its] custody seriously
13 (ECF No. 39-1, Ex. 1 ¶ 15)—soap “*may* be made available” but only when “operationally
14 feasible.” (Ex. 95 at USA000634 (emphasis added).) The list goes on.

15 If there was ever any doubt that, as a matter of policy and practice, Defendants can
16 and will detain Plaintiffs under conditions that deny Plaintiffs “the minimal civilized
17 measure of life’s necessities,” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981), the TEDS
18 standard erases it. Defendants have given themselves permission to hold Plaintiffs for at
19 least three days and three nights in constantly illuminated cells that lack beds, blankets,
20 soap, adequate food, potable water, and hot running water; and Defendants have done so
21 despite scores of federal judicial opinions condemning these very conditions.

22 **III. LEGAL STANDARD**

23 A movant is entitled to a preliminary injunction if she shows that she is likely to
24 succeed on the merits; that she is likely to suffer irreparable harm in the absence of
25 preliminary relief; that the balance of equities tips in her favor; and that an injunction is in
26 the public interest. *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir.
27 2009) (citation omitted). A movant also may rely upon an “alternate formulation” of this
28 standard under which “serious questions going to the merits and a balance of hardships

that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (citation omitted). Under this second “sliding scale” approach, “the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). “The same standard applies regardless of whether the movant seeks to maintain the status quo or to halt an ongoing deprivation of rights.” *Klein v. City of Laguna Beach*, 381 F. App’x 723, 725 (9th Cir. 2010) (citation omitted). In addition, because a preliminary injunction is granted on less formal procedures than a full trial on the merits, *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981), a court may consider otherwise inadmissible evidence in making its ruling, *Flynt Distributing Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

IV. ARGUMENT

A. Plaintiffs are Likely to Succeed On Their Claim That Defendants Violate Their Fifth Amendment Due Process Rights.

1. Governing Law

Defendants are constitutionally obligated to care for individuals whom, like Plaintiffs, Defendants detain against their will:

[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

DeShaney v. Winnebago Cty. Dep’t of Soc. Servs., 489 U.S. 189, 199-200 (1989) (citations omitted).

Because Plaintiffs are civil detainees held pursuant to civil immigration laws,

1 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), their protections derive from the Fifth
 2 Amendment, which shields any person in the custody of the United States from conditions
 3 that amount to punishment without due process of law. *Wong Wing v. United States*,
 4 163 U.S. 228, 237 (1896).

5 Civil detainees “are entitled to conditions of confinement that are not punitive.”
 6 *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004). Several principles follow from this
 7 assertion. First, if a particular condition of confinement violates the Eighth Amendment,
 8 it necessarily violates the Fifth Amendment. *Id.* Conditions that do not violate the Eighth
 9 Amendment, however, may nonetheless violate the Fifth. Second, civil detainees may not
 10 be subjected to conditions “intended to punish” or “excessive in relation to [their non-
 11 punitive] purpose” or “employed to achieve objectives that could be accomplished in so
 12 many alternative and less harsh methods.” *Id.* at 932–34 (citations omitted). Third, if
 13 civil detainees are confined under conditions inferior to pretrial detainees or the
 14 involuntarily committed—and of course the criminally convicted—those conditions are
 15 presumptively punitive and unconstitutional. *Id.* at 933. Fourth, “to prevail on a
 16 Fourteenth [or Fifth] Amendment claim regarding conditions of confinement, the confined
 17 individual need not prove ‘deliberate indifference’ on the part of government officials.”
 18 *Id.* at 934.

19 **2. Failure to Provide Beds and Deprivation of Sleep**

20 Detention facilities (and prisons) must provide detainees held overnight with beds
 21 and mattresses. The absence of *either* violates detainees’ due process rights.
 22 *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1448 (9th Cir. 1989); *accord Anela v.*
 23 *City of Wildwood*, 790 F.2d 1063, 1069 (3d Cir. 1986). Indeed, the use of floor
 24 mattresses—*i.e.*, mattresses without bed frames—is unconstitutional “without regard to
 25 the number of days a prisoner is so confined.” *Lareau v. Manson*, 651 F.2d 96, 105 (2d
 26 Cir. 1981). Photographs demonstrate that floor sleeping is ubiquitous in Tucson Sector
 27 hold rooms (Vail Decl. ¶¶ 32, 33, 47, 52, 59, 73), despite Defendants’ policy that “hold
 28 rooms are not designed for sleeping” (Ex. 81 at USA000091.) While Plaintiffs’ claim

succeeds on this ground alone, other conditions compound the problem.

First, hold rooms are overcrowded, forcing Plaintiffs to sleep next to toilets, sitting upright, and packed together head to toe:



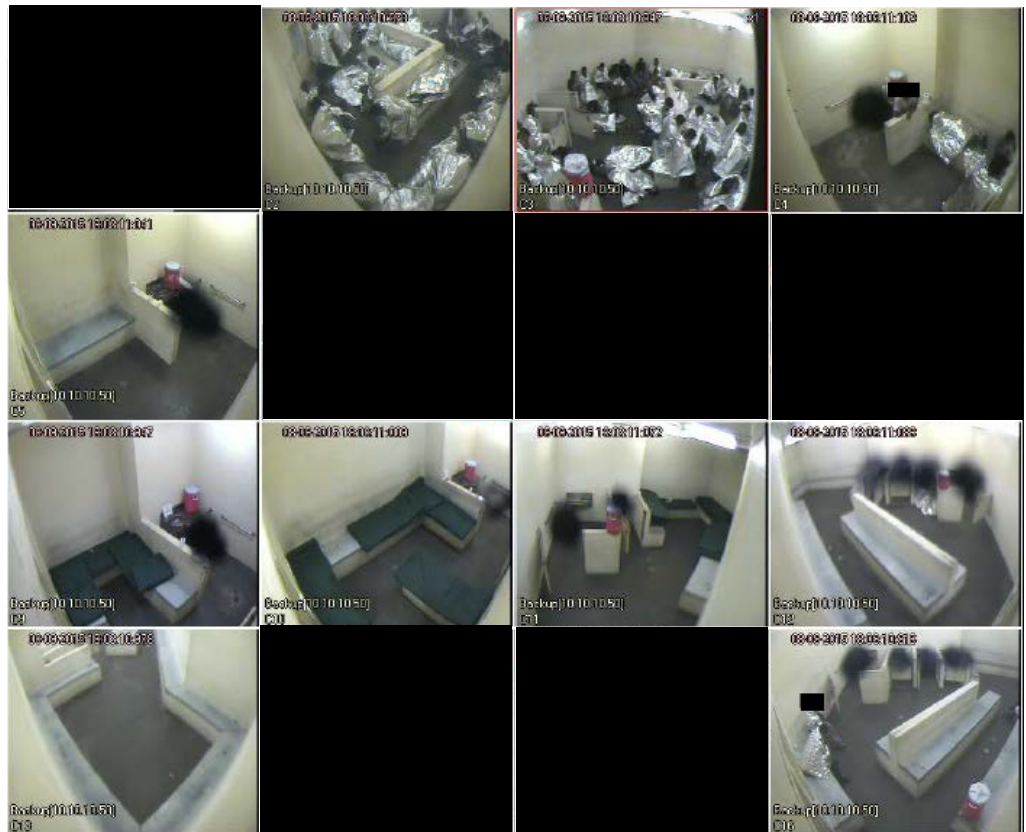
VTCC000019

(Ex. 188; Vail Decl. ¶¶ 32-33, 47, 52.) One detainee, who gave his spot on the floor to an injured man, was one of fifteen people forced to stand all night. (Vail Decl. ¶ 35.) Requiring detainees to sleep in shifts is not only inhumane and punitive, it has been roundly condemned by the U.S. government when it occurs in Ukraine, Haiti, and other countries.⁸ A strikingly analogous situation was condemned as unconstitutional by the court in *Bowers v. City of Philadelphia*, No. 06-CV-3229, 2007 WL 219651 (E.D. Pa. Jan. 25, 2007). There, “[b]ecause of the overcrowded conditions . . . detainees were forced to sleep overlapping one another and on every inch of the concrete floors [and] huddled with their heads next to the toilets [and] on metal benches . . . if there was room.” *Id.* at *10, *24; *see also id.* at *35 (issuing preliminary injunction). On this basis, too, Plaintiffs are likely to succeed on the merits of their due process claims.

⁸*Report on Int’l Prison Conditions*, U.S. Dep’t of State, May 22, 2013, available at <http://www.state.gov/j/drl/rls/209944.htm>.

1 Second, there is constant noise throughout the night. (Vail Decl. ¶¶ 65-66.) Courts
2 have held that sleep-interrupting noise constitutes a due process violation. *Toussaint v.*
3 *McCarthy*, 597 F. Supp. 1388, 1409–10 (N.D. Cal. 1984), *aff'd in part, rev'd in part on*
4 *other grounds*, 801 F.2d 1080, 1110 (9th Cir. 1986); *accord Antonelli v. Sheahan*, 81 F.3d
5 1422, 1433 (7th Cir. 1996) (“noise [that] occur[s] every night, often all night, interrupting
6 or preventing . . . sleep” gives rise to due process claim). Third, hold cells are constantly
7 illuminated. (ECF No. 39-1, Ex. 1 ¶ 8.) This, too, violates due process—particularly
8 where, as here, the light interferes with sleep. *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th
9 Cir. 1996), *amended on other grounds*, 135 F.3d 1318 (9th Cir. 1998) (“[T]here is no
10 legitimate penological justification for requiring [inmates] to suffer physical and
11 psychological harm by living in constant illumination. That practice is
12 unconstitutional.”); *King v. Frank*, 328 F. Supp. 2d 940, 946–47 (W.D. Wis. 2004)
13 (constant illumination leading to sleep deprivation may violate Eighth Amendment).

14 Together these and other conditions, including failure to provide adequate warmth,
15 *infra*, deprive Plaintiffs of sleep, in violation of their Fifth Amendment due process rights.
16 Such failures are not driven by necessity. In many instances, Defendants have unused
17 hold rooms that could be used to alleviate overcrowding in adjacent rooms, but which
18 Defendants choose not to use:
19
20
21
22
23
24
25
26
27
28



(Ex. 170.)

3. Failure to Provide Warmth

While temperatures in Tucson Sector hold rooms are supposed to range from 68 to 72 degrees Fahrenheit (*e.g.*, Ex. 115 at USA01896 (“Cell temps checked [68-72 degrees]?”)), Defendants’ own logs indicate that hold room temperatures drop as low as 58.8 degrees (Ex. 111 at USA01461), while others register 62 degrees with “[m]ultiple subjects complaining that it is cold” (Ex. 114 at USA01838-39).

58.8 degrees is cold even to the fully clothed, which detainees are not because Defendants routinely and systematically confiscate their outer layers of clothing upon intake. (Vail Decl. ¶ 104.) Despite their legal “obligation to ensure that [detainee] clothing is adequate,” Defendants do not replace confiscated clothing. *Toussaint*, 597 F. Supp. at 1411 (citation omitted). Instead, Defendants give—or at least are supposed to give—detainees a single Mylar sheet (ECF No. 39-1, Ex. 1 ¶ 15), though in practice some detainees get nothing (Vail Decl. ¶¶ 55, 106). Regardless, these Mylar sheets do little to

1 protect detainees against the cold (*Id.* ¶¶ 55, 106, 107; Powitz Decl. ¶ 101), especially
 2 since these paper-thin sheets are all that stands between detainees and a concrete bench,
 3 floor, or wall. *See United States v. Wilson*, 344 F. App'x 134, 137, 143 (6th Cir. 2009)
 4 (cell furnished with only concrete bench and concrete floors stated Eighth Amendment
 5 claim for subjection to cold).

6 This combination of concrete and metal furnishings and Defendants' failure to
 7 provide proper blankets and "clothing that is at least minimally adequate for the
 8 conditions under which [Plaintiffs] are confined," *Knop v. Johnson*, 667 F. Supp. 467,
 9 475–77 (W.D. Mich. 1987), *aff'd in pertinent part*, 977 F.2d 996, 1012 (6th Cir. 1992),
 10 unconstitutionally deprives Plaintiffs of warmth, *Henderson v. DeRobertis*, 940 F.2d
 11 1055, 1059 (7th Cir. 1991), *cert. denied*, 503 U.S. 966 (1992). Plaintiffs' are likely to
 12 succeed on their claim for deprivation of warmth.

13 Moreover, Defendants' punitive use of hold room temperature—despite the clear
 14 statement in the TEDS standard that "[u]nder no circumstances will officers/agents use
 15 temperature controls in a punitive manner" (Ex. 95 at USA000633)—also violates
 16 Plaintiffs' due process rights. Specifically, agents lower hold room temperatures to
 17 punish detainees who speak to one another or who request that cell temperatures be raised.
 18 (Vail Decl. ¶ 108; Powitz ¶ 100.) Because civil detainees may not be punished, any
 19 punishment is *per se* a due process violation. *Jones*, 393 F.3d at 934. Plaintiffs are also
 20 likely to succeed on the merits of their constitutional claim on this alone.

21 **4. Failure to Provide a Safe and Sanitary Environment**

22 "A sanitary environment is a basic human need that a penal institution must
 23 provide for all inmates." *Toussaint*, 597 F. Supp. at 1411. This obligation attaches all the
 24 more for institutions of civil confinement like Border Patrol's Tucson Sector stations.

25 The right to a sanitary environment includes a "right to personal hygiene supplies
 26 such as toothbrushes and soap," *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996), and
 27 to "sanitary napkins for female prisoners," *Atkins v. County of Orange*, 372 F. Supp. 2d
 28 377, 406 (S.D.N.Y. 2005); *see also Dawson v. Kendrick*, 527 F. Supp. 1252, 1288–89

(S.D. W.Va. 1981) (“The failure to regularly provide prisoners with clean bedding, towels, clothing and sanitary mattresses, as well as toilet articles including soap, razors, combs, toothpaste, toilet paper, access to a mirror and sanitary napkins for female prisoners constitutes a denial of personal hygiene and sanitary living conditions.”). Detainees, however, are routinely and systematically denied soap (Vail Decl. ¶¶ 117, 122)—a denial that is formalized in Defendants’ own policies and procedures (Ex. 95 at USA000634). They also are routinely and systematically denied sanitary napkins and diapers for babies and small children (Vail Decl. ¶ 125), both of which Defendants concede they are obligated to provide (Ex. 95 at USA000634), as well as toothbrushes and toothpaste. And they are routinely and systematically denied access to showers and hot running water—deprivations that have been deemed unconstitutional for “the most antisocial and violent of the inmates” in California’s prison system, *Toussaint*, 597 F. Supp. at 1394, 1411, but which Defendants regularly impose on ill, pregnant, and juvenile immigrants.

Lacking access to soap and warm water, detainees are unable to wash their hands before eating or after using the toilet. (Powitz Decl. ¶ 64; Vail Decl. ¶ 122.) This significantly increases the likelihood that infectious diseases common to prisons and other custodial institutions will be transmitted among detainees. (Powitz Decl. ¶¶ 54, 64, 70, 71, 89; Vail Decl. ¶ 122); *see also Bowers v. City of Philadelphia*, 2007 WL 219651, at *15 (describing likely spread of disease under conditions of confinement akin to those in Tucson Sector hold rooms). Plaintiffs need not, of course, wait until they contract a communicable disease to seek relief: the Eighth (and therefore Fifth) Amendment “protects against future harm of inmates.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993); *accord Lareau v. Manson*, 651 F.2d at 109 (“it is unnecessary to require evidence that an infectious disease has actually spread in an overcrowded jail before issuing a remedy.”). Indeed, pretrial detainees have a constitutional right “to receive necessary and proper personal hygiene items as preventative of future medical and physical harm.” *Board v. Farnham*, 394 F.3d 469, 482 (7th Cir. 2005).

1 The right to a sanitary environment also includes access to functioning toilets,
 2 which must be made available in reasonable proportion to the total number of detainees.
 3 In *Fischer v. Winter*, a ratio of 15 detainees to one toilet was deemed constitutionally
 4 insufficient. 564 F. Supp. 281, 297, 302 (N.D. Cal. 1983). But that is precisely the ratio
 5 mandated by Defendants’ policy, Exhibit 81 at USA000090 (noting requirement of “1
 6 toilet per 15 detainees”), and, in practice, the situation is far worse: In some hold rooms,
 7 over 40 detainees were forced to share one toilet (Vail Decl. ¶ 51; Powitz Decl. ¶ 52).

8 Although “[n]o one in civilized society should be forced to live under conditions
 9 that force exposure to another person’s bodily wastes,” *Gates v. Cook*, 376 F.3d 323, 334
 10 (5th Cir. 2004), such exposure is not uncommon in Tucson Sector hold rooms. (Vail
 11 Decl. ¶¶ 32, 51, 52.) Cleaning is infrequent and irregular; hold rooms lack cleaning
 12 supplies and often trash cans (Vail Decl. ¶ 52; Powitz Decl. ¶¶ 27-31, 90), which are
 13 routinely removed from hold rooms for “safety reasons” (ECF No. 39-1, Ex. 1 ¶ 14).

14 The unsanitary conditions of confinement in Tucson Sector hold rooms are not
 15 only inhumane, but also inimical to detainees’ physical health. (Powitz Decl. ¶ 31, 39, 40,
 16 41, 50, 70, 71, 89.) Because such sanitary deprivations have been “found to be *cruel and*
 17 *unusual* under contemporary standards of decency,” *Young v. Quinlan*, 960 F.2d 351, 364
 18 (3rd Cir. 1992) (emphasis added), Plaintiffs are substantially likely to demonstrate that
 19 these deprivations violate due process.

20 **5. Failure to Provide Adequate and Sufficient Food**

21 Prison officials are “obligat[ed] to provide inmates with nutritionally adequate
 22 meals on a regular basis.” *Foster v. Runnels*, 554 F.3d 807, 816 (9th Cir. 2009).
 23 Defendants’ own regulations formalize this and other requirements: adults must be given
 24 food at mealtimes and snacks in between (Ex. 95 at USA000635); juveniles and pregnant
 25 women must receive additional food and must receive it more often (*id.* at USA000639).
 26 To ensure that Defendants adhere to these requirements, they are obligated to document
 27 “[a]ll meal service . . . in the appropriate electronic system(s) of record.” (Ex. 95 at
 28 USA000635.)

Defendants’ electronic system of record—the so-called “e3DM” data—demonstrates that Defendants fail not only to abide by their own regulations, but also by minimal constitutional standards. Defendants regularly fail to feed detainees, sometimes for over 24 hours at a time. (Gaston Decl. ¶¶ 44, 45, 49). When detainees are fed, they receive for *every* meal and *every* snack some combination of a microwavable burrito, juice, and crackers. (*Id.* ¶¶ 41, 46; Vail Decl. ¶¶ 90, 91, 92, 93, 101). This diet—sporadic as it is—is neither nutritionally adequate nor “well-balanced,” *Smith v. Sullivan*, 553 F.2d 373, 379–380 (5th Cir. 1977) (articulating requirement); and is comparable to, if not nutritionally worse than, diets that courts have found inadequate in prisons, *Campbell v. Cauthron*, 623 F.2d 503, 508 (8th Cir. 1980) (finding inadequate “two sweet rolls and coffee for breakfast, and frozen ‘TV’ dinners for the noon and evening meals”). No wonder, then, that Plaintiffs testify to being constantly hungry. (Vail Decl. ¶ 94.)

As with hold-room temperature, Defendants use food punitively. (*Id.* ¶ 100-101.) This violates Defendants’ own policies (Ex. 95 at USA00635 (“[f]ood and water should never be used as a reward, or withheld as punishment”)), and it violates the Constitution, *Jones*, 393 F.3d at 932–34. Plaintiffs are likely to succeed on the merits of their claim.

6. Failure to Provide Potable Water

Defendants own regulations require that “[f]unctioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees.” (Ex. 95 at USA00635.) Access to adequate water is likewise protected by the Constitution. *Keenan v. Hall*, 83 F.3d 1083, 1091 (9th Cir. 1996).

Detainees in Tucson Sector stations are regularly and systematically denied adequate drinking water because hold room drinking fountains or “bubblers” do not function properly (when they function at all) and detainees are given no substitute. (Vail Decl. ¶¶ 76-85; Powitz Decl. ¶ 85.) Just as often, hold rooms have water, but detainees are not given clean cups (Vail Decl. ¶¶ 77, 79, 81; Powitz Decl. ¶ 75), forcing them to share drinking cups or other receptacles (Vail Decl. ¶¶ 77, 80-82). In other words, detainees either receive insufficient potable water or they are presented with a “Hobson’s

choice” between water contaminated with the bodily fluids of other detainees and no water at all. Forcing detainees to share drinking cups threatens detainee health; this risk is exacerbated by Defendants’ failure to medically screen incoming detainees ((Powitz Decl. ¶ 78, 80); *see infra* IV.A.7). *Helling v. McKinney*, 509 U.S. at 33–34 (Eighth Amendment protects against future harm posed by unsafe drinking water). The absence of potable water and clean drinking cups violates the Constitution. Plaintiffs are likely to succeed on this claim as well.

7. Failure to Provide Adequate Medical Screening and Care

Chief Padilla testified that “Tucson Sector takes the health and safety of aliens within their custody seriously.” (ECF No. 39-1, Ex. ¶ 15.) Not true.

First, Defendants fail to medically screen incoming detainees, despite clear case law in this and other Circuits that denying, delaying, or mismanaging intake screening violates the Constitution. *Gibson v. Cty. of Washoe, Nev.*, 290 F.3d 1175, 1188–90 (9th Cir. 2002); *Lareau v. Manson*, 51 F.2d at 109. This affirmative duty to screen applies both to short-term detention facilities housing civil detainees and to penitentiaries housing convicts. *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1340–1344 (D. Ariz. 2014) (jail); *Madrid v. Gomez*, 889 F. Supp. 1146, 1257 (N.D. Cal. 1995) (prison).

Yet in most cases “medical screening” in Tucson Sector stations is conducted—if and when it is conducted—by border patrol agents “in the field,” not by a nurse, doctor, or other qualified or specially trained personnel. (ECF No. 39-1, Ex. 1 ¶ 9; Vail Decl. ¶¶ 138, 139.) Defendants’ own policies confirm this: “If an *officer/agent* suspects . . . that a detainee may have a contagious disease, the detainee should be separated whenever operationally feasible.” (Ex. 95 at USA00634 (emphasis added).) This contradicts both commonly accepted standards in similar facilities throughout the nation (Goldenson Decl. ¶¶ 12-17; 24-30), as well as the constitutional minimum courts have required court orders in similar cases. *See, e.g., Graves*, 48 F. Supp. 3d at 1340. Beyond Defendants’ written policies, numerous detainees have declared that their attempts to obtain medical attention for injuries that occurred prior to apprehension were rebuffed by the agents executing

1 Defendants' medical screening "policy."

2 Second, Defendants fail to maintain a medical treatment program capable of
 3 "responding to emergencies" that arise after detainees are placed in the holding cells.
 4 *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982), *abrogated on other grounds by*
 5 *Sandin v. Conner*, 515 U.S. 472 (1995); *see also Shorter v. Baca*, -- F. Supp. 3d --, No.
 6 12-cv-7337-DOC, 2015 WL 1809282, at *16 (C.D. Cal. Apr. 21, 2015) (jail officials
 7 violated Eighth (and thus Fifth) Amendment by denying pretrial detainee emergency
 8 dental care); *cf. Estate of Prasad ex rel. Prasad v. County of Sutter*, 958 F. Supp. 2d 1101,
 9 1114 (E.D. Cal. 2013) (failure to maintain around-the-clock medical personnel in jail
 10 constitutes deliberate indifference). By law, Defendants must permit detainees "to make
 11 their medical problems known to the medical staff" in the detention facility and such staff
 12 must be "competent to deal with the [detainees'] problems." *Hoptowit*, 682 F.2d at 1253.
 13 Such around-the-clock access to medical staff is standard throughout similar facilities.
 14 (Goldenson Decl. ¶¶ 13, 16.)

15 Third, Defendants' practice of confiscating incoming detainees' medication,
 16 creates an impermissible and heightened risk that detainees will experience a medical
 17 emergency. *Hernandez v. County of Monterey*, -- F. Supp. 3d --, No. 5:13-CV-2354-
 18 PSG, 2015 WL 3868036, at *17 (N.D. Cal. Apr. 14, 2015). It is standard in similar
 19 detention facilities through the United States to have in place a policy maximizing a
 20 detainee's ability to continue prescribed medication. (Goldenson Decl. ¶ 47.) Numerous
 21 courts have held that such efforts are constitutionally required in the jail setting.
 22 *Hernandez*, 2015 WL 3868036, at *12 ("It is critical for correctional facilities to maintain
 23 continuity of treatment for newly admitted inmates."); *Graves*, 48 F. Supp. 3d at 1341
 24 (reviewing procedures implemented under court order to ensure that arriving detainees are
 25 promptly continued on prescription medications); *cf. Wakefield v. Thompson*, 177 F.3d
 26 1160, 1164–65 (9th Cir. 1999) (prison officials violate Eighth Amendment by failing to
 27 supply, at time of release into the community, a prisoner with sufficient medication to
 28 permit him to consult with community-based doctor). Accordingly, Plaintiffs are likely to

succeed on their claim that Defendants’ denial of adequate medical screening and care violates their due process rights.

B. Plaintiffs are Likely to Succeed on Their Claim That Defendants Have Failed to Enforce Mandatory Statements of Policy.

1. Governing Law

A party can sue under the APA to compel an agency to abide by its own statement of policy when such a statement constitutes “agency action.” 5 U.S.C. § 706(1) (requiring court to “compel agency action unlawfully withheld or unreasonably delayed.”). “[A]gency action’ is defined in [5 U.S.C.] § 551(13) to include ‘the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, *or failure to act.*’” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 62 (2004). The APA defines the term “rule” as “an agency statement of . . . future effect designed to implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4). An agency statement that meets this definition constitutes agency action. *See, e.g., Defenders of Wildlife v. Tuggle*, 607 F. Supp. 2d 1095, 1114 (D. Ariz. 2009) (Bury, J.) (agency’s “Standard Operating Procedure” was a “rule” under APA).

Such a statement has the force and effect of law, and can be enforced under the APA, when it (1) prescribe[s] substantive rules—not interpretive rules, general statements of policy or rules of agency organization—and (2) conforms to certain procedural requirements. *River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1071 (9th Cir. 2010) (citation omitted). “To satisfy the first requirement, the rule must be legislative in nature, affecting individual rights and obligations; to satisfy the second, it must have been promulgated pursuant to a specific statutory grant of authority and in conformance with the procedural requirements imposed by Congress.” *Id.*

The TEDS standard constitutes a “rule” and enforceable guidance under the *River Runners* standard. It is “an agency-wide policy that sets forth the first nationwide standard which govern CBP’s interaction with detained individuals. . . . In addition to transport, escort, detention and search provisions, TEDS also includes requirements

related to: sexual abuse and assault prevention and response; care of at-risk individuals in custody; and personal property.” (Ex. 95 at USA00620.) Each and every one of these “requirements” affects the individual rights of all detainees in Border Patrol stations, including—but certainly not limited to—their right to “bodily integrity.” *Albright v. Oliver*, 510 U.S. 266, 272 (1994). It also sets out agency and CBP agent obligations. (Ex. 95 at USA00621, USA00626, USA00633 (CBP agents must, *inter alia*, “perform their duties in a non-discriminatory manner,” “safeguard detainees during a search,” and “grant detainees telephone access.”).) Finally, it states specifically the statutory, regulatory and other authority under which it was promulgated. (*Id.* at USA000620.) It clearly satisfies the *River Runner* standard.

2. Defendants Fail to Abide by the TEDS Standards.

Having formalized their inhumane and punitive practices, Defendants fail even to meet the modest goals articulated in the TEDS standards, much less the preceding 2008 Policy. (Vail Decl. ¶ 72.) Defendants are obligated to provide “clean bedding . . . to juveniles” (Ex. 95 at USA00634), “clean drinking cups” (*id.* at USA00635), and “toilet paper and sanitary napkins” (*id.* at USA00634). But Defendants fail to do so. (Vail Decl. ¶¶ 51, 77, 79, 80, 81, 125; Powitz Decl. ¶¶ 60, 75.) Defendants are obligated to an “maintain hold room temperature within a reasonable and comfortable range.” (Ex. 95 at USA00633.) But Defendants fail to do so. (Vail Decl. ¶¶ 107, 108; Powitz Decl. ¶¶ 91, 95, 96, 101, 102, 105.) Defendants are obligated to “regularly and professionally clean[] and sanitize[]” hold cells. (Ex. 95 at USA00633.) But Defendants fail to do so. (Vail Decl. ¶ 52, Powitz Decl. ¶¶ 18, 23, 29, 30, 32, 42, 90.) Defendants are obligated to make drinking water “always . . . available” and provide meals regularly. (Ex. 95 at USA00635.) But Defendants fail to do so. (Vail Decl. ¶ 152.) Finally, although Defendants may *not* “use temperature controls in a punitive manner” (Ex. 95 at USA00633), and use “[f]ood and water . . . as punishment” (*id.* at USA00635), this is precisely what Defendants do (Vail Decl. ¶¶ 100, 108; Powitz Decl. ¶ 100).

Plaintiffs are likely to succeed on the merits of their claim that Defendants are

obligated but fail to enforce certain minimal standards related to Plaintiffs’ detention.

C. Plaintiffs Will Suffer Irreparable Harm If This Court Does Not Grant An Injunction.

“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted); *Majors v. Jeanes*, 48 F. Supp. 3d 1310, 1317 (D. Ariz. 2014) (same). Where, as here, a movant demonstrates a likelihood of success on a constitutional claim, “it follows . . . ‘that irreparable harm is *likely*, not just possible’ in the absence of preliminary injunctive relief.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1144–45 (9th Cir. 2013) (citation omitted). Having shown a constitutional deprivation, Plaintiffs need establish nothing else: “[W]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable [harm] is necessary.” *Pure Wafer, Inc. v. City of Prescott*, 14 F. Supp. 3d 1279, 1302 (D. Ariz. 2014) (citation omitted).

Lest there be any doubt, however, the harm to Plaintiffs—which includes suffering, risk of exposure to disease, the denial of food, medicine, and other necessities—is manifestly irreparable. *Hernandez*, 2015 WL 3868036, at *15 (holding that suffering, risk of tuberculosis, and no medical access constitutes irreparable harm); *Harris v. Bd. of Supervisors, L.A. Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (same for pain, infection, medical complications); *V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1121 (N.D. Cal. 2009) (same for denial of food, medication, and other necessities).

Defendants’ apparent reluctance to acknowledge, much less remedy, the conditions in Tucson Sector stations makes it not just likely but certain that the irreparable harm will continue. *Zepeda v. U.S. INS*, 753 F.2d 719, 727 (9th Cir. 1984). Defendants’ statements to this Court that Tucson Sector stations are “short-term facilities” ignores reality (ECF No. 52 at 2), and demonstrates that Defendants do not intend to change their ways absent an order from this Court. Indeed, all that Defendants have done is formalize their policies—a transparent, but unsuccessful attempt at *post hoc* “legalization.”

D. The Balance of Equities Tips Sharply in Plaintiffs' Favor.

This Court “‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” *Winter v. Nat. Res. Def. Counsel*, 555 U.S. 7, 24 (2008) (citation omitted). Here, the answer is clear: the harm to Plaintiffs’ outweighs any conceivable hardship to Defendants.

Detained individuals continue to be harmed by the deprivation of sleep, warmth, adequate food and water. The health risk posed by the lack of medical screening, soap, and clean hold rooms alone tips against any administrative government hardship. On Plaintiffs’ side is their physical well-being and human dignity; on Defendants’ is some speculative and relatively minimal financial or administrative burden. “[F]aced with [] a conflict between financial concerns and preventable human suffering, [the court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.” *Harris*, 366 F.3d at 766 (alterations in original) (citation omitted); *accord Rosado v. Alameida*, 349 F. Supp. 2d 1340, 1348 (S.D. Cal. 2004) (“When adjudicating a preliminary injunction motion, the Ninth Circuit expects lower courts to protect physical harm to an individual over monetary costs to government entities.”).

Defendants’ hardship, moreover, is really no hardship at all, because Defendants are *already required* to follow the Constitution. “[The government] cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns.” *Rodriguez*, 715 F.3d at 1145; *see also Zepeda*, 753 F.2d at 727 (“[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”). When the government’s so-called burden is weighed against the “the major hardship posed by needless prolonged detention” of immigrants, the balance tips toward an injunction. *Rodriguez*, 715 F.3d at 1145.

E. A Preliminary Injunction Serves the Public Interest.

“The public interest inquiry primarily focuses on the impact on non-parties, as opposed to parties.” *Friendly House v. Whiting*, 846 F. Supp. 2d 1053, 1062 (D. Ariz. 2012) (citation omitted). How our own government treats immigrants concerns us all,

1 including—if we are to believe what it has said publicly—the government itself.

2 The Supreme Court has articulated, and the Ninth Circuit has reaffirmed, “the
3 highest public interest in the due observance of all the constitutional guarantees.” *U.S. v.*
4 *Raines*, 362 U.S. 17, 27 (1960); *Melendres*, 695 F.3d at 1002 (“it is always in the public
5 interest to prevent the violation of a party's constitutional rights”). Stopping Defendants’
6 mistreatment of immigrants in government-operated detention facilities in Arizona serves
7 the public interest. And so does “a preliminary injunction that ensures that federal statutes
8 are construed and implemented in a manner that avoids serious constitutional questions.”
9 *Rodriguez*, 715 F.3d at 1146. The preliminary injunction sought here would merely
10 guarantee that Defendants cease to interpret and execute their authority to act under color
11 of federal law in ways that violate the Fifth Amendment.

12 Defendants, moreover, can claim no public interest in denying immigrants the
13 minimal civilized measure of life’s necessities—in denying them sleep, warmth, medical
14 care, food and water. While the public has an interest in “assuring that public funds are
15 appropriately expended,” there is nothing “inappropriate” about ensuring that detained
16 individuals are not mistreated. *Rosado*, 349 F. Supp. 2d at 1348–49. To the contrary,
17 where, as here, the fisc is balanced against preventable constitutional harm, the latter must
18 prevail, *id.* at 1349. Likewise for government claims of “security,” *Jordan v. Gardner*,
19 986 F.2d 1521, 1527 (9th Cir. 1993), and “logistical difficult[y],” *Rodriguez*, 715 F.3d at
20 1146.

21 An injunction is in the public interest.

22 **V. CONCLUSION**

23 For the foregoing reasons, Plaintiffs respectfully ask this Court to enjoin
24 Defendants, their agents and their employees from detaining Plaintiffs and putative class
25
26
27
28

1 members under conditions that are punitive, inhumane, and unconstitutional pending final
2 resolution of this suit.

3
4 Dated: December 4, 2015

By: /s/ Harold J. McElhinny

5 Harold J. McElhinny*
6 Kevin M. Coles*
7 Elizabeth Balassone*
8 MORRISON & FOERSTER LLP
9 425 Market Street
10 San Francisco, CA 94105-2482
11 Telephone: (415) 268-7000
12 Facsimile: (415) 268-7522
13 Email: HMcElhinny@mofo.com
14 Email: KColes@mofo.com

15 Colette Reiner Mayer*
16 MORRISON & FOERSTER LLP
17 755 Page Mill Road
18 Palo Alto, CA 94304-1018
19 Telephone: (650) 813-5600
20 Facsimile: (650) 494-0792
21 Email: CRMayer@mofo.com

22 Louise C. Stoupe*
23 Pieter S. de Ganon*
24 MORRISON & FOERSTER LLP
25 Shin-Marunouchi Building, 29th Floor
26 5-1, Marunouchi 1-Chome
27 Tokyo, Chiyoda-ku 100-6529, Japan
28 Telephone: +81-3-3214-6522
Facsimile: +81-3-3214-6512
Email: LStoupe@mofo.com
Email: PdeGanon@mofo.com

1 Linton Joaquin*
2 Karen C. Tumlin*
3 Nora A. Preciado*
4 NATIONAL IMMIGRATION LAW CENTER
5 3435 Wilshire Boulevard, Suite 2850
6 Los Angeles, CA 90010
7 Telephone: (213) 639-3900
8 Facsimile: (213) 639-3911
9 Email: joaquin@nilc.org
10 Email: tumlin@nilc.org
11 Email: preciado@nilc.org

12 Mary Kenney*
13 Emily Creighton*
14 Melissa Crow*
15 AMERICAN IMMIGRATION COUNCIL
16 1331 G Street NW, Suite 200
17 Washington, DC 20005
18 Telephone: (202) 507-7512
19 Facsimile: (202) 742-5619
20 Email: mkenney@immcouncil.org
21 Email: ecreighton@immcouncil.org
22 Email: mcrow@immcouncil.org

23 Victoria Lopez (Bar No. 330042)**
24 Daniel J. Pochoda (Bar No. 021979)
25 James Duff Lyall (Bar No. 330045)**
26 ACLU FOUNDATION OF ARIZONA
27 3707 North 7th Street, Suite 235
28 Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

Attorneys for Plaintiffs

* *Admitted pursuant to Ariz. Sup. Ct. R. 38(a)*

** *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jane Doe #1; Jane Doe #2; Norlan Flores,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
Commissioner, United States Customs &
Border Protection, in his official capacity;
Michael J. Fisher, Chief of the United States
Border Patrol, in his official capacity;
Jeffrey Self, Commander, Arizona Joint
Field Command, in his official capacity;
Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

Defendants.

Case No. 4:15-cv-00250-TUC-DCB

**[PROPOSED] ORDER GRANTING
PRELIMINARY INJUNCTION
CLASS ACTION**

**(Assigned to the
Honorable David C. Bury)**

Action Filed: June 8, 2015

1 The Court, having considered Plaintiffs' Motion for Preliminary Injunction, and
2 finding that good cause appears, orders as follows:

3 1. Defendants, their agents and all persons acting in concert with them
4 ("Defendants") shall not hold persons for longer than 12 hours ("Detainee(s)") in
5 detention cells, search rooms or interview rooms ("Hold Rooms") located in the Tucson
6 sector under any of the following conditions:

- 7 a) The Hold Rooms do not have a clean bed, mattress, blanket and
8 pillow for each Detainee;
- 9 b) The Hold Rooms are constantly illuminated;
- 10 c) The Hold Rooms fail to provide an environment enabling sleep due
11 to excessive noise;
- 12 d) The Hold Rooms fail to provide a minimum square footage of 35sq
13 ft. of unencumbered space per occupant (unencumbered is usable
14 space that is not encumbered by fixtures or furnishings).
- 15 e) The Hold Rooms fail to provide adequate toilets, specifically a
16 minimum of 1 toilet per 12 male Detainees and 1 toilet per 8 female
17 Detainees;
- 18 f) There is insufficient soap for daily use by every Detainee;
- 19 g) There is insufficient toilet paper for daily use by every Detainee;
- 20 h) There is not one clean towel for regular use by each Detainee;
- 21 i) The Hold Rooms are dirty or unsanitary;
- 22 j) There are not sufficient supplies of toothbrushes and toothpaste for
23 each Detainee for daily use;
- 24 k) There are not sufficient feminine hygiene products for every female
25 Detainee;
- 26 l) There are not sufficient diapers, wipes, formula or baby food for
27 daily use by Detainees under the age of four;
- 28

- m) There are not sufficient facilities to enable every Detainee to shower himself or herself in a hot shower with soap and a towel at least once per day;
- n) The Hold Rooms do not have sufficient and accessible potable water for all Detainees, either in the form of a clean, working drinking fountain or some other source that allows the water to be easily collected in a cup;
- o) There are not sufficient paper cups for daily use by every Detainee;
- p) The Hold Rooms are uncomfortably cold: Defendants shall provide sufficient clothing to ensure that Detainees are not unduly cold while in the Hold Rooms;
- q) Defendants do not provide every Detainee with nutritionally adequate meals with a diversified and varying menu on a daily basis;
- r) The Hold Rooms contain persons that have not been medically screened upon entry into a facility by medically trained personnel or an emergency medical technician, paramedic, physician, physician's assistant, or nurse practitioner ("medically qualified personnel");
- s) Detainees lack access to medically qualified personnel available to examine all requesting or ill Detainees on a timely basis; or
- t) Defendants do not permit or enable Detainees to continue to take their prescription medications that have been approved by medically qualified personnel in the United States or elsewhere, or that are contained in a properly identified container with the specific dosage indicated.

2. Named defendants shall file a comprehensive report with the Court describing, for each Station in the Tucson Sector, Defendants' compliance with each paragraph of this order and any areas of less than full compliance with the reasons and date of planned compliance ("Compliance Report"). The Compliance Report shall

1 contain sufficient information and detail to enable this Court to evaluate Defendants'
2 compliance with this order. A copy of the Compliance Report shall also be served on
3 Plaintiffs. The first Compliance Report is due one month from the date of this order and
4 shall be filed and served by Defendants every month thereafter.

5
6 **IT IS SO ORDERED.**
7

8
9 Dated: _____

HON. DAVID C. BURY
United States District Judge

1 Harold J. McElhinny*
Kevin M. Coles*
2 Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
3 425 Market Street
San Francisco, CA 94105
4 Telephone: (415) 268-7000
Facsimile: (415) 268-7522
5 Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
6 Email: EBalassone@mofo.com

7 Attorneys for Plaintiffs

8 * *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

9 Additional counsel listed on next page

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA
13

14 Jane Doe #1; Jane Doe #2; Norlan Flores,
on behalf of themselves and all others
15 similarly situated,

Plaintiffs,

16 v.

17 Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
18 official capacity; R. Gil Kerlikowske,
Commissioner, United States Customs &
19 Border Protection, in his official capacity;
Michael J. Fisher, Chief of the United States
20 Border Patrol, in his official capacity;
Jeffrey Self, Commander, Arizona Joint
21 Field Command, in his official capacity;
Manuel Padilla, Jr., Chief Patrol Agent-
22 Tucson Sector, in his official capacity,

23 Defendants.
24
25
26
27
28

Case No. 4:15-cv-00250-TUC-DCB

**DECLARATION OF ELDON VAIL
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)
** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 I, ELDON VAIL, hereby declare:

2 **I. INTRODUCTION**

3 1. I have personal knowledge of the facts stated herein and, if called as a
4 witness, could and would competently testify thereto.

5 2. I am a former corrections administrator with nearly thirty-five years of
6 experience working in and administering adult and juvenile institutions. Before becoming
7 a corrections administrator, I held various line and supervisory level positions in a number
8 of prisons and juvenile facilities in Washington State. I have served as the Superintendent
9 (Warden) of 3 adult institutions, including facilities that housed maximum, medium and
10 minimum-security inmates.

11 3. I served for seven years as the Deputy Secretary for the Washington State
12 Department of Corrections (WDOC), responsible for the operation of prisons and
13 community corrections. I briefly retired, but was asked by the former Governor of
14 Washington, Chris Gregoire, to come out of retirement to serve as the Secretary of the
15 Department of Corrections in the fall of 2007. I served as the Secretary for four years,
16 until I retired in 2011.

17 4. Since my retirement I have served as an expert witness and correctional
18 consultant for cases and disputes twenty-eight times in fourteen different states. A true
19 and correct copy of my current resume is attached as Attachment A to this report, which
20 lists my work experience, publications, and service as an expert witness and correctional
21 consultant.

22 5. As a Superintendent, Assistant Director of Prisons, Assistant Deputy
23 Secretary, Deputy Secretary and Secretary, I have been responsible for the safe and secure
24 operations of adult prisons in the State of Washington, a jurisdiction that saw and
25 continues to see a significant downward trend in prison violence with very little class
26 action litigation. As an expert witness and consultant I have been called upon to address
27 security issues and conditions of confinement in adult prisons and jails in other states. I
28 am experienced in sound correctional practice.

1 **II. ASSIGNMENT**

2 6. I have been asked by Plaintiffs’ counsel to offer my opinions regarding the
3 conditions of confinement in Tucson Sector Border Patrol Station Hold Rooms (“Hold
4 Rooms”).

5 **III. MATERIALS RELIED UPON**

6 7. I personally inspected all four of the Border Patrol Stations made available
7 to Plaintiffs for inspection—Tucson, Casa Grande, Douglas and Nogales—on September
8 8 through September 11, 2015. At each station, I was accompanied by sanitarian expert
9 Robert W. Powitz and a photographer. I was also accompanied at each station by two of
10 Plaintiffs’ attorneys, including Colette Mayer and Nora Preciado at Tucson, Louise
11 Stoupe and Nora Preciado at Casa Grande, Kevin Coles and James Lyall at Douglas,
12 Nogales and an abbreviated second visit to Tucson.

13 8. I reviewed surveillance video screenshots from an additional 3 stations—
14 Sonoita, Brian A. Terry, and Willcox—which I did not personally inspect. The conditions
15 at these stations appear to be very similar to those at the four stations that I visited.
16 (Exs. 168-169, 154-157, 190-191.)¹

17 9. I have read the declaration of Robert W. Powitz and believe his account of
18 our inspections and descriptions of the various facilities to be accurate.

19 10. I have read the declaration of Joseph Gaston and have based my opinion on
20 the reports prepared at the request of Plaintiffs’ counsel, which analyze “e3DM” data
21 produced by Defendants. I understand the e3DM data purports to reflect certain records
22 logged by Defendants with respect to the detention of individuals at each of the eight
23 Border Patrol Stations within the Tucson Sector.

24 11. I have been provided with all documents produced by Defendants in this
25 case to date, Bates numbers USA000001 through USA0002186.

27 ¹ All exhibits referenced in this declaration are to the Appendix of Exhibits In Support of
28 Plaintiffs’ Motion for Preliminary Injunction.

12. I have also been provided with copies of photographs taken during our Border Patrol station inspections.

13. I have reviewed approximately 50 of the declarations of former detainees who were detained in U.S. Customs and Border Protection facilities within the Tucson Sector of the U.S. Border Patrol submitted in support of Plaintiffs' Motion for Class Certification.

14. I have also reviewed screenshots of surveillance video from Tucson, Casa Grande, Douglas and Nogales Stations that was produced by Defendants.

15. I have been provided with certain declarations and other documents filed in this case and *Flores v. Lynch*, No. CV 85–4544–RJK–Px (C.D. Cal. filed July 11, 1985) that relate to CBP hold rooms.

IV. OPINIONS

16. It is my opinion that the operation of the CBP detention facilities in the Tucson sector does not comply with the national standards for correctional facilities in several respects outlined in more detail below.

17. The American Correctional Association (ACA) is the primary body that promulgates standards for the operation of jails. These standards were developed by ACA with the involvement of the National Sheriffs' Association, the American Jail Association, the National Institute of Corrections and the Federal Bureau of Prisons and they describe the mandatory standards for the safe operation of detention facilities. A true and correct copy of these standards is attached to the Appendix of Exhibits as Exhibit 195. The CBP makes no reference to these standards and fails to meet them in many respects.

18. Other bodies also establish standards for the operation of jails and detention facilities. The United States Department of Justice National Institute of Corrections (NIC) has developed standards for the safe, secure and humane operation of jails. A true and correct copy of these standards is attached to the Appendix of Exhibits as Exhibit 196.

19. The United Nations has established a Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment as well as Standard

1 Minimum Rules for the Treatment of Prisoners. CBP makes no reference to these
2 principles and standards to guide the operation of its detention facilities. True and correct
3 copies of these standards are attached to the Appendix of Exhibits as Exhibits 197 and
4 198.

5 20. CBP has promulgated standards that serve as “mandatory minimum
6 requirements for CBP managers to implement and improve the security posture for their
7 designated CBP area of responsibilities.” (*See* CBP Security Policy and Procedures
8 Handbook, HB 140-02B, August 13, 2009 (“2009 CBP Handbook”), Appendix 8.10,
9 attached to the Appendix of Exhibits as Exhibits 81 and 102 (produced by Defendants at
10 USA00088-105 and USA00681-698).) The guidelines set out in the 2009 CBP Handbook
11 remain in place today.

12 21. The CBP also has internal standards and guidelines that govern their
13 interactions with detainees that were recently modified. Formerly, issues such as bedding,
14 medical screening and hygiene were governed by CBP’s 2008 Hold Rooms and Short
15 Term Custody Policy (“2008 Policy”), attached to the Appendix of Exhibits as Exhibit 85.

16 22. Similarly, attached to the Appendix of Exhibits as Exhibit 86 is a true and
17 correct copy of a document produced by Defendants on or about September 4, 2015 and
18 Bates labeled USA000322-345, which appears to be a CBP memorandum dated October
19 18, 2012, with subject heading “Hold Rooms and Short Term Custody Policy,” which
20 “serves as a reminder of the [June 2, 2008] Hold Rooms and Short Term Custody Policy,
21 which in turn “covers all persons . . . who are arrested by Border Patrol Agents and are
22 detained in hold rooms at Border Patrol stations, checkpoints, and processing facilities.”

23 23. The new standards recently issued by CBP “replace separate policies that
24 have evolved over the years since CBP’s formation in 2003” are lauded as “agency-wide
25 policy that sets forth the first nationwide standards which govern CBP’s interaction with
26 detained individuals”. (*See* National Standards on Transport, Escort, Detention, and
27 Search (“TEDS standards”) published on October 5, 2015, excerpts attached to the
28 Appendix of Exhibits as Exhibit 95.)

24. Neither the TEDS standards (which lower CBP's standards from the preexisting level), their historical antecedents or the 2009 CBP Handbook make reference to ACA or NIC standards or the United Nations principles and in fact in several areas violate those standards and principles. As described in more detail below, the result is that many of the actual practices of the CBP facilities are unsafe and inhumane and put detainees at risk of significant harm. Further, these conditions serve no legitimate penological or custodial purpose.

A. Hold Rooms Designed For Short Term Confinement Only

25. It is my professional opinion that the Hold Rooms were designed and intended for short-term confinement, meaning detentions of less than 10 hours.

26. Defendants admit that Tucson Sector stations are "not designed for long-term care and detention." (ECF No. 39-1, Ex. 1 ¶ 11.)

27. Defendants also describe these stations as "short-term facilities" that "serve the limited purpose of overnight processing" or "brief initial processing." (ECF No. 52 at 2, 8–9.)

28. According to CBP officials, including Defendants here, "Border Patrol seeks to process and transfer all aliens out of their custody within 12 hours from apprehension." (ECF No. 39-1, Ex. 1 ¶ 11; *see also* Request for Judicial Notice ("RJN"), Ex. A (Declaration of Chief Border Patrol Agent Kevin W. Oaks ¶ 14, ECF. No. 121-1, *Flores v. Lynch*, No. CV 85–4544–RJK–Px (C.D. Cal. filed July 11, 1985))).

29. Similarly, the design and construction of the facilities suggest that they were intended for very short detentions only. The 2009 CBP Handbook, describes the physical requirements of the Hold Rooms and states, among other requirements, the amount of unencumbered floor space that each detainee is intended to have in the Hold Rooms. (Exs. 81.) The 2009 Handbook mandates that each detainee should be provided with 37 square feet of unencumbered space for a single occupant hold room, and 7 additional square feet for each additional detainee. It also states that hold rooms have "[n]o beds; a hold room is not designed for sleeping." (*Id.* at USA000091.) Facilities of the type

1 described in the Handbook, however, are inadequate for long-term detention and further
2 support my conclusion that the facilities were not intended to hold detainees over 10
3 hours.

4 30. Detainees are held in the facilities for much longer than the time period for
5 which they were designed. For example, according to Plaintiffs' analysis of "e3DM" data
6 produced by Defendants, of the 17,006 individuals detained in Tucson Sector facilities
7 between June 10, 2015 to September 28, 2015, at least 14,021 were detained for over 12
8 hours; 6,541 over 24 hours; 2,841 over 36 hours; 1,064 over 48 hours; and 157 over 72
9 hours. (Decl. of Joseph Gaston in Support of Mot. for Preliminary Injunction (Gaston
10 Decl.) ¶ 20.)

11 **B. Lack of Space**

12 31. It is my opinion that the hold rooms at the CBP facilities have maximum
13 occupancy numbers that are overstated for housing detainees any length of time, but are
14 particularly problematic when individuals are detained for over 10 hours. As a result,
15 there is evidence that the hold rooms are regularly overcrowded.

16 32. Surveillance video from Tucson Station reveals that Defendants routinely
17 pack so many individuals into holding cells that detainees are commonly forced to lie
18 down on the concrete floors beneath the toilet stalls. Others are crammed so tightly, they
19 look like sardines in a can, with no room to move in any direction without rolling over
20 someone else:



(Ex. 188).

33. Surveillance video from other hold rooms similarly shows detainees crowded into cells and forced to lie on concrete floors to sleep or rest. (Exs. 151, 152, 158; *see also* Exs. 130, 170, 172-73, 176-88); Declaration of Kevin Coles In Support of Plaintiffs' ("Coles Decl.") ¶ 36, 37.)

34. The surveillance video also shows that people are often kept in these crowded conditions overnight. (Coles Decl. ¶ 36.)

35. Consistent with this, former detainees describe having to sit or stand for all or part of the nights because there was insufficient room for everyone in the cell to lie down. (*See, e.g.*, ECF No. 2-1, Ex. 6 ¶ 8 (he and 15 others stood all night because there was not enough room to lie down); ECF No. 2-2, Ex. 33 ¶ 6 (sandwiched between others and unable to lie down); ECF No. 2-3, Ex. 50 ¶ 17 (forced to sleep on his side on the floor to make room for others to lie down).)

36. This overcrowding problem is compounded by the fact that many of the holding cells I encountered in my inspections were irregularly designed in shape, often with multiple narrow concrete benches and toilet stalls. (Exs. 52, 54, 56, 60, 62, 68, 75; *see also* Exs. 7, 19,-20.) Despite the dimensions of the cell perimeter walls, the actual useable space available to detainees is restricted, in some cases severely. Cells with stated

1 occupancy numbers as high as 48, such as Cell 18 in Tucson, did not even have enough
2 floor space to fit more than a couple beds. (Exs. 60-62.)

3 37. During my inspection of Tucson, Casa Grande and Douglas Stations, I
4 found room occupancy numbers posted above or near each holding cell door.

5 38. There were no occupancy numbers posted at the Nogales Station. We were
6 informed that occupancy numbers had been painted over.

7 39. Defendants produced their own capacity numbers for hold rooms at each of
8 the four stations we inspected.

9 40. Defendants produced various floor plans and sketches with measurements
10 for some of the walls and fixtures in holding cells at each of those four stations.

11 41. From my review of these floor plans and sketches, I believe that
12 Defendants' hold room occupancy numbers were likely calculated by applying the 2009
13 CBP Handbook standard of 35 square feet for the first detainee plus 7 additional square
14 feet for each additional detainee.

15 42. CBP's unencumbered space requirements are significantly below the
16 American Correctional Association's National Core Jail Standards ("Core Jail Standards")
17 requirements. A true and correct copy of excerpts of these standards is attached to the
18 Appendix of Exhibits as Exhibit 199. Even for confinement in multiple-occupancy cells
19 for less than ten hours per day, the Core Jail Standard 1-CORE-1A-07 requires at least 25
20 square feet of unencumbered space per occupant.

21 43. It is my professional judgment that the CBP Handbook standard is
22 completely inadequate for longer-term detentions (lasting more than 10 hours), where
23 detainees reasonably require room to lie down, sleep, and walk around.

24 44. Longer-term facilities (over ten hours) have larger minimum space
25 requirements. For example, the Core Jail Standards state that "between two and sixty-four
26 occupants and provide 25 square feet of unencumbered space per occupant. *When*
27 *confinement exceeds ten hours per day, at least 35 square feet of unencumbered space is*
28 *provided for each occupant.*" (Ex. 199, 4-ALDF-1A-10, at 3 (emphasis added).)

1 45. There is widespread consensus among corrections officials, based on their
 2 experience and supported by considerable research that goes back at least 30 years, that
 3 overcrowded facilities create conditions of confinement that increase the risk to safety and
 4 security for prisoners. That consensus is consistent with my own correctional experience.
 5 Dr. Craig Haney, a University of California professor who has researched and testified as
 6 an expert in prison overcrowding cases, wrote in an article in the Washington University
 7 Journal of Law and Policy.

8 There is widespread agreement among correctional experts
 9 that chronic idleness in prison produces negative
 10 psychological and behavioral effects... Thus, overcrowding
 11 means that there is less for prisoners to do, fewer outlets to
 12 release the resulting tension, a decreased staff capacity to
 identify prisoner problems, and fewer ways to solve them
 when they do occur. The increased risk of victimization is a
 likely result.²

13 46. The conditions here serve no legitimate penological or custodial interest and
 14 in fact are likely to make the facilities unsafe as such conditions will increase tension
 15 among the detainees as they contend for space to simply lie down, sleep or use the
 16 bathroom with having someone in the immediate proximity. Based on my experience and
 17 review of literature, I believe the lack of space in these holding cells creates an
 18 unjustifiable risk of harm to detainees.

19 47. The effects of overcrowding and lack of space in CBP facilities are
 20 extensive. There is simply not enough space to move around in the holding cell when they
 21 approach or exceed their stated capacity. There is not enough space to sometimes sit or
 22 find a place to sleep. Unless they stand for 24 hours of more— a difficult, if not
 23 impossible undertaking —detainees must sit or lie on heat-draining concrete floors and
 24 benches. It is very likely, and consistent with detainee declarations, that adequate sleep is
 25 impossible to achieve in these conditions.

26
 27 ² (Dr. Craig Haney, *The Wages of Prison Overcrowding: Harmful Psychological*
 28 *Consequences and Dysfunctional Correction Reactions*, Washington University Journal of
 Law & Policy, Volume 22, January 2006, pages 275-276, Exhibit 201.)

1 48. There are also no activities or diversions for the detainees while they await
2 decisions on their next destination to distract them from the conditions.

3 49. The effects of overcrowding are made worse the longer they must be
4 endured. However, the CBP facilities have some unique and troubling designs that can
5 quickly result in conditions that place great stress on detainees.

6 50. The location of and access to toilets is one exacerbating factor and seems
7 unnecessarily humiliating for detainees. While the designs of every CBP facility I
8 inspected were different, access to even a modicum of privacy while using the toilet was
9 absent in all of them. Every detainee in the room can view the toilet activities of others.
10 Moreover, the surveillance cameras mounted in each cell make clear to the detainees that
11 they are being watched not only by every other detainee in the room but also by the CBP
12 agents. Some of the surveillance cameras even have a direct view into the toilet stall.
13 (Exs. 143, 144 (for surveillance video); Exs. 7, 8 (for photos of the toilet stall shown in the
14 video).) This lack of privacy makes overcrowding even more of an issue. (*See* ECF No.
15 2-3, Ex. 50 ¶ 9 (closed his eyes when using bathroom because he was so embarrassed).)

16 51. Similarly, overcrowding has a direct effect on hygiene. Many of the toilets
17 we inspected were leaking and stained with built up grime from over use as there are
18 simply not enough of them for the capacity of the detainees in some of the holding cells.³
19 (Ex. 11; Ex. 43; Ex. 77.) One detainee reported that there was only one toilet for
20 approximately 40 people. (ECF No. 2-1, Ex. 6 ¶¶ 7, 10; *id.*, Ex. 7 ¶¶ 9, 14 (2 toilets for 60
21 people); *id.*, Ex. 16 ¶¶ 3, 12 (the sole toilet was backed up and did not flush while a
22 mother and two children were detained); ECF No. 2-3, Ex. 38 ¶¶ 17, 20 (approximately 90
23 people detained with only three of four toilets that functioned); ECF No. 2-1, Ex. 2 ¶¶ 5, 9
24 (52 people in a cell with only 2 of 3 toilets working); *id.*, Ex. 1 ¶¶ 4, 6 (2 of 3 toilets
25 working in cell with 45 people); *id.*, Ex. 17 ¶¶ 6, 13 (60 to 70 people in cell with only 2 of

26
27 ³ The ACA prison standard 4-4137 requires one toilet for every twelve male
28 prisoners and one toilet for every eight female prisoners, standards which, in my
observation, are frequently exceeded in CBP holding cells. (*See* Ex. 195, 4-ALDF-4C-
12, at 54.)

4 toilets working).) Additionally, detainees frequently run out of toilet paper and CBP delays in resupplying them. (*Id.* Ex. 6 ¶ 10; ECF No. 2-3, Ex. 44 ¶ 25.)

52. Although CBP apparently has no policies with respect to how often the Hold Rooms must be cleaned, surveillance footage from Casa Grande station shows hold rooms being cleaned once per 48 hours, if that. (Coles Decl. ¶ 41.) There are no cleaning supplies in the hold rooms and, according to detainees, the rooms often lacked a trash can. (ECF No. 2-1, Ex. 8 ¶ 11; *id.*, Ex. 16 ¶ 25; *id.*, Ex. 43 ¶ 15.) This means, effectively, that the Hold Rooms are hardly ever clean and that the areas around the toilets are generally dirty. (ECF No. 2-1, Ex. 8 ¶ 11 (diapers, toilet paper and other trash was strewn around the bathroom area); ECF No. 2-3, Ex. 35 ¶ 24 (1 toilet backed up and smelled terrible).) Unfortunately, this fact does not stop the overcrowding of the cells which makes it necessary for some detainees to lie down very close to those toilets in order to find a place to sleep:



(Ex. 173, 174; Ex. 152; *see also* ECF No. 2-2, Ex. 32 ¶ 10 (people were so tightly packed into the cell some had to sleep in the bathroom area); *id.*, Ex. 17 ¶ 7 (same); ECF No. 2-1, Ex. 7 ¶ 13 (one detainee sat upright on the concrete floor for two nights, finding it impossible to sleep more than a couple of hours during the time he was detained); *id.*, Ex. 11 ¶ 12 (several detainees explained that in order to find space to sleep on the floor, some detainees resorted to sleeping next to toilets).) In essence, the design of the Hold Rooms mean that the person using the toilet and the person trying to sleep both experience

difficulties, creating unnecessary tension in the holding cell, especially when it is overcrowded.

53. All of these factors lead me to conclude that detainees suffer unnecessarily and that these conditions are likely to create tension among the detainees as they are forced to compete for access to these most basic functions of everyday life. (*See, e.g.*, ECF No. 2-2, Ex. 20 ¶ 18 (“Sometimes if you went to use the bathroom you would lose your seat [on the bench].”).)

C. Deprivation of Sleep

54. During my inspections of the four stations, I did not see a single bed, cot or mattress, and no bedding apart from two or three pillows.

55. The only coverings I found were thin sheets made of Mylar, a material similar in appearance to, but more durable than, aluminum. These sheets are almost paper thin, but are referred to by CBP agents as “Mylar blankets”:



(Ex. 4.)

56. I understand that Plaintiffs’ review of video surveillance from these stations further supports the fact that detainees are not provided beds or mattresses at these stations, regardless the duration of their detention. (Coles Decl. ¶ 45.)

57. During my inspection of Casa Grande station, there were only three mats in the entire facility:



(Ex. 3.)

58. We were informed at each station that mats were intended only for families and children. According to documents filed by CBP with the court, the policy in the Tucson Sector is that “[m]attress pads are available for juvenile and family units,” ECF No. 39-1, Ex. 1 ¶ 15, while in the Rio Grande Valley, “[i]n certain circumstances, aliens who are in Border Patrol’s custody may require some form of bedding.” (RJN, Ex. A ¶ 21.)

59. Surveillance video from some of these stations often shows detainees lying on the concrete floors while, at the exact same moment in time in the same station, mats go unused in other unoccupied or less occupied cells:



(Ex. 170; *see also* Ex. 147.)

60. Surveillance video also shows families and children confined in cells with too few or no mats:



(Ex. 146, 147; *see also* Ex. 155.)

61. This is consistent with the declarations of former detainees held with their children but not provided mats. (ECF No. 2-1, Ex. 5, ¶ 5; *id.*, Ex. 8 ¶ 9 (mother and 6 month old daughter); *id.*, Ex. 13 ¶ 7 (pregnant mother and 5 year old daughter); *id.*, Ex. 16 ¶ 7 (pregnant mother and 2 children); ECF No. 2-2, Ex. 29 ¶ 3, 7 (mother and 18 month old child).)

62. According to Plaintiffs' analysis of the e3DM data, out of the 16,992 individuals held in U.S. Border Patrol custody between June 10 and September 28, 2015, only 122 were recorded to have received a mat. (Gaston Decl. ¶ 25.)

63. Additionally, detainees are frequently forced to endure constant illumination in the holding cells through the night. Video surveillance shows holding cell lights on in the middle of the night. (Ex. 186, 187; Ex. 142; Exs. 150, 151.) Even when the holding cell lights are dimmed or turned off, light from the processing areas still floods in through the windows from the processing areas. (Exs. 171, 182.)

64. Detainees are commonly seen shielding the light by hiding their faces under their Mylar blankets. (Ex. 152; Ex. 188.) One juvenile even appears to be shielding himself from the light by hiding underneath one of the mats. (Exs. 162, 163.)

65. Declarations of former detainees also show that there is constant noise throughout the night. (ECF No. 2-1, Ex. 9 ¶ 9 (guards would talk to detainees throughout

1 the night or hit the cell window); *id.*, Ex. 11 ¶ 15 (Mylar sheets were very noisy making it
2 hard to sleep).

3 66. Video surveillance also shows CBP agents interrupting detainees' sleep in
4 the middle of the night to conduct cell counts or call individuals in or out of the cells.
5 (Coles Decl. ¶ 40; *see also* ECF No. 2-1, Ex.16 ¶ 11 (called out twice for interviews
6 during the night).)

7 67. The Core Jail Standards require bedding and appropriate illumination:

8 Bedding Issue

9 1-CORE-4B-01 (Ref. 4-ALDF-4B-02)

10 Inmates are issued suitable, clean bedding and linens.

11 There is provision for linen exchange, including towels, at
12 least weekly.

13 (Ex. 199, 1-CORE-4B-01, at 25.)

14 Environmental Conditions/Lighting

15 1-CORE-1A-09 (Ref. 4-ALDF-1A-14, 1A-15)

16 All inmate rooms/cells provide the occupants with access to
17 natural light. Lighting throughout the facility is sufficient for
18 the tasks performed.

19 (*Id.*, 1-CORE-1A-09, at 4.)

20 68. The Department of Justice NIC Standards also state:

21 Inmates must be provided with clean clothes and bedding.

22 Clothing, towels, and bedding must be exchanged, laundered,
23 and inspected on a regular basis. Failing to do so will result in
24 an unhygienic facility for both the inmates and the staff."

25 (Ex. 196 at 4.)

26 69. The United Nations Standard Minimum Rules for the Treatment of
27 Prisoners state:

28 Every prisoner shall, in accordance with local or national
standards, be provided with a separate bed, and with separate
and sufficient bedding which shall be clean when issued, kept
in good order and changed often enough to ensure its
cleanliness.

(Ex. 198, R. 19 at 3.)

70. Prior to the start of this litigation, even the CBP's own standards required all
detainees to be given bedding. According to CBP's June 2, 2008 Memorandum regarding

1 “Hold Rooms and Short Term Custody” (the “2008 Memorandum”), “[d]etainees
2 requiring bedding will be given clean bedding. Only one detainee will use this bedding
3 between cleanings. This bedding will be changed every three days and cleaned before it is
4 issued to another detainee. Vinyl or rubber-coated mattresses will be disinfected before
5 being reissued.” (2008 Memorandum, ¶ 6.11 (Ex. 86 at 330)).

6 71. Unfortunately, CBP’s recently issued standards drop below even this basic
7 level. Section 8.0 of the new TEDS standards defines bedding as “A (or any combination
8 of) blanket, mat, or cot.” Section 4.12 of the new TEDS standards states that “bedding”
9 must be provided to juveniles but only a “blanket” needs to be provided to adults and only
10 on request.

11 72. CBP’s recent reductions in bottom line requirements from the 2008 Memo
12 to the new TEDS standards serve as an admission that bedding has not been adequately
13 provided to detainees in these facilities. Standards from top officials at CBP are meant to
14 inform as to what practices are recommended and acceptable. It is clear that, in practice,
15 these minimums have been treated as maximums, if followed at all.

16 73. The current practice at the CBP facilities is to force detainees to sleep on the
17 concrete floor or on very narrow concrete benches in overcrowded conditions. While
18 inspecting those facilities I made a point of sitting and lying down on those concrete
19 benches. Even though the air temperature of the holding cells seemed more or less
20 “normal” it only took a few minutes on a concrete bench to begin to feel the heat leave my
21 body and for me to begin to feel cold. I cannot imagine that any restful sleep is possible
22 without a bed that is off the floor and adequate bedding to keep myself warm. The
23 declarations of former detainees confirm this. (ECF No. 2-1, Ex. 4 ¶ 6; *id.*, Ex. 8 ¶¶ 8-9;
24 ECF No. 2-2, Ex. 24 ¶ 8; ECF No. 2-3, Ex. 48 ¶ 8; ECF No. 2-1, Ex. 11 ¶ 13; *id.*, Ex. 16
25 ¶¶ 9-10; *id.*, Ex. 15 ¶¶ 9-10, 21-22.)

26 74. According to one detainee, he and fifteen others had to remain standing
27 throughout the night and he was therefore not able to sleep at all. (ECF No. 2-1, Ex. 6 ¶ 8
28 (gave up his place on the floor to an injured detainee).) In its report on International

Prison Conditions, the U.S. Department of State identified overcrowding as a “central problem” in prison management and cited specific instances in Ukraine and Haiti where inmates were forced to sleep in shifts as evidence of overcrowding.⁴ The State Department stated that it “encourages the use of the general standard in section 7085(b)(1) of Public Law 111-117 for guiding our assessment of whether prison conditions are overcrowded (i.e., ‘the number of prisoners or detainees does not so exceed prison capacity such that per capita floor space is sufficient to allow for humane sleeping conditions and reasonable physical movement’),”⁵

75. Add to this mix the undisputed acknowledgement by CBP officials that the lights in the holding cell are left on 24 hours a day. Furthermore, it is likely that the lack of sleep will exacerbate tensions in an overcrowded environment. It is my opinion that the practices at the CBP facilities are well beyond what would be tolerated in jails or prisons for convicted felons in our country. It is my professional opinion that conditions of confinement at the Tucson Sector Stations unnecessarily deprive detainees of sleep, serve no legitimate penological or custodial purpose, and create an unjustifiable risk of harm to detainees.

D. Potable Water

76. It is a basic requirement that detainees be provided with access to potable water.

77. The CBP facilities deal with this issue differently. Surveillance video of holding cells at Tucson Station (which was limited to two dates in August, 2015 and most of September, 2015, *see* Coles Decl. ¶¶ 91-111) shows a 5-gallon water cooler in cells, often placed on toilet stalls or the ground, but with few or no paper cups. (Exs. 180, 184, 185.) Cells with 15 or more detainees might have only four or five paper cups shared

⁴ *Report on Int’l Prison Conditions*, U.S. Dep’t of State, May 22, 2013, available at <http://goo.gl/OaquKm>.

⁵ *Id.*

1 among the various detainees. Individuals can also be seen drinking directly from the
2 water cooler itself. (Coles Decl. ¶ 39.)

3 78. In Casa Grande, there were no water coolers in any of the holding cells
4 during our inspections.

5 79. There were no cups in any of the rooms at Casa Grande. During my
6 inspection of the Casa Grande facility I saw paper cups in the storage room. (Ex. 1.)
7 Papers cups were never given to the detainees in Hold Room 5 during the 5 days where
8 they were drinking out of the plastic jug depicted below. (Coles Decl. ¶ 46.) Depriving
9 detainees of paper cups appears to be common practice. In general, during my inspections
10 of Tucson, Casa Grande and Douglas stations, I found paper cups being stored at each of
11 the stations, yet found few or none in the holding cells or waste receptacles. (Ex. 1 (box
12 of Solo brand cups); Exs. 50, 51.)

13 80. Numerous detainees complained of not getting adequate access to drinking
14 water. (ECF No. 2-1, Ex. 5 ¶ 13 (no drinking water); ECF No. 2-3, Ex. 43 ¶ 18 (same);
15 ECF No. 2-2, Ex. 26 ¶ 27 (no drinking water for entire first day).) Many complain of
16 being forced to recycle used juice boxes to hold drinking water. (ECF No. 2-1, Ex. 2 ¶
17 11; *id.*, Ex. 10 ¶ 16; *id.*, Ex. 12 ¶ 10.)

18 81. This testimony is confirmed by surveillance video of the Casa Grande which
19 shows at least a dozen different detainees drinking from the same 1-gallon water jug over
20 the course of 5 days:



(Ex. 130; *see also* Exs. 125, 129, 130, 133, 141.)

82. The jug was never replaced or cleaned, despite the cell being swept by maintenances crews on several occasions over the course of the 5 days it was used.

(Coles Decl. ¶ 46.)

83. In hold rooms with “bubblers” to dispense drinking water, these were usually located just above or adjacent to the toilets, often as part of the same metal toilet/sink unit. During each of my inspections of the four stations, I observed numerous bubblers that did not work or had extremely low water pressure. One example of a malfunctioning bubbler is shown in the picture below:



(Ex. 31.)

84. In general, I believe that the problem with the bubblers is the same as with the toilets—they are subject to overuse as there are not enough of them for the numbers of detainees placed in the holding cells⁶ and they are not regularly inspected and repaired.

85. CBP’s own inspection checklists produced in this litigation support this conclusion. One of the earliest produced “Processing Inspection Form” for Casa Grande states that “Water fountain 10-7 in cell#6” is not working starting June 7, 2015. (Ex. 103)

⁶ ACA prison standard 4-4138 requires one washbasin for every 12 prisoners. (*See* Ex. 195, 4-ALDF-4C-10, at 54.)

1 That entry continues for months. One of the latest produced Processing Inspection Forms
 2 in October 20, 2015 shows the same water fountain has not been repaired. “One Fountain
 3 needs repairs Cell #6” (Ex. 107). Although CBP’s records are incomplete, I understand
 4 that at least 34 detainees were held in Cell #6 between June 10, 2015 and September 28,
 5 2015. (Gaston Decl. ¶ 72.)

6 86. Similarly, inspection checklists for the Tucson Station report one or more
 7 malfunctioning sinks from July 16 through August 27 (Ex. 114 at USA1758-1776;
 8 Ex. 115 at USA1872-1898), and then again on September 10, 21 and 22 (Ex. 114 at
 9 USA1758-1776), and again between October 16-19 (Ex. 116 at USA2035-037; Ex. 116 at
 10 USA2055-056). Inspection checklists logs from Nogales Station report malfunctioning
 11 sinks on August 23-26 (Ex. 112 at USA1589-1592); August 28-September 9 (Ex. 112 at
 12 USA1595-1597; Ex. 112 at USA1608; Ex. 112 at USA1610; Ex. 112 at USA1610-1619);
 13 September 11-18 (Ex. 112 at USA1650-1657), September 20-21 (Ex. 112 at USA1659-
 14 1660), September 27 (Ex. 113 at USA1694); October 3 (Ex. 113 at USA1750), October
 15 14-16 (Ex. 113 at USA1731-1732), and October 18 (Ex. 113 at USA1735).

16 87. The Core Jail Standards make clear that potable water is required:

17 1-CORE-1A-05 (Mandatory) (Ref. 4-ALDF-1A-07)
 18 The facility’s potable water source and supply, whether owned
 19 and operated by a public water department or the facility, is
 20 certified at least annually by an independent, outside source to
 21 be in compliance with jurisdictional laws and regulations.

22 (Ex. 199, 1-CORE-1A-05, at 2.)

23 88. Even CBP’s new TEDS standards make clear that detainees must be
 24 provided with potable water. Section 4.14 of the new TEDS standards also require that
 25 clean paper cups be provided to detainees. In my professional judgment, the failure to
 26 provide clean cups and potable water serves no legitimate penological or custodial interest
 27 and unjustifiably increases the risk of harm to detainees. (Ex. 95 at USA000631.)

28 89. The CBP facilities need to have clear standards for providing access to
 potable water and make sure that each facility complies with those standards. This is the
 simple and basic work of a detention facility. Further, water fixtures must be checked

1 regularly and repaired quickly when they are broken. If they wish to continue using water
 2 jugs as part of their water delivery system, the regular cleaning and refilling of those jugs
 3 should be scheduled and logged. In no case should detainees be expected to share the
 4 same cups or drink from the same gallon jug as they present an obvious risk of the spread
 5 of contagious disease.

6 **E. Food**

7 90. During my inspections, I found that each of the four stations stored
 8 microwaveable burritos, crackers and boxes of fruit juice. The nutritional information
 9 indicated that the burritos generally had between 330 and 360 calories each, crackers 200
 10 calories and boxes of fruit juice around 60 calories. (*See* Ex. 2.)

11 91. Other than some baby foods and formulas, there was no other food for
 12 detainees at these facilities.

13 92. There were no rotating menus and no evidence of differentiation between
 14 the food provided to children (other than infants), adults, and pregnant or nursing mothers.

15 93. There were no facilities for preparing hot meals other than microwaves or
 16 warming trays. (Ex. 5; Ex. 42.)

17 94. Plaintiffs' analysis of the e3DM data indicates that, between June 10, 2015
 18 and September 28, 2015, the *average* gap time between burritos reportedly offered to
 19 detainees at all Tucson sector stations was 7.336 hours. (Gaston Decl. ¶ 49.) At Tucson
 20 station, the average gap time between meals was 8.239 hours. (Gaston Decl. ¶ 68.)
 21 Consistent with this, many detainees stated that they did not receive any food for 12 or
 22 more hours (ECF No. 2-3, Ex. 43 ¶¶ 9, 19, 21, 32; ECF No. 2-1, Ex. 5 ¶¶ 13, 17) and that
 23 they were constantly hungry. (ECF No. 2-3, Ex. 43 ¶¶ 18, 32, 38; ECF No. 2-3, Ex. 45
 24 ¶ 28; *id.*, Ex. 46 ¶¶ 12, 15; *id.*, Ex. 47 ¶ 13; ECF No. 2-2, Ex. 26 ¶ 18; ECF No. 2-3,
 25 Ex. 48 ¶ 11; ECF No. 2-1, Ex. 5 ¶¶ 13, 17; ECF No. 2-2, Ex. 30 ¶¶ 17, 18; ECF No. 2-3,
 26 Ex. 42 ¶¶ 12, 21; ECF No. 2-1, Ex. 11 ¶ 18; ECF No. 2-2, Ex. 21 ¶¶ 15, 25; ECF No. 2-3,
 27 Ex. 44 ¶ 15, 21, 24; *id.*, Ex. 49 ¶¶ 20, 28; *id.*, Ex. 36 ¶ 23.)

1 95. Former detainee declarants frequently complained about the quality of food
2 as well. (ECF No. 2-1, Ex. 9 ¶ 32; *id.*, Ex. 16, ¶ 15; *id.*, Ex. 14 ¶ 8.)

3 96. The DOJ NIC Jail Standards state:

4 Inmates must be provided with adequate, nutritional meals.
5 Dieticians should ensure that each meal provides inmates with
6 a balanced diet appropriate to their age and medical
7 conditions. Teenagers may need a different caloric intake than
8 older inmates. Diabetics, inmates on dialysis, and those with
9 food allergies all need to have medically approved and
10 appropriate diets. Inmates with legitimate religious dietary
11 restrictions also must be accommodated.

12 (Ex. 196 at 4.)

13 97. The Core Jail Standards make clear that nutritionally balanced diet is
14 required and that meals must be served regularly:

15 1-CORE-4A-01 (Mandatory) (Ref. 4-ALDF-4A-07)
16 The facility's dietary allowances are reviewed at least
17 annually by a qualified nutritionist or dietician to ensure that
18 they meet the nationally recommended dietary allowances for
19 basic nutrition for appropriate age groups. Menu evaluations
20 are conducted at least quarterly by food service supervisory
21 staff to verify adherence to the established basic daily
22 servings.

23 (Ex. 199, 1-CORE-4A-01, at 23.)

24 1-CORE-4A-06 (Ref. 4-ALDF-4A-17, 4A-18)
25 Three meals, including at least two hot meals, are prepared,
26 delivered, and served under staff supervision at regular times
27 during each twenty-four hour period, with no more than
28 fourteen hours between the evening meal and breakfast.
Variations may be allowed based on weekend and holiday
food service demands, provided basic nutritional goals are
met.

(*Id.*, 1-CORE-4A-06, at 25.)

98. Section 4.13 of the new TEDS Standards also requires food to be provided
at "regularly scheduled meal times" and accurately "documented in the appropriate
electronic system(s) of record" and snacks are to be provided "between regularly
scheduled meal times."

99. Section 5.6 of the new TEDS requires that juveniles and pregnant detainees
"will be offered a snack upon arrival and a meal at least every six hours thereafter, at

1 regularly scheduled meal times. At least two of those meals will be hot. Juveniles and
2 pregnant or nursing detainees must have regular access to snacks, milk and juice.”

3 100. Former detainees’ declarations show that, despite providing irregular and
4 insufficient meals, Border Patrol agents threaten to confiscate food to keep detainees
5 quiet. (ECF No. 2-1, Ex. 11 ¶ 21; ECF No. 2-2, Ex. 43 ¶ 21; ECF No. 2-1, Ex. 11 ¶ 21
6 (“Border patrol agents said that if we were not quiet they were going to take away our
7 food. So we stayed very quiet because we were afraid of losing the food.”).)

8 101. I understand that Defendants were ordered to make available to Plaintiffs
9 documents sufficient to show current detainee detention practices and procedures at the
10 four stations I inspected. I have not seen any documents indicating that any of the four
11 stations’ dietary allowances have been reviewed by a qualified dietician or nutritionist,
12 and therefore assume none exists. I *have* seen Holding Cell Inspection forms from
13 Douglas Station in which CBP employees include in the remarks section that the burritos
14 are “delicious” or “yummy” or “super yummy” or “scrumptious.” (Ex. 108 at USA1185;
15 Ex. 109 at USA1197; Ex. 111 at USA1494; Ex. 111 at USA1467.) I understand that CBP
16 employees do not eat the food given to detainees so I must assume that these comments
17 are made sarcastically and with the recognition that the burritos are not particularly
18 appetizing and are in fact considered punitive. (ECF No. 2-1, Ex. 11 ¶ 21.)

19 102. The failure to provide a nutritionally balanced diet to individuals detained
20 more than 12 hours serves no legitimate penological or custodial interest and creates a risk
21 of harm for some detainees.

22 103. Detainees should be given food immediately upon arrival and then upon a
23 set schedule. The current diet also does not address food allergies and should be required
24 to do so.

25 **F. Temperature and Ventilation**

26 104. During our inspection, CBP agents informed us that all detainees’ outer
27 layers of clothing were confiscated before being placed in hold rooms, and in all but a few
28 instances, detainees were not given replacement clothing. (ECF No. 2-1, Ex. 3 ¶ 8 (agents

1 confiscated shirts and coat, so detainee had only a short sleeve shirt); ECF No. 2-2,
2 Ex. 20, ¶ 9 (clothes were confiscated, leaving detainee with only a short sleeve shirt.)

3 105. Surveillance video regularly shows detainees in Hold Rooms with no outer
4 layers of clothing. (Exs. 126, 129; Ex. 165.)

5 106. Surveillance video also shows detainees huddled together under Mylar
6 blankets, even in the late Arizona summer months, wrapped head to toe in these flimsy
7 plastic sheets. (Exs. 187, 188; Ex. 191.) According to detainees' declarations sometimes
8 they would not even have these sheets. (ECF NO. 2-3. Ex. 43 ¶ 10 (“[t]hree of the sixteen
9 [detainees] got small aluminum blankets but the rest of us did not. . . [w]e asked for
10 blankets but they ignored us”); ECF No. 2-1, Ex. 9 ¶¶ 24, 25 (guard refused detainee's
11 request for new aluminum sheet when it ripped, so she asked permission to take an
12 aluminum blanket from the trash.)

13 107. These Mylar sheets are demonstrably inadequate to keep people warm in
14 hold rooms that, even in the warmer months, drop to 58.8° Fahrenheit. (Ex. 111 at
15 USA001461.) (ECF No. 2-2, Ex. 25, ¶ 9 (detainee stated that she tried to “curl up on the
16 floor and huddle with some of the other women in order to stay warm,” but ultimately
17 needed to pace around the holding cell to try to warm herself); ECF No. 2-2, Ex. 20 ¶ 8.
18 (detainee stated that he understood why “dogs sleep in a little ball, to keep warm, but
19 couldn't even keep warm doing that.”); *id.*, Ex. 26 ¶ 24 (“[m]any children were crying
20 because it was so cold”); ECF No. 2-3, Ex. 44 ¶¶ 8, 21 (detainee's two year old daughter
21 and other children in the holding cell often cried due to hunger and cold).)

22 108. Former detainee declarations commonly complain of being subjected to cold
23 temperatures. (ECF No. 2-1, Ex. 6 ¶ 9 (“The temperature in the cell was very cold, we
24 call it the ‘hielera’ (freezer) because they turn on the air high and it's so cold.”).) There
25 are even accounts of Border Patrol agents using cold temperatures to punish inmates.
26 (ECF No. 2-2, Ex. 24 ¶ 6; *id.*, Ex. 23 ¶ 17 (“One Mexican woman asked an agent to turn
27 off the air conditioner. The agent said, ‘Don't ask or we'll turn it up.’”); ECF No. 2-2,
28 Ex. 18 ¶ 8; ECF No. 2-1, Ex. 4 ¶ 6 (“When people asked the guards to make it warmer,

1 they made it colder. Sometimes they laughed at us when we complained about the
 2 temperature.”); ECF No. 2-2, Ex. 18 ¶ 8; ECF No. 2-1, Ex. 6 ¶ 9 (“the other detainees who
 3 spoke English would translate for us and tell us that the guards said that if we talked too
 4 much or complained that they would turn on the air even colder”); ECF No. 2-3, Ex. 34
 5 ¶ 9 (“Someone asked the officials to make the cell warmer, but they were ignored; in fact,
 6 after the request was made we could feel the cell get even colder.”).)

7 109. Given the lack of clothing and mattresses and nothing to do all day,
 8 detainees are left to sit or lay down on concrete, which is a very cold experience. During
 9 the inspection, I alternately sat on the concrete and wooden benches at Nogales and the
 10 difference was striking. Concrete benches are very cold and seep heat from your body.

11 110. During our inspection of Douglas we were told their air-conditioning system
 12 was out of order, yet the temperatures were about the same as at the other facilities we
 13 inspected. As a result the CBP had provided sweatshirts/jackets for the detainees to wear.
 14 Every detainee was wearing them. In that the temperatures where similar to the other
 15 facilities, this is clear evidence of the need for additional insulation. In September 2015,
 16 the Douglas station changed its Holding Cell Inspection form to include a “Cell
 17 Temperature Check” section in which CBP employees include temperature readings for
 18 each of the cells. (Ex. 111 at USA001512.) The temperature of the cells appears to
 19 depend on the location of that cell, with some consistently colder than others.

20 111. The Core Jail Standards Require CBP to provide suitable clothing:

21 1-CORE-4B-02 (Ref. 4-ALDF-4B-03)

22 Inmates are issued clothing that is properly fitted and suitable
 23 for the climate. There are provisions for inmates to exchange
 clothing at least twice weekly.”

24 (Ex. 199, 1-CORE-4B-02, at 25.)

25 112. The Core Jail Standards also require:

26 1-CORE-1A-10 (Ref. 4-ALDF-1A-19, 1A-20)

27 A ventilation system supplies at least 15 cubic feet per minute
 28 of circulated air per occupant, with a minimum of five cubic
 feet per minute of outside air. Toilet rooms and cells with
 toilets have no less than four air changes per hour unless state
 or local codes require a different number of air changes. Air

quantities are documented by a qualified independent source and are checked not less than once per accreditation cycle. *Temperatures are mechanically raised or lowered to acceptable comfort levels.*”]

(*Id.*, 1-CORE-1A-10, at 4.)

113. Additionally, the DOJ NIC Jail Standards state (emphasis added):

Inmates must be *provided with* clean clothes and bedding. Clothing, towels, and bedding must be exchanged, laundered, and inspected on a regular basis. Failing to do so will result in an unhygienic facility for both the inmates and the staff.

(Ex. 196 at 4.)

114. It is my opinion that the current practice of lack of suitable clothes, lack of bedding and mattresses, and the composition of the benches and floors that detainees must sit and sleep on serves no penological interest and serves only as punishment for the detainees.

G. Ability to Maintain Personal Hygiene

115. I understand that detainees often arrive dirty to the facilities and are in need of the opportunity to clean themselves and change clothing upon arrival. (ECF No. 2-1, Ex. 33 ¶ 8; ECF No. 2-3, Ex. 39 ¶ 7; ECF No. 2-2, Ex. 26 ¶ 29. Detainees also need to be able to clean their bodies prior to eating or after using the bathroom. Detainees however are unable to maintain basic personal hygiene in these facilities and typically not permitted to wash or change upon arrival or at any other time during their detention.

116. Out of the four facilities that we inspected, only Nogales and Tucson had any facilities for detainees to shower themselves. CBP officials at Nogales told us that these showers were rarely used and then only when a detainee showed evidence of scabies. According to e3DM data produced by Defendants, only 115 detainees were given showers out of 16,992 held in Tucson Sector Border Patrol stations between June 10 and September 28, 2015. (Gaston Decl. ¶ 27.) Of those 115 showers, 20 were purportedly provided at Casa Grande station, where we were told by CBP agents that no shower facilities existed. (Gaston Decl. ¶ 60.)

117. I observed soap dispenser located on the walls of many hold rooms. However, they were sometimes broken or empty. During our inspection of Casa Grande station, there were no soap dispensers and no evidence of soap at all for detainees to clean themselves. In the Douglas station, the Holding Cell Inspection forms record there being no soap during several days in October. (Ex. 111 at USA1526; Ex. 111 at USA1528; Ex. 111 at USA1537-38; Ex. 111 at USA1546-47; Ex. 111 at USA1549; Ex. 111 at USA1557.)

118. I also inspected the toilets and sinks. Most cells had between one and four metal sink/toilet units behind a low brick privacy wall or stall. (Ex. 55; Exs. 10, 23.) Occasionally the sink and toilet were separate units (Ex. 44) A few toilets were not operational. (Ex. 70.)

119. In only one case did I find a sink providing hot water.

120. We did not observe any towels that were made available to detainees.

121. The Core Jail Standards require:

1-CORE-4B-04 (Ref. 4-ALDF-4B-08, 4B-09, 4C-10)
Inmates, including those in medical housing units or infirmaries, have access to showers toilets, and washbasins with temperature controlled hot and cold running water twenty-four hours per day. Inmates are able to use toilet facilities without staff assistance when they are confined in their cell/sleeping areas. Water for showers is thermostatically controlled to temperatures ranging from 100 degrees to 120 degrees Fahrenheit.

(Ex. 199, 1-CORE-4B-04, at 26.)

122. The result is that detainees have no opportunity to adequately clean themselves. Hot water is virtually nonexistent, soap is sometimes available but sometimes it is not, there are no towels and there is only very rare access to a shower. Many detainees come to the facilities after walking through the desert sometimes for days or weeks. (ECF No. 2-1, Ex. 11 ¶ 3 (apprehended after walking in desert for 10 days); ECF No. 2-2, Ex. 23 ¶¶ 5, 10 (lost in desert for a week).) It is likely their personal hygiene has suffered prior to the time of their apprehension. (ECF No. 2-3, Ex. 39 ¶ 7.) When they get to a CBP facility they do not have the opportunity to clean themselves. Especially

1 given the lack of hot water, they are not able to properly clean themselves before eating or
2 after going to the bathroom. In a detention facility where detainees are held in
3 overcrowded conditions it is my opinion this creates an unreasonable risk for the spread of
4 disease or infection among the detainees and the staff who work there. I would think that
5 CBP administrators would want to do more to protect their own staff if for no other
6 reason.

7 123. Again, this is simple and basic protocol for the operation of a detention
8 facility. Typically, general population jail inmates can shower daily. Since the detainees
9 are constantly locked in their cells, they do not have an opportunity to shower during out
10 of cell time like a jail population inmate. It is my opinion that detainees should be
11 provided the opportunity to shower, after being searched, upon arrival at the facility. They
12 should have the opportunity to shower once every 3 days they are confined at the facility.

13 124. Once again, this practice of the CBP serves no legitimate penological or
14 custodial purpose, creates an unjustifiable risk of harm to detainees, and amounts to
15 nothing more than punishment.

16 125. Additionally, I understand from detainees' declarations that they are not
17 provided with an adequate supply of sanitary napkins (ECF No. 2-2, Ex. 25 ¶ 11) or
18 diapers (*id.*, Ex. 29 ¶ 15 (One and a half year old child without a clean diaper for nineteen
19 hours); *id.*, Ex. 28 ¶ 11 (agents refused mother's request that they get a diaper out of her
20 bag, so child was left in a diaper diaper); *id.*, Ex. 30, ¶ 14.)

21 **H. Unsafe Isolation Cells**

22 126. At the Douglas facility there are 6 isolation cells that are completely
23 inadequate. These cells were very alarming to me and very dangerous for any detainee
24 who might be housed there and for the staff who must supervise them. There are no
25 windows to see into the cells in order to view inside nor are there food ports in the doors
26 to safely deliver meals. The in-cell cameras have at least one blind spot that does that
27 allow viewing into all parts of the cell.
28

1 127. Since these cells are without windows in the doors and there is no food port
2 in the cell door, the CBP agents must open the cell door “blind” since they cannot see in
3 before opening the door. This increases the possibility of a serious assault that could occur
4 immediately upon opening the cell door.

5 128. In all the documents I have reviewed about the operations of CBP facilities I
6 have seen nothing that describes how these isolation cells are to be operated. As a result
7 there is no evidence that these cells are operated according to industry standards. It is well
8 know that the risk of suicide and self-harm is increased for persons housed in isolation.
9 For that reason alone, consistent with ACA standards and industry practice, half hour
10 checks are required of individuals held in isolation. Moreover, the surveillance cameras in
11 the cells at Douglas are mounted in such a way as to create a hazard for hanging.

12 129. It is my opinion that the isolation cells at Douglas should be shut down and
13 not utilized until the problems with the cell doors are fixed and the agency develops
14 policy for their use that are consistent with industry standards. Continuing their operation
15 creates the risk of serious harm for any detainee who may be housed there.

16 **I. Medical Screening Standards in Detention Settings**

17 130. Core Jail Standards provide that the admission processes for a newly-
18 admitted inmate include, but are not limited to, health screening, suicide screening, and
19 alcohol and drug screening. (Ex. 199, 1-CORE-2A-14, at 13.)

20 131. Specifically, the Core Jail Standards articulate mandatory guidelines for
21 “Intake physical and mental health screening.” (Ex. 199, 1-CORE-4C-09, at 30.)

22 132. The screening should commence upon the inmate’s arrival at the facility,
23 unless there is documentation of a medical screening within the previous 90 days or the
24 inmate is an intra-system transfer. (*Id.*)

25 133. The screening should be “conducted by health-trained staff or by qualified
26 health care personnel in accordance with protocols established by the health authority.”
27 (*Id.*)

28 134. Screening must include at least:

- current or past medical conditions, including mental health problems and communicable diseases;
- current medications, including psychotropic medications;
- history of hospitalization, including inpatient psychiatric care;
- suicidal risk assessment, including suicidal ideation or history of suicidal behavior;
- use of alcohol and other drugs including potential need for detoxification;
- dental pain, swelling, or functional impairment;
- possibility of pregnancy; and
- cognitive or physical impairment.

135. Screening should also include observation of the following:

- behavior, including state of consciousness, mental status, appearance, conduct, tremor, or sweating;
- body deformities and other physical abnormalities;
- ease of movement;
- condition of the skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations, recent tattoos, and needle marks or other indications of injection drug use; and
- symptoms of psychosis, depression, anxiety and/or aggression.

136. At the conclusion of the screening, the medical disposition of the inmate should be determined as:

- refusal of admission until inmate is medically cleared;
- cleared for general population;
- cleared for general population with prompt referral to appropriate medical or mental health care services;
- referral to appropriate medical or mental health care service for emergency treatment; or

- process for observation for high risk events, such as seizures, detoxification head wounds, and so forth.

137. As explained by the Core Jail Standards, the purpose of this medical screening is two-fold: “to prevent newly arrived inmates who pose a health or safety threat to themselves or others from being admitted to the general population” and “to identify inmates who require immediate medical attention.” (Ex. 199, 1-CORE-4C-09, at 31.)

J. Failure to Screen at Tucson Sector CBP Facilities

138. During our inspection of the Tucson Sector CBP facilities, as described above, we were told by Defendants’ personnel that medical screening is not performed upon detainees’ arrival at each station. We were also told that some agents are EMT-trained and can be assigned these duties if they are available. I am not aware, however, of any records received by Plaintiffs from Defendants that ensure sufficient EMT-trained agents are on the staff rosters in each Tucson Sector CBP facility to consistently perform medical screening of arriving detainees.

139. The declarations of numerous former detainees show the failure of CBP to provide adequate medical screening, and even medical assistance upon request. (ECF No. 2-2, Ex. 23 ¶ 7 (no medical evaluation and denied assistance when she complained of heavy vaginal bleeding); ECF No. 2-3, Ex. 38 ¶ 14 (refused medical assistance despite swollen arm); *id.*, Ex. 37 ¶¶ 22, 29, 31 (refused prescribed medication for pain leg fracture); ECF No. 2-1, Ex. 9 ¶ 12-1; ECF No. 2-2, Ex. 19 ¶ 19.) Moreover, medications that detainees have with them are confiscated. (ECF No. 201, Ex. 9 ¶ 14.)

140. The declarations also show that detainees arriving at CBP facilities in the Tucson Sector are a particularly vulnerable population—exhausted, hungry, thirsty, many who are sick or injured and in need of immediate medical care. (ECF No. 2-2, Ex. 23, ¶ 5; ECF No. 2-2, Ex. 26, ¶¶ 15-16; *id.*, Ex. 21 ¶ 14; ECF No. 2-3, Ex. 36 ¶ 8; ECF No. 2-1, Ex. 15 ¶ 18 (diarrhea and vomiting); *id.*, Ex. 6 ¶ 15 (heart condition); ECF No. 2-1, Ex. 20 ¶ 15 (colitis); ECF No. 2-2, Ex. 23 ¶ 23 (heavy sustained vaginal bleeding); ECF No. 2-3,

Ex. 37 ¶¶ 4, 21, 34 (pain from broken leg).) This makes medical screening and care all the more crucial in the Tucson Sector setting.

K. Practices and Policies are Inadequate For A Facility That Holds Detainees Over 10 Hours

141. I understand that Defendants have been ordered to make available to Plaintiffs documents sufficient to show current detainee detention practices and procedures for the four stations I inspected.

142. I have reviewed all of the policies produced. I find them to be either inadequate or insufficient and out of line with accepted standards for detention facilities, and woefully inadequate for facilities that detains people over 10 hours.

143. I understand that after the start of this litigation, in October 2015, the government released new TEDS standards. The new TEDS standards significantly extended the time period that Border Patrol agents may hold detainees to 72 hours or more. (Ex. 95 at USA631.) The hold rooms are completely inadequate facilities for housing detainees that long.

144. Apart from the deficiencies outlined above, CBP does not have policies on basic items that are standards in all jails and other correctional facilities such as what I have reference above for the use of isolation cells. Just a few examples of other standards taken from the Core Jail Standards that are not addressed by current CBP policies include:

- a. Required weekly, monthly and annual sanitation inspections. (Ex. 199, 1-CORE-1A-01, at 1.)
- b. All inmate rooms/cells provide the occupants with access to natural light. Lighting throughout the facility is sufficient for the tasks performed. (*Id.*, 1-CORE-1A-09, at 4.)
- c. When a female inmate is housed in a facility, at least one female staff member is on duty at all times. (*Id.*, 1-CORE-2A-05, at 10.)
- d. If food services are provided by the facility, there are weekly inspections of all food service areas, including dining and food preparation areas and equipment. Water temperature is checked and recorded daily. (*Id.*, 1-CORE-4A-05, at 24.)

e. Inmates have access to exercise and recreation opportunities. When available, at least one hour daily is outside the cell or outdoors. (*Id.*, 1-CORE-5C-01, at 27.)

f. Annual and pre-service training requirements (*Id.*, 1-CORE-7B-03, at 52-53.)

145. Ultimately the CBP facilities lack the focus on the detail of the operation of detention facilities necessary to make certain they operate in a safe and humane manner.

146. CBP does not appear to have many of the accountability measures that are typically found in corrections facilities including routine inspection systems in all of its stations (daily, weekly, monthly) and outside audits. The purpose of these types of procedures is to establish accountability for local managers and to see if their practices are consistent with their policies. Corrections facilities require oversight and that appears to be woefully lacking from the operation of CBP facilities. Additionally, CBP's policies do not cover all of the apparent practices within CBP facilities, leaving room for abuse. For example, on July 21, 2015, the Tucson station appears to have ordered 30 spit hoods. (Ex. 118.) Spit hoods are typically transparent light hoods that are "designed to prevent the wearer from biting and/or transferring or transmitting fluids (saliva and mucous) to others."⁷ As with any restraint and particularly since the spit hoods cover the eyes, nose, and mouth of the wearer, spit hoods may pose dangers to the wearer if not fastened properly.⁸ However none of the produced policies contained any guidelines regarding the proper use of spit hoods (or any reference to spit hoods or similar devices at all).

147. CBP's own records demonstrate failings in documenting and addressing issues in its facilities. CBP appears to complete daily Processing Inspection Forms for each of its stations. The same form is filled out for different shifts during the day.

148. These forms suggest that inspections, which have implications for the health and safety of both detainees and CBP personnel, were not performed consistently or with

⁷ *Policy 306: Handcuffing and Restraints*, University of Merced Police Department, available at <http://police.ucmerced.edu/about/departments/policies/policy-306>

⁸ *Id.*

1 appropriate care. For example, forms from Casa Grande station indicate that the video
2 recording system was not working, was working intermittently, or was possibly not
3 checked. (Ex. 104 at USA706-708, USA718-719, USA722-724, USA729-749) (for the
4 question of whether the video monitors and video loop is operational or in use, the “no”
5 box is checked).) Similarly, in the Casa Grande station, a lock on a cell was reported
6 broken during some shifts but not during others. (*Id.* at USA790-791 (No report of
7 broken lock during first shift on July 5 or July 6); Ex. 105 at USA814-816 (Lock on cell 9
8 reported broken during the second shift on July 5 but not on July 7); *id.* at USA836,
9 USA838 (Lock on cell 9 reported broken during third shift on July 5 and July 7); *id.* at
10 USA866, USA 868 (Lock on cell 9 reported broken during fourth shift on July 5 and July
11 7); Ex. 107 at USA1043, USA1047 (Lock broken again or still broken in September .)
12 For the Nogales station, several items are reported as needing repair on August 18,
13 including lighting (“At least one light out in every cell”), benches (“Some benches are
14 missing bolts”), and doors/locks. (Ex. 112 at USA1570.) No issues are reported the
15 following day. (Ex. 112 at USA1571.) However the same items are indicated as needing
16 repair on August 22. (*Id.* at USA1574.) Some forms for the Casa Grande station were not
17 filled out at all. (Ex. 104, USA728; Ex. 107 at USA1021, USA1029.) Additionally there
18 very few or no comments in the “Remarks” sections of forms for all stations which
19 suggested to me that the completion of the forms is largely a perfunctory exercise and not
20 an actual inspection.

21 149. CBP’s inconsistent practices illustrate their own misunderstanding that part
22 of their mission and responsibility is to attend to the basic and human needs of the
23 detainees.

24 150. The CBP is engaged in at least two primary functions—the apprehension of
25 detainees and their subsequent detention. It does not appear that they fully embrace,
26 accept or understand the detention function. Agents for the Border Patrol are expected to
27 be proficient at both functions. Structurally it would be best if those functions were
28 separated. Absent that approach, training for agents expected to perform both functions

1 should be separated into separate tracks so that it is clear to agents that the skill sets are
2 different. Managing a detained population is complex work and deserves its own focus
3 and emphasis for the staff expected to perform those functions in order to provide for the
4 safe and humane housing of the detainees.

5 151. It is clear that the CBP facilities are designed and operated to hold detainees
6 for a short period of time. Whether or not it is 24, 48, 72 hours, or longer, CBP still needs
7 to learn, implement and then monitor all the basic functions of a detention operation. But
8 in order to minimize the amount of time people spend in these facilities, I strongly
9 recommend that CBP do a business process flow analysis of detainees from arrest to
10 transfer out of BP custody to identify roadblocks to moving them quickly. Performance
11 measures should then be established for agency managers to make sure they are constantly
12 focused on the important issue of moving detainees to their next location where full
13 services can be provided.

14 152. The impact of overcrowded facilities, lack of regular sleep, lack of access to
15 adequate food and water, inadequate sanitation, poor temperature control and ventilation,
16 and other factors described above is likely to create conditions of confinement that place
17 stress on detainees that is completely unnecessary for the safe and secure operation of a
18 detention facility. Such conditions can and do lead to increased risk for detainees and staff
19 alike as they introduce conflict for basic human necessities into an already stressful
20 environment. Upon arrival at the these facilities detainees are likely to be exhausted,
21 possibly in need of medical care, and some have fled their home country out of fear for
22 their safety or the safety of their loved ones. (ECF No. 2-3, Ex. 41 ¶ 24 (afraid of
23 returning to home country as relatives had been killed there); *id.*, Ex. 38 ¶ 24 (same); ECF
24 No. 2-1, Ex. 8 ¶ 26 (afraid of returning to home country); *id.*, Ex. 15 ¶ 34 (same); ECF
25 No. 2-2, Ex. 21 ¶ 28 (same).) Others are seeking be reunited with U.S. citizen children
26 and spouses – often after several years of separation. (ECF No. 2-1, Ex. 9 ¶ 36; *id.*,
27 Ex. 11 ¶ 23; ECF No. 2-2, Ex. 19 ¶ 27.) Good security is a combination of humane
28 treatment and adherence to accepted custody practices—not a focus on conditions that

1 simply punish which appears to be the misguided approach taken in the operation of CBP
2 facilities.

3 **V. CONCLUSION**

4 153. Based on my experience, review of the materials in this case, and the
5 literature, the conditions of confinement in these holding cells for periods longer than ten
6 hours are worse than national jails and prisons and, combined, clearly and unjustifiably
7 create risk of harm to detainees, and, in my professional judgment, serve no penological
8 or custodial interest.

9 154. I have worked in correctional organizations for 35 years. During my career
10 and since I commenced my work as a corrections consultant and expert witness nearly
11 four years ago I have been in countless prisons and jails. Those facilities house individuals
12 who have been charged with or convicted of felonies and misdemeanors. I have never
13 been in one that treats those confined in a manner that the CBP treats detainees. The
14 absence of medical screening upon arrival is unthinkable. Sufficient food, water and
15 clothing are fundamental to safe, secure and humane operation but I have never seen the
16 challenges the CBP creates for detainees for access to these basic necessities. I have seen
17 and experienced the effects of overcrowding but no jurisdiction would cram so many
18 people into so little space, without beds and bedding, that routinely occurs in CBP
19 facilities. The conditions of confinement I witnessed through my inspections and through
20 studying the records in this case are unthinkable in any other jurisdiction that I have seen
21 or heard about. The CBP are housing people in conditions that are unnecessarily harsh,
22 dangerous and contrary to accepted industry practices and standards. These conditions
23 seem to me to be designed to punish and that is not the role of the Border Patrol.

24 155. CBP must either take the necessary steps to ensure that detainees pass
25 through these short-term facilities in a matter of hours, or take the significant steps
26 required to make the conditions of confinement adequate for overnight stays.

VI. CELL CAPACITIES, FLOOR PLANS, AND INSPECTION FORMS

156. Attached to the Appendix of Exhibits as Exhibit 83 is a true and correct copy of a document produced by Defendants on or about September 4, 2015 and Bates labeled USA000157, which purports to list the maximum cell capacities for each hold room at Tucson station.

157. Attached to the Appendix of Exhibits as Exhibit 94 is a true and correct copy of a document produced by Defendants on or about September 30, 2015 and Bates labeled USA000617, which purports to list the maximum cell capacities for each hold room at Nogales station.

158. Attached to the Appendix of Exhibits as Exhibit 99 is a true and correct copy of a document produced by Defendants on October 19, 2015 and Bates labeled USA000673-674, which purports to list the maximum cell capacities for each hold room at Douglas and Casa Grande stations.

159. Attached to the Appendix of Exhibits as Exhibit 89 is a true and correct copy of a document produced by Defendants on September 4, 2015 and Bates labeled USA000359, which purports to be hand drawn sketches with measurements for cell dimensions at Casa Grande station.

160. Attached to the Appendix of Exhibits as Exhibit 90 is a true and correct copy of a document produced by Defendants on September 4, 2015 and Bates labeled USA000360-363, which purports to be hand drawn sketches with measurements for cell dimensions at Douglas station.

161. Attached to the Appendix of Exhibits as Exhibit 91 is a true and correct copy of a document produced by Defendants on September 4, 2015 and Bates labeled USA000364, which purports to be sketches with measurements for cell dimensions at Nogales station.

162. Attached to the Appendix of Exhibits as Exhibit 92 is a true and correct copy of a document produced by Defendants on September 4, 2015 and Bates labeled

1 USA000365-371, which purports to be hand drawn sketches with measurements for cells
2 at Tucson station.

3 163. Attached to the Appendix of Exhibits as Exhibit 93 is a true and correct
4 copy of a document produced by Defendants on September 28, 2015 and Bates labeled
5 USA000573-586, which purports to be hand drawn sketches with additional
6 measurements for cells and fixtures at Tucson station.

7 164. Attached to the Appendix of Exhibits as Exhibit 93 is a true and correct
8 copy of a document produced by Defendants on September 28, 2015 and Bates labeled
9 USA000587-591, which purports to be hand drawn sketches with additional
10 measurements for cells and fixtures at Casa Grande station.

11 165. Attached to the Appendix of Exhibits as Exhibit 93 is a true and correct
12 copy of a document produced by Defendants on September 28, 2015 and Bates labeled
13 USA000592-599, which purports to be hand drawn sketches with additional
14 measurements for cells and fixtures at Douglas station.

15 166. Attached to the Appendix of Exhibits as Exhibit 93 is a true and correct
16 copy of a document produced by Defendants on September 28, 2015 and Bates labeled
17 USA000600, which purports to be sketches with additional measurements for cells and
18 fixtures at Nogales station.

19 167. Attached to the Appendix of Exhibits as Exhibit 117 is a true and correct
20 copy of a document produced by Defendants on October 29, 2015 and Bates labeled
21 USA002065, which purports to be the processing area blueprint for Casa Grande station.

22 168. Attached to the Appendix of Exhibits as Exhibit 117 is a true and correct
23 copy of a document produced by Defendants on October 29, 2015 and Bates labeled
24 USA002066, which purports to be the processing area blueprint for Nogales Grande
25 station.

26 169. Attached to the Appendix of Exhibits as Exhibit 117 is a true and correct
27 copy of a document produced by Defendants on October 29,, 2015 and Bates labeled
28 USA002067, which purports to be the processing area blueprint for Douglas station.

170. Attached to the Appendix of Exhibits as Exhibit 117 is a true and correct copy of a document produced by Defendants on October 29, 2015 and Bates labeled USA002068, which purports to be the processing area blueprint for Tucson station.

171. Attached to the Appendix of Exhibits as Exhibits 105, 106, and 107 are true and correct copies of documents produced by Defendants on November 9, 2015, which purport to be processing inspection forms for Casa Grande station between June and October, 2015.

172. Attached to the Appendix of Exhibits as Exhibits 109, 110, and 111 are true and correct copies of documents produced by Defendants on November 9, 2015, which purport to be Holding Cell Inspection Forms for Douglas station between June and October, 2015.

173. Attached to the Appendix of Exhibits as Exhibits 112 and 113 are true and correct copies of documents produced by Defendants on November 9, 2015, which purport to be Holding Cell Checklists for Nogales station between August and October, 2015.

174. Attached to the Appendix of Exhibits as Exhibits 114, 115, and 116 are true and correct copies of documents produced by Defendants on November 9, 2015, which purport to be Holding Cell Checklists for Tucson station between July and October, 2015.

VII. AUTHENTICATION OF INSPECTION PHOTOGRAPHS

175. Exhibit 50 is a true and correct copy of a photograph taken during Plaintiffs' inspection of Tucson station on September 8, 2015, which accurately depicts a rolling cart at Tucson station containing paper cups and folded Mylar blankets in a cardboard box.

176. Exhibit 51 is a true and correct copy of a photograph taken during Plaintiffs' inspection of Tucson station on September 8, 2015, which accurately depicts a storage area at Tucson station with metal shelving and pallets containing office supplies, drinking cups, diapers, and other items.

1 177. Exhibit 52 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
3 Tucson station with a view across the room towards the toilets.

4 178. Exhibit 53 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
6 Tucson station with a close-up view of the toilet/sink unit inside a stall.

7 179. Exhibit 54 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
9 Tucson station with a view from the toilet stall towards the door and windows.

10 180. Exhibit 55 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
12 Tucson station with a close-up view of the toilet/sink unit inside a stall.

13 181. Exhibit 56 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
15 Tucson station with a view across the room towards the toilet stalls.

16 182. Exhibit 57 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
18 Tucson station with a close-up view of underneath a toilet bowl.

19 183. Exhibit 58 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Tucson station on September 11, 2015, which accurately depicts Room 19 in
21 Tucson station with a view across the room towards the toilet stalls.

22 184. Exhibit 60 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
24 Tucson station with a view of benches and toilet stalls.

25 185. Exhibit 61 is a true and correct copy of a photograph taken during Plaintiffs'
26 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
27 Tucson station with a view of cement benches.
28

1 186. Exhibit 62 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
3 Tucson station with a view from the door to the back of the cell.

4 187. Exhibit 63 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
6 Tucson station with a close-up view of a toilet stall.

7 188. Exhibit 64 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
9 Tucson station with a close-up view of a handicapped toilet/sink unit in stall

10 189. Exhibit 65 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
12 Tucson station with a close-up view of windows and a door frame.

13 190. Exhibit 66 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Tucson station on September 11, 2015, which accurately depicts Room 18 in
15 Tucson station with a close-up view of underneath the toilet/sink unit in a stall.

16 191. Exhibit 67 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Tucson station on September 11, 2015, which accurately depicts Room 1 in
18 Tucson station with a close-up view of a soap dispenser and sink/backsplash.

19 192. Exhibit 68 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
21 Tucson station with a view across the cell towards the back of the room.

22 193. Exhibit 69 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
24 Tucson station with a close-up view of a privacy wall.

25 194. Exhibit 70 is a true and correct copy of a photograph taken during Plaintiffs'
26 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
27 Tucson station with a close-up view of a toilet/sink unit in a stall.

28

1 195. Exhibit 71 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
3 Tucson station with a close-up view of cement benches.

4 196. Exhibit 72 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
6 Tucson station with a close-up view of cement benches.

7 197. Exhibit 73 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Tucson station on September 11, 2015, which accurately depicts Room 4 in
9 Tucson station with a close-up view of cement benches.

10 198. Exhibit 74 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Tucson station on September 11, 2015 which accurately depicts Room 4 in
12 Tucson station with a view across cell in front of toilet stalls.

13 199. Exhibit 75 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Tucson station on September 11, 2015, which accurately depicts Room 6 in
15 Tucson station with a view of cement benches.

16 200. Exhibit 76 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Tucson station on September 11, 2015, which accurately depicts Room 6 in
18 Tucson station with a view of underneath a toilet/sink unit.

19 201. Exhibit 77 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Tucson station on September 11, 2015, which accurately depicts Room 6 in
21 Tucson station with a close-up view of underneath a toilet/sink unit.

22 202. Exhibit 1 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Casa Grande station on September 9, 2015, which accurately depicts a
24 storage area in Casa Grande station with metal shelving containing items including
25 drinking cups, plastic liners, baby diapers, and sanitary napkins.

26 203. Exhibit 2 is a true and correct copy of a photograph taken during Plaintiffs'
27 inspection of Casa Grande station on September 9, 2015, which accurately depicts the
28 back of a package of microwavable burritos at Casa Grande station.

1 204. Exhibit 3 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Casa Grande station on September 9, 2015, which accurately depicts a
3 storage room in Casa Grande station with metal shelving containing three sleeping mats.

4 205. Exhibit 4 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Casa Grande station on September 9, 2015, which accurately depicts a box
6 of Mylar blankets in Casa Grande station.

7 206. Exhibit 5 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Casa Grande station on September 9, 2015, which accurately depicts a food
9 heating unit and/or microwave in Casa Grande station.

10 207. Exhibit 6 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Casa Grande station on September 9, 2015, which accurately depicts a
12 janitor's closet in Casa Grande station.

13 208. Exhibit 7 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Casa Grande station on September 9, 2015, which accurately depicts holding
15 cell no. 9 in Casa Grande station from the door.

16 209. Exhibit 8 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Casa Grande station on September 9, 2015, which accurately depicts holding
18 cell no. 9 in Casa Grande station with a view of two toilet/sink units.

19 210. Exhibit 9 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Douglas station on September 10, 2015, which accurately depicts holding
21 cell S South Black in Douglas station with a close-up view of the floor behind the
22 toilet/sink unit.

23 211. Exhibit 10 is a true and correct copy of a photograph taken during Plaintiffs'
24 inspection of Douglas station on September 10, 2015, which accurately depicts holding
25 cell S South Yellow and/or S South Blue in Douglas station with a close-up view of the
26 toilet/sink area.

27 212. Exhibit 11 is a true and correct copy of a photograph taken during Plaintiffs'
28 inspection of Douglas station on September 10, 2015, which accurately depicts holding

1 cell S South Yellow and/or S South Blue in Douglas station with a close-up view of the
2 toilet/sink unit.

3 213. Exhibit 12 is a true and correct copy of a photograph taken during Plaintiffs'
4 inspection of Douglas station on September 10, 2015, which accurately depicts holding
5 cell S South Yellow and/or S South Blue in Douglas station with a close-up view of side
6 of the sink and wall.

7 214. Exhibit 13 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Douglas station on September 10, 2015, which accurately depicts holding
9 cell N North Blue in Douglas station with a close-up view of the toilet bowl.

10 215. Exhibit 14 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Douglas station on September 10, 2015, which accurately depicts holding
12 cell N North Blue in Douglas station with a close-up view of human excrement on the
13 privacy wall of the toilet.

14 216. Exhibit 15 is a true and correct copy of a photograph taken during Plaintiffs'
15 inspection of Douglas station on September 10, 2015, which accurately depicts holding
16 cell N North Green in Douglas station with a view from opened door.

17 217. Exhibit 17 is a true and correct copy of a photograph taken during Plaintiffs'
18 inspection of Douglas station on September 10, 2015, which accurately depicts holding
19 cell N North Black in Douglas station with a close-up view of the toilet bowl.

20 218. Exhibit 18 is a true and correct copy of a photograph taken during Plaintiffs'
21 inspection of Douglas station on September 10, 2015, which accurately depicts holding
22 cell N North Yellow in Douglas station with a view from the door.

23 219. Exhibit 19 is a true and correct copy of a photograph taken during Plaintiffs'
24 inspection of Douglas station on September 10, 2015, which accurately depicts holding
25 cell N North Yellow in Douglas station with a view from the side wall towards the privacy
26 wall.

1 220. Exhibit 20 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Douglas station on September 10, 2015, which accurately depicts holding
3 cell N North Yellow in Douglas station with a view of the toilet/sink unit.

4 221. Exhibit 21 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Douglas station on September 10, 2015, which accurately depicts holding
6 cell N North Yellow in Douglas station with a close-up view of the floor next to the toilet.

7 222. Exhibit 22 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Douglas station on September 10, 2015, which accurately depicts holding
9 cell N North Yellow in Douglas station with a close-up view of spotted stainless steel

10 223. Exhibit 23 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Douglas station on September 10, 2015, which accurately depicts holding
12 cell N North Yellow in Douglas station with a view of the toilet/sink unit.

13 224. Exhibit 24 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Douglas station on September 10, 2015, which accurately depicts holding
15 cell N North Yellow in Douglas station with a close-up view of the floor drain.

16 225. Exhibit 25 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Douglas station on September 10, 2015, which accurately depicts isolation
18 cell No. 1 in Douglas station with a close-up view of the floor and sleeping mat.

19 226. Exhibit 26 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Nogales station on September 11, 2015, which accurately depicts holding
21 cell no. 3 in Nogales station with a view into the cell from the door.

22 227. Exhibit 27 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Nogales station on September 11, 2015, which accurately depicts holding
24 cell no. 3 in Nogales station with a view into the cell from the door.

25 228. Exhibit 28 is a true and correct copy of a photograph taken during Plaintiffs'
26 inspection of Nogales station on September 11, 2015, which accurately depicts holding
27 cell no. 3 in Nogales station with a close-up of sleeping mats on benches.
28

1 229. Exhibit 29 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Nogales station on September 11, 2015, which accurately depicts holding
3 cell no. 3 in Nogales station with a close-up of sleeping mats on benches.

4 230. Exhibit 30 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Nogales station on September 11, 2015, which accurately depicts holding
6 cell no. 3 in Nogales station with a close-up view of a stain on the floor.

7 231. Exhibit 31 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Nogales station on September 11, 2015, which accurately depicts holding
9 cell no. 5 in Nogales station with a close-up view of an air vent.

10 232. Exhibit 32 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Nogales station on September 11, 2015, which accurately depicts holding
12 Cell no. 1 in Nogales station with a close-up view of a sink and backsplash.

13 233. Exhibit 33 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Nogales station on September 11, 2015, which accurately depicts holding
15 cell no. 1 in Nogales station with a close-up view of a ceiling vent.

16 234. Exhibit 34 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Nogales station on September 11, 2015, which accurately depicts holding
18 cell no. 1 in Nogales station with a view of a corner of the floor near a cement bench.

19 235. Exhibit 35 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Nogales station on September 11, 2015, which accurately depicts holding
21 cell no. 4 in Nogales station with a close-up view of an orange Igloo water container.

22 236. Exhibit 36 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Nogales station on September 11, 2015, which accurately depicts a view of
24 the floor at Nogales station underneath a toilet/sink unit.

25 237. Exhibit 37 is a true and correct copy of a photograph taken during Plaintiffs'
26 inspection of Nogales station on September 11, 2015, which accurately depicts holding
27 cell no. 2 in Nogales station with a close-up view of the cinder block walls.
28

1 238. Exhibit 38 is a true and correct copy of a photograph taken during Plaintiffs'
2 inspection of Nogales station on September 11, 2015, which accurately depicts a cleaning
3 supply room in Nogales station viewed from the door.

4 239. Exhibit 42 is a true and correct copy of a photograph taken during Plaintiffs'
5 inspection of Nogales station on September 11, 2015, which accurately depicts Room C in
6 Nogales station with a close-up view of two microwave ovens.

7 240. Exhibit 43 is a true and correct copy of a photograph taken during Plaintiffs'
8 inspection of Nogales station on September 11, 2015, which accurately depicts Room 8 in
9 Nogales station with a close-up view of underneath the toilet bowl.

10 241. Exhibit 44 is a true and correct copy of a photograph taken during Plaintiffs'
11 inspection of Nogales station on September 11, 2015, which accurately depicts Room 7 in
12 Nogales station with a close-up view of underneath the sink.

13 242. Exhibit 45 is a true and correct copy of a photograph taken during Plaintiffs'
14 inspection of Nogales station on September 11, 2015, which accurately depicts Room 7 in
15 Nogales station showing a corner of the floor.

16 243. Exhibit 46 is a true and correct copy of a photograph taken during Plaintiffs'
17 inspection of Nogales station on September 11, 2015, which accurately depicts Room 7 in
18 Nogales station with a close-up view of a corner wall next to the door.

19 244. Exhibit 47 is a true and correct copy of a photograph taken during Plaintiffs'
20 inspection of Nogales station on September 11, 2015, which accurately depicts Shower
21 Room 2 in Nogales station viewed from the door.

22 245. Exhibit 48 is a true and correct copy of a photograph taken during Plaintiffs'
23 inspection of Nogales station on September 11, 2015, which accurately depicts Station
24 ASID at Nogales station with a view of air-conditioning controls and computers.

25 ///

26 ///

27 ///

28 ///

Executed this 4th day of December, 2015.

5. E. V. I.

DECL. OF ELDON VAIL IN SUPPORT OF PLAINTIFFS' MOT. FOR PRELIMINARY INJUNCTION
Case No. 4:15-cv-00250-DCB

Attachment A

ELDON VAIL

1516 8th Ave SE
 Olympia, WA. 98501
 360-349-3033
Nodleliav@comcast.net

WORK HISTORY

Nearly 35 years working in and administering adult and juvenile institutions, and probation and parole programs, starting at the entry level and rising to Department Secretary. Served as Superintendent of 3 adult institutions, maximum to minimum security, male and female. Served as Secretary for the Washington State Department of Corrections (WADOC) from 2007 until 2011.

▪ Secretary	WADOC	2007-2011
▪ Deputy Secretary	WADOC	1999-2006
▪ Assistant Deputy Secretary	WADOC	1997-1999
▪ Assistant Director for Prisons	WADOC	1994-1997
▪ Superintendent	McNeil Island Corrections Center	1992-1994
▪ Superintendent	WA. Corrections Center for Women	1989-1992
▪ Correctional Program Manager	WA. Corrections Center	1988
▪ Superintendent	Cedar Creek Corrections Center	1987
▪ Correctional Program Manager	Cedar Creek Corrections Center	1984-1987
▪ Juvenile Parole Officer	Division of Juvenile Rehabilitation	1984
▪ Correctional Unit Supervisor	Cedar Creek Corrections Center	1979-1983
▪ Juvenile Institution Counselor	Division of Juvenile Rehabilitation	1974-1979

SKILLS AND ABILITIES

- Ability to analyze complex situations, synthesize the information and find practical solutions that are acceptable to all parties.
- A history of work experience that demonstrates how a balance of strong security and robust inmate programs best improves institution and community safety.
- Leadership of a prison system with very little class action litigation based on practical knowledge that constitutional conditions are best achieved through negotiation with all parties and not through litigation.
- Extensive experience as a witness, both in deposition and at trial.
- Experience working with multiple Governors, legislators of both parties, criminal justice partners and constituent groups in the legislative and policymaking process.

- Skilled labor negotiator for over a decade. Served as chief negotiator with the Teamsters and the Washington Public Employees Association for Collective Bargaining Agreements. Chaired Labor Management meetings with Washington Federation of State Employees.

HIGHLIGHTS OF CAREER ACCOMPLISHMENTS

- Reduced violence in adult prisons in Washington by over 30% during my tenure as Secretary and Deputy Secretary even though the prison population became much more violent and high risk during this same time period.
- Long term collaboration with the University of Washington focusing on improving treatment for the mentally ill in prison and the management of prisoners in and through solitary confinement.
- Implemented and administered an extensive array of evidence based and promising programs:
 - Education, drug and alcohol, sex offender and cognitive treatment programs.
 - Implemented sentencing alternatives via legislation and policy, reducing the prison populations of non-violent, low risk offenders, including the Drug Offender Sentencing Alternative and, as the Secretary, the Family and Offender Sentencing Alternative. <http://www.doc.wa.gov/community/fosa/default.asp>
 - Pioneered extensive family based programs resulting in reductions in use of force incidents and infractions, as well as improved reentry outcomes for program participants.
 - Established Intensive Treatment Program for mentally ill inmates with behavioral problems.
 - Established step down programs for long-term segregation inmates resulting in significant reduction in program graduate returns to segregation. <http://www.thenewstribune.com/2012/07/10/2210762/isolating-prisoners-less-common.html>
- Initiated the Sustainable Prisons Project <http://blogs.evergreen.edu/sustainableprisons/>
- Improved efficiency in the agency by administrative consolidation, closing 3 high cost institutions and eliminating over 1,200 positions. Housed inmates safely at lowest possible custody levels, also resulting in reduced operating costs.
- Increased partnerships with non-profits, law enforcement and community members in support of agency goals and improved community safety.
- Resolved potential class action lawsuit regarding religious rights of Native Americans. http://seattletimes.nwsource.com/html/opinion/2015464624_guest30galanda.html

- Successful settlement of the Jane Doe class action law suit, a PREA case regarding female offenders in the state's prisons for women.
- Led the nation's corrections directors to support fundamental change in the Interstate Compact as a result of the shooting of 4 police officers in Lakewood, WA.
- Dramatically improved media relations for the department by being aggressively open with journalists, challenging them to learn the difficult work performed by corrections professionals on a daily basis.

EDUCATION AND OTHER BACKGROUND INFORMATION

- Bachelor of Arts - The Evergreen State College, Washington – 1973
- Post graduate work in Public Administration - The Evergreen State College, Washington - 1980 and 1981
- National Institute of Corrections and Washington State Criminal Justice Training Commission - various corrections and leadership training courses
- Member of the American Correctional Association
- Associate member, Association of State Correctional Administrators (ASCA)
- Guest Speaker, Trainer and Author for the National Institute of Corrections (NIC)
- Commissioner, Washington State Criminal Justice Training Commission 2002-2006, 2008-2011
- Member, Washington State Sentencing Guidelines Commission 2007-2011
- Instructor for Correctional Leadership Development for the National Institute of Corrections
- Author of *Going Beyond Administrative Efficiency—The Budget Crisis in the State of Washington*, published in Topics of Community Corrections by NIC, 2003
- Advisory Panel Member, *Correctional Technology—A User's Guide*
- Consultant for *Correctional Leadership Competencies for the 21st Century*, an NIC publication

- Co-chair with King County Prosecutor Dan Satterberg, *Examining the Tool Box: A Review of Supervision of Dangerous Mentally Ill Offenders*
<http://your.kingcounty.gov/prosecutor/DMIO%20-WorkgroupFinalReport.pdf>
- Consultant for Correctional Health Care Executive Curriculum Development, an NIC training program, 2012
- Guest lecturer on solitary confinement, University of Montana Law School in 2012
- On retainer for Pioneer Human Services from July 2012 - July 2013
- On retainer for BRK Management Services from September 2012 – April 2013
- Guest Editorial, Seattle Times, February 22, 2014
<http://www.seattletimes.com/opinion/guest-opinions-should-washington-state-abolish-the-death-penalty/>

CURRENT ACTIVITIES

- Serve on the Board of Advisors for Huy, a non-profit supporting Native American Prisoners
- Registered Agent for the Association of State Correctional Administrators (ASCA) in Washington
- Retained as an expert witness or correctional consultant in the following cases:
 - *Mitchell v. Cate*,
No. 08-CV-1196 JAM EFB
United States District Court, Eastern District of California,
Declarations, March 4, 2013, May 15, 2013 and June 7, 2013
Deposed, July 9, 2013
Case settled, October 2014
 - *Parsons, et al v. Ryan*,
No. CV 12-06010 PHX-NVW
United States District Court of Arizona
Declarations and reports, November 8, 2013, January 31, 2014,
February 24, 2014, September 4, 2014
Deposed, February 28, 2014 and September 17, 2014
Case settled, October 2014

- *Gifford v. State of Oregon*,
No. 6:11-CV-06417-TC
United States District Court, For the District of Oregon,
Eugene Division,
Expert report, March 29, 2013
Case settled, May 2013
- *Ananachescu v. County of Clark*,
No. 3:13-cv-05222-BHS
United States District Court, Western District of Tacoma
Case settled, February 2014
- *Coleman et al v. Brown, et al*,
No. 2:90-cv-0520 LKK JMP P
United State District Court, Eastern District of California,
Declarations, March 14, 2013, May 29, 2013, August 23, 2013 and
February 11, 2014
Deposed, March 19, 2013 and June 27, 2013
Testified, October 1, 2, 17 and 18, 2013
- *Peoples v. Fischer*,
No. 1:11-cv-02694-SAS
United States District Court, Southern District of New York
Interim settlement agreement reached February 19, 2014,
Negotiations ongoing
- *Dockery v. McCarty*,
No. 3:13-cv-326 TSL JMR
United States District Court for the Southern District of
Mississippi, Jackson Division
Report, June 16, 2014
- *C.B., et al v. Walnut Grove Correctional Authority et al*,
No. 3:10-cv-663 DPS-FKB,
United States District Court for the Southern District of
Mississippi, Jackson Division
Memo to ACLU and Southern Poverty Law Center,
March 14, 2014, filed with the court
Reports to the court August 4, 2014 and February 10, 2015
Testified April 1, 2 and 27, 2015
- *Graves v. Arpaio*,
No. CV-77-00479-PHX-NVW,
United States District Court of Arizona
Declaration, November 15, 2013
Testified on March 5, 2014

- *Wright v. Annucci, et al*,
No. 13-CV-0564 (MAD)(ATB)
United States District Court, Northern District of New York
Reports, April 19, 2014 and December 12, 2014
- *Corbett v. Branker*,
No. 5:13 CT-3201-BO
United States District Court, Eastern District of North Carolina,
Western District
Special Master appointment November 18, 2013
Expert Report, January 14, 2014
Testified, March 21, 2014
- *Fontano v. Godinez*,
No. 3:12-cv-3042
United States District Court, Central District of Illinois,
Springfield Division
Report, August 16, 2014
- *Atencio v. Arpaio*,
No. CV12-02376-PHX-PGR
United States District Court of Arizona
Reports, February 14, 2014 and May 12, 2014
Deposed on July 30, 2014
- *State of Oregon v. James DeFrank*,
Case # 11094090C
Malheur County, Oregon
- *Disability Rights, Montana, Inc. v. Richard Oppen*,
No. CV-14-25-BU-SHE
United State District Court for the District of Montana,
Butte Division
- *Larry Heggem v. Snohomish County*,
No. CV-01333-RSM
United States District Court,
Western District of Washington at Seattle
Report, May 29, 2014
Deposed, June 27, 2014
- *Padilla v. Beard, et al*,
Case 2:14-at-00575
United States District Court, Eastern District of California,
Sacramento Division
Declaration November 19, 2015

- *Dunn et al v. Dunn et al*,
No. 2:14-cv-00601-WKW-TFM
United States District Court, Middle District of Alabama
Declarations, September 3, 2014, April 29, 2015 and
June 3, 2015
- *Sassman v. Brown*,
No. 2:14-cv-01679-MCE-KJN,
United States District Court, Eastern District of California,
Sacramento Division
Declaration, August 27, 2014, Report, December 5, 2014
Deposed, December 15, 2014
- *Manning v. Hagel*,
No. 1:14-cv-01609
United States District Court for the District of Columbia
- *Doe v. Michigan Department of Corrections*
No. 5:13-cv-14356-RHC-RSW
United States District Court, Eastern District of Michigan,
Southern Division
- *Robertson v. Struffert, et al*
Case 4:12-cv-04698-JSW
United States District Court, Northern District of California
Declaration March 16, 2015
Deposed May 4, 2015
Case settled, October 2015
- *Commonwealth of Virginia v. Reginald Cornelius Latson*
Case No: GC14008381—00
General District Court of the County of Stafford
Report January 12, 2015
Pardon granted
- *Star v. Livingston*
Case No: 4:14-cv-03037
United States District Court, Southern District of Texas,
Houston Division
Report March 3, 2015

- *Redmond v. Crowther*
Civil No. 2:13-cv-00393-PMW
United States District Court, Central Division,
State of Utah
Report April 28, 2015
Deposed July 28, 2015
- *Doe v. Johnson*
Case 4:15-cv-00250-DCB
United States District Court for the District of Arizona
- *Flores v. United States of America*
Civil Action No 14-3166
United States District Court, Eastern District of New York
Report August 14, 2015
- *Bailey v. Livingston*
Civil Action No. 4:14-cv-1698
United States District Court, Southern District of Texas,
Houston Division
Report August 5, 2015
Deposed December 2, 2015
- *Rasho v. Godinez*
Civil Action No. 07-CV-1298
United States District Court, Central Division of Illinois,
Peoria Division
- *Morgal v. Williams*
No. CV 12-280-TUC-CKJ
United States District Court for the District of Arizona
- *Williams v. Snohomish County*
Case No. 15-2-22078-1 SEA
Superior Court for the State of Washington, King County
- *Sacramento County*
Retained to evaluate conditions for mentally ill inmates
in Sacramento County jail

1 Harold J. McElhinny*
Kevin M. Coles*
2 Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
3 425 Market Street
San Francisco, CA 94105
4 Telephone: (415) 268-7000
Facsimile: (415) 268-7522
5 Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
6 Email: EBalassone@mofo.com

7 Attorneys for Plaintiffs

8 * *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

9 Additional counsel listed on next page

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA
13

14 Jane Doe #1; Jane Doe #2; Norlan Flores,
on behalf of themselves and all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
19 Commissioner, United States Customs &
Border Protection, in his official capacity;
20 Michael J. Fisher, Chief of the United States
Border Patrol, in his official capacity;
21 Jeffrey Self, Commander, Arizona Joint
Field Command, in his official capacity;
22 Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

23 Defendants.
24
25
26
27
28

Case No. 4:15-cv-00250-TUC-DCB

**DECLARATION OF ROBERT W.
POWITZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)

** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 I, ROBERT W. POWITZ, hereby declare:

2 **I. INTRODUCTION**

3 1. I have personal knowledge of the facts stated herein and, if called as a
4 witness, could and would competently testify thereto.

5 2. I am a practicing forensic sanitarian with almost 50 years of professional
6 experience in corrections. I hold a master's degree in public health with a specialty in
7 institutional practice and a doctorate in environmental health, both from the University of
8 Minnesota.

9 3. I am registered as a sanitarian and certified food safety professional with
10 the National Environmental Health Association and licensed as a sanitarian in the State
11 of Connecticut.

12 4. I have served as an expert witness on correctional public health on behalf
13 of the U.S. Department of Justice, Civil Rights Division and the Federal Bureau of
14 Prisons, and in the following jurisdictions: First, Second, Third, Fourth, Sixth and
15 Eleventh Federal Circuit Courts of Appeals; the states of Alabama, California, Delaware,
16 District of Columbia, Florida, Georgia, Louisiana, Maryland, Massachusetts, Michigan,
17 New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota and Vermont;
18 and the cities of Baltimore, Los Angeles, New Orleans, New York, Philadelphia and
19 Washington, DC. Correctional public health encompasses food service, sanitation
20 (including maintenance and hygiene), shelter (including space, lighting, ventilation,
21 living conditions, housekeeping, etc.), and safety (both general and fire safety) in prisons,
22 jails and other types of custodial institutions.

23 5. I am certified by National Sanitation Foundation ("NSF") International and
24 the National Environmental Health Association as a food safety and Hazard Analysis
25 Critical Control Point ("HACCP") instructor.

26 6. I have served on the editorial boards of and as a contributing author for
27 *Food Safety Magazine* and *Corrections Managers' Report*. I also authored a regular
28 column in *American Jails* between 2004 and 2007. I have regularly appearing columns

1 that focus on topical issues in public and environmental health and safety specific to
2 corrections.

3 7. I am a member of the National Environmental Health Association and
4 American Jail Association.

5 8. I have authored various articles that were published in *American Jails* and
6 *Correction Managers' Report*.

7 9. A true and correct copy of my current resume is attached as Attachment A
8 to this declaration.

9 **II. ASSIGNMENT**

10 10. I have been asked by Plaintiffs' counsel to offer my opinions regarding the
11 conditions of confinement in Tucson Sector Border Patrol Station Hold Rooms
12 (hereafter, "hold rooms").

13 **III. MATERIALS RELIED UPON**

14 11. I personally inspected all four of the Border Patrol Stations made available
15 to Plaintiffs for inspection—Tucson, Casa Grande, Douglas and Nogales—on September
16 8 through September 11, 2015. At each station, I was accompanied by corrections expert
17 Eldon Vail and a photographer. I was also accompanied at each station by two of
18 Plaintiffs' attorneys: Colette Mayer and Nora Preciado at Tucson; Louise Stoupe and
19 Nora Preciado at Casa Grande; and Kevin Coles and James Lyall at Douglas, Nogales,
20 and an abbreviated second visit to Tucson.

21 12. I have read the declaration of Eldon Vail and believe his account of our
22 inspections and descriptions of the various facilities to be accurate.

23 13. I have read the declaration of Joseph Gaston and have based my opinions
24 on reports he prepared at the request of Plaintiffs' counsel, which analyze the "e3DM"
25 data produced by Defendants. I understand that the e3DM data purports to reflect certain
26 records logged by Defendants with respect to the detention of individuals at each of the
27 eight Border Patrol Stations within the Tucson Sector.
28

1 14. I have been provided with all documents produced by Defendants in this
2 case.

3 15. I have reviewed the declarations of individuals who were detained in U.S.
4 Customs and Border Protection (“CBP”) facilities within the Tucson Sector of the U.S.
5 Border Patrol submitted in support of Plaintiffs’ Motion for Class Certification.

6 16. I have also reviewed screenshots from surveillance video produced by
7 Defendants and photographs taken during my Border Patrol station inspections.

8 17. I have been provided with certain declarations and other documents filed in
9 this case and in *Flores v. Lynch*, No. CV 85–4544–RJK–Px (C.D. Cal. filed July 11,
10 1985), that relate to the hold rooms.

11 **IV. OBSERVATIONS AND OPINIONS**

12 18. It is my opinion that the hold rooms operated by Defendants do not comply
13 with CBP’s own standards let alone the national standards for correctional facilities, with
14 respect to hygiene.

15 19. There are a number of relevant standards that I have referred to in order to
16 form my opinion in addition to the standards outlined by Eldon Vail in his declaration
17 (Vail Decl. ¶¶ 16-20).

18 20. These standards include the Performance-Based Standards for Adult Local
19 Detention Facilities issued by the American Correctional Association (“ALDF
20 Standards”) that describe mandatory standards for the hygienic operation of detention
21 facilities. A true and correct copy of excerpts from the ALDF Standards is attached to the
22 Appendix of Exhibits as Exhibit 195.

23 21. Similarly, the American Public Health Association issues Standards for
24 Health Services in Correctional Institutions.

25 22. In addition, the U.S. Department of Justice has issued ICE Detention
26 Standards that relate to sanitary issues, a true and correct copy of which is attached to the
27 Appendix of Exhibits hereto as Exhibit 200.
28

A. The Hold Rooms Are Unsanitary

23. In my opinion, the hold rooms operated by CBP are not regularly and professionally cleaned and sanitized. During my inspections, I observed and assessed hold room cleanliness, including floors, walls, benches, drains, toilets, sinks, stalls, and other fixtures. Almost all of these areas were badly soiled.

24. CBP's own standards require all facilities or hold rooms to be regularly and professionally cleaned and sanitized. (Ex. 95, 4.7.)

25. In addition, National standards for correctional facilities require general cleanliness and garbage removal. Both the Core Jail Standards for Housekeeping and the ALDF Standards require that: "The facility is clean, in good repair." (Ex. 199, 1-CORE-1A-04 (Ref. 4-ALDF-1A-04) at 2; Ex. 195, 4-ALDF-1A-04 at 3.)

26. The ICE Detention Standards further state that:

Garbage and refuse shall be collected and removed from common areas at least daily to maintain sanitary conditions and to avoid creating health hazards.

(Ex. 200, Sec. 1.2.III.7.b at 25.)

B. Trash in Hold Rooms

27. Hold rooms often lacked waste bins. At Tucson Station, for example, waste bins were kept outside the hold rooms in the processing area. (Ex. 59.)

28. Even more commonly, toilet stalls lacked waste receptacles for used toilet paper or sanitary napkins or diapers. (Exs. 20; 21; 56.)

29. Surveillance videos produced by Defendants show that hold rooms frequently accumulate excessive amounts of trash:



(Exs. 189, 153, 156.)

30. Screenshots of surveillance video from Douglas station show a child walking by trash scattered around the hold room, while his mother and a young toddler lie beneath Mylar sheets heaped on the floor:



(Ex. 149.) Earlier, the mother can be seen changing her child's diaper on top of the same Mylar sheets:



(Ex. 148.)

31. Direct exposure to garbage contributes to the risk of disease and the presence of vermin, as well as contributing to psychologically stressful conditions due to foul odors and eating and sleeping amidst filth. Also the inability to properly dispose of sanitary napkins and diapers significantly increases the risk of transmission of blood borne diseases and/or gastrointestinal infections. Any blood spill, including menstrual blood, can pose a risk of transmission of disease.

C. Filth on Floors and Walls

32. The hold room floors are made of concrete, and each cell has at least one floor drain. During my inspection, I observed that the floors in many of the hold rooms were filthy, stained, and in some instances moldy:



(Ex. 64; *see also* Exs. 9, 30, 34, 45, 53, 58, 63, 66, 69.)

33. Detainees are frequently seen lying down and sleeping on these same floors:



(Ex. 178.)

34. The floor drains were often packed with filth and trash. (Exs. 16, 24, 36.) The perimeter walls were often filthy: Some were coated in what appeared to be human excrement:

35. The perimeter walls were often filthy: Some were coated in what appeared to be human excrement:



(Ex.14; *see also* Exs. 22, 37, 46, 65, 71, 72, 73.)

36. Detainees are frequently seen sitting or lying against these same walls:



(Ex. 185; *see also* Exs. 173, 174, 177, 178, 180, 151, 152.)

37. Such filth, including bodily fluids, on the floor and the walls significantly increases the likelihood that infectious diseases common to prisons and other custodial institutions—including E. Coli, Hepatitis A, and MRSA (an antibiotic-resistant staph infection)—will be transmitted among detainees.

D. Filth on Toilets and Sinks

38. I observed numerous instances of stained and streaked toilets and sinks at each station I inspected. The directional spigots that are designed for use as water

1 fountains were not maintained in a clean and sanitary condition. (Exs. 11, 12, 13, 17, 43,
2 44, 57, 67, 76, 77.)

3 39. Unclean toilets and drinking fountains, especially when mounted so close
4 to one another, significantly increase the risk that drinking fountains will be infected with
5 fecal matter and other human waste—not to mention bodily fluids like saliva—increasing
6 the risk that disease will spread among detainees.

7 40. The absence of clean hold rooms, toilets, sinks and drinking fountains
8 serves no legitimate purpose and creates an unjustified risk to detainees.

9 41. The unclean environment significantly contributes to the risk of cross
10 contamination and contracting a dermatological disease or condition, gastrointestinal
11 infection, as well as contributes to psychologically stressful conditions.

12 **E. The Sleeping Areas and Sleeping Mats Are Unsanitary**

13 42. In addition to the general lack of cleanliness of the hold rooms, in my
14 opinion the sleeping areas of the hold rooms are unsanitary.

15 43. National standards for correctional facilities also require clean bedding and
16 linens. The Core Jail Standards require that:

17 Inmates are issued suitable, clean bedding and linens.
18 There is provision for linen exchange, including towels, at
least weekly.”

19 (Ex. 199, 1-CORE-4B-01 (Ref. 4-ALDF-4B-02) at 25.)

20 44. The DOJ NIC Jail Standards further state that:

21 Inmates must be provided with clean clothes and bedding.
22 Clothing, towels, and bedding must be exchanged, laundered,
23 and inspected on a regular basis. Failing to do so will result in
an unhygienic facility for both the inmates and the staff.

24 (Ex. 196 at 4.)

25 45. The United Nations Standard Minimum Rules for the Treatment of
26 Prisoners state:

27 Every prisoner shall, in accordance with local or national
28 standards, be provided with a separate bed, and with separate
and sufficient bedding which shall be clean when issued, kept

in good order and changed often enough to ensure its cleanliness.

(Ex. 198, at 3, ¶ 19.)

46. Pervasive hygiene failures concerns at these facilities is exacerbated by the fact that, as surveillance video shows, detainees are often held overnight in overcrowded hold rooms without beds or mattresses. This forces them to sleep on the floors near and sometimes in toilet stalls and other unsanitary areas:



(Ex. 186; *see also* Exs. 146, 178.)

47. Although most detainees sleep on the floor, a very small percentage are provided mats to sleep on. (Declaration of Joseph Gaston (“J. Gaston Decl.”), ¶ 25.) However all of the mats that we saw during the inspection were dirty:



(Ex. 25; *see also* Exs. 28, 29.) Mats in hold rooms were usually placed directly on the concrete floors which, as described above, were also filthy and occasionally moldy. (Exs. 15, 25.)

48. Detainees are not provided with beds and clean bedding, even when held for periods exceeding 24 hours. Instead, the vast majority are forced to sleep on the dirty floor, while a small number—often children—are given dirty mats. Under either circumstance, these conditions are certain to interfere with a detainee's ability to sleep.

49. The detainees' inability to sleep is compounded by the continuous illumination in multiple-occupancy hold rooms that interrupts circadian rhythms which results in injury and depression and compromises alertness, plasma melatonin, body temperature, and sleep/wakefulness of the detainees.

50. The lack of clean beds and clean bedding serves no legitimate purpose and represents a potential safety hazard to the detainee, compromises health maintenance and promotes the acquisition of illness or infection. At a minimum, the unsanitary and inappropriately lit sleeping arrangements impede the detainees' ability to sleep. Sleep deprivation can result in inordinate stress and ill health – making detainees more susceptible to disease.

F. Unclean Hold Rooms Have Insufficient Numbers of Toilets Based on the Stated Capacity

51. The current rated capacities of the multiple-occupancy cells exceeds the toilet and washbasin to detainee ratios for both females and males. The ALDF Standard 4-4137 requires one toilet for every twelve male prisoners and one toilet for every eight female prisoners. (Ex. 195, 4-ALDF-2C-08 (Ref. 3-ALDF-2C-08, 2C-09) at 48.) In most cases, the number of toilets in a hold room was inadequate for the contemplated occupancy numbers posted or produced by Defendants.

52. Some especially large hold rooms at Nogales Station with purported capacities of up to 88 individuals per hold room had only one functioning toilet. The only other toilet in that cell would not flush.

53. In my opinion, detainees should not be held in hold rooms where the capacity exceeds one functioning toilet for every twelve male detainees and one toilet for every eight female detainees. Exceeding accepted standards for the ratio of toilets to detainees serves no legitimate purpose and creates an unjustified risk to detainees.

54. Aside from leading to an increased likelihood of accumulated filth and malfunctioning toilets, exceeding the recommended ratios could also result in detainees suffering adverse health effects—e.g., voluntary urinary retention and concomitant urinary tract infections, as well as more serious medical conditions if toilets are not available when needed.

G. Poor Group and Individual Hygiene in the Hold Rooms

55. During my inspections, I observed several issues with respect to the hygiene of group and individual detainees.

56. During my inspection of Casa Grande Station, there was no soap available anywhere for detainees to clean themselves. At other stations, I observed soap dispensers mounted on the walls of many hold rooms, but these were typically broken or empty.

57. Although we were shown shower facilities at Tucson, Douglas and Nogales stations (*see* Ex.47), we were also told that detainees were generally not provided access

1 to showers. At Nogales Station, we were told that detainees were never provided access
2 unless there were concerns about contamination or infectious diseases (scabies was
3 mentioned specifically). Casa Grande had no shower facilities whatsoever.

4 58. During our inspections, we found various personal hygiene items stored at
5 each facility, including towels, washcloths and toothbrushes (Exs. 39, 40, 41), but we
6 found no evidence that any of these supplies were made available to detainees, nor did
7 our inspection of Defendants' refuse reveal that used (or unused) personal hygiene items
8 had been discarded by detainees.

9 59. Declarations by former detainees confirm that they were never given
10 personal hygiene items. (*See, e.g.*, ECF No. 2-3, Ex. 38 ¶ 21 (no toothbrushes,
11 toothpaste, soap, or towels); *id.*, Ex. 41 ¶ 12 (same); *id.*, Ex. 43 ¶ 16 (same).)

12 60. Defendants' e3DM data demonstrated that detainees are routinely denied
13 dental care, feminine hygiene, and other personal hygiene items. (J. Gaston Decl. ¶ 32.)

14 61. During our inspections, we were shown laundry facilities at the Tucson
15 Station. We were told that neither Nogales nor Casa Grande nor Douglas station had
16 laundry facilities.

17 62. Detainees have no opportunity to change out of their soiled clothing or to
18 have their soiled clothing laundered.

19 63. I also inspected the sinks and toilets at all four stations. Most hold rooms
20 had between one or two metal toilet/lavatory fixtures behind a low brick privacy wall or
21 stall. (Exs. 10, 23.) A few of the larger hold rooms in Tucson station had three or four of
22 these fixtures in toilet stalls. (Ex. 55.) Occasionally the sink and toilet were separate
23 units positioned close together (Ex. 44.)

24 64. In many instances, detainees housed in the multiple-occupancy hold rooms
25 had little to no opportunity to wash their hands. Many of the combination toilet/lavatory
26 fixtures did not have metered faucets that provided an uninterrupted water flow of at least
27 10 seconds, which is the minimal flow required for minimally adequate hand washing.
28

65. Only one hold room—out of the dozens we inspected—had hot water available.

66. The Core Jail Standards require showers and hygiene products to be available:

Inmates, including those in medical housing units or infirmaries, have access to showers, toilets, and washbasins with temperature controlled hot and cold running water twenty-four hours per day. Inmates are able to use toilet facilities without staff assistance when the year confined in their cells/sleeping areas. Water for showers is thermostatically controlled to temperatures ranging from 100 degrees to 120 Fahrenheit.

(Ex. 199, 1-CORE-4B-04 (Ref. 4-ALDF-4B-08, 4B-09, 4C-10) at 26.)

Articles and services necessary for maintaining proper personal hygiene are available to all inmates including items specifically needed for females.

(Ex. 199, 1-CORE-4B-03 (Ref. 4-ALDF-4B-06) at 26.)

67. The DOJ NIC Jail Standards further state that clean clothes must be provided:

Inmates must be provided with clean clothes and bedding. Clothing, towels, and bedding must be exchanged, laundered, and inspected on a regular basis. Failing to do so will result in an unhygienic facility for both the inmates and the staff.

(Ex. 196 at 4.)

68. The ALDF Standards state that:

Sufficient bathing facilities are provided in the medical housing unit or infirmary area to allow inmates to bathe daily. At least one bathing facility is configured and equipped to accommodate inmates who have physical impairments or who need assistance to bathe. Water for bathing is thermostatically controlled to temperatures ranging from 100 degrees Fahrenheit to 120 degrees Fahrenheit.

(Ex. 195, 4-ALDF-4C-11 (Ref. New) at 54.)

69. The ICE Detention Standards further state that:

At no cost to the detainee, all new detainees shall be issued clean, laundered, indoor/outdoor temperature-appropriate, size appropriate, presentable clothing during intake. . . . Each

1 detainee shall receive, at minimum, the following items: 1)
2 one bar of bath soap, or equivalent; 2) one comb; 3) one tube
3 of toothpaste; 4) one toothbrush; 5) one bottle of shampoo, or
4 equivalent; and 6) one container of skin lotion.

5 (Ex. 200, Secs. 4.5.IV.B & D at 310-11.)

6 70. CBP's failure to provide basic products to allow detainees to clean
7 themselves creates an unhygienic facility for both detainees and CBP agents.
8 Defendants' failure to maintain basic levels of group and individual hygiene in these
9 facilities serves no legitimate interest, and unjustifiably increases the risk of harm to
10 detainees.

11 71. The lack of personal hygiene significantly contributes to a lack of well-
12 being and poor health. For example, soiled clothing has been implicated in the spread of
13 MRSA—a disease common in communal institutions—as well as other infectious
14 diseases and skin ailments. Soiled garments may also compromise thermal comfort.

15 **H. Unhygienic Provision of Food and Water**

16 72. CBP agents that distribute food to detainees pay no regard to personal
17 hygiene.

18 73. During our inspections, we were only permitted to observe one instance of
19 food being delivered to detainees. This occurred at Nogales Station. We did not observe
20 any hand washing or use of disposable gloves prior to and during the distribution of food.

21 74. We were not able observe how much time passed between food being
22 “prepared,” included heating of the microwave burritos which form the bulk of detainees’
23 diet while in custody, and delivery to detainees.

24 75. At Tucson and Nogales stations, we observed 5-gallon “Igloo” water
25 coolers in many of the hold rooms, which were used to provide detainees with access to
26 drinking water. But there were no facilities—no sinks, kitchens, or anything else—in
27 any station we inspected where these water coolers could routinely be cleaned and
28 sanitized. I have also seen video surveillance footage showing detainees drinking from
the same water jug because cups have not been provided.

1 76. The ICE Detention Standards require that:

2 Detainees, staff and others shall be protected from injury and
3 illness by adequate food service training and the application of
4 sound safety and sanitation practices in all aspects of food
 service and dining room operations.

5 (Ex. 200, Sec. 4.1.II.3 at 241)

6 77. The ICE Detention Standards define “Sanitation” as:

7 The creation and maintenance of hygienic conditions; in the
8 context of food, involves handling, preparing, and storing
9 items in a clean environment, eliminating sources of
 contamination.

10 (Ex. 200, Sec. 7.5 at 461.)

11 78. In my opinion, food and water is not handled or delivered to detainees in an
12 appropriately hygienic or sanitary way. This places both CBP agents and detainees at
13 risk of the spread of disease, particularly gastrointestinal illnesses.

14 79. As noted above, we were not able to observe how much time passed
15 between the preparation of food and its delivery. If foods are held outside of a “safe
16 temperature” range (hot food over 140° F when served and the cold foods colder than
17 45°F), pathogenic organisms will reproduce, resulting in a dose significant to cause
18 infection. Additionally, delay between food preparation and delivery gives pathogenic
19 bacteria the opportunity to multiply to a number great enough to overwhelm the body's
20 natural defenses and cause disease.

21 80. Failure to clean and sanitize the water coolers or jugs and to provide clean,
22 individual drinking containers greatly elevates the risk of spreading water-borne diseases
23 as well as communicable diseases.

24 81. The absence of a hygienic food and water distribution process serves no
25 legitimate purpose and creates an unjustified risk to detainees.

I. Lack Of Regular Maintenance Program and Policies

82. I understand that Defendants were ordered to produce current detainee policies and procedures. I saw no policies or procedures regarding the routine and adequate maintenance of hold rooms in these facilities.

83. Defendants appear to complete daily Processing Inspection Forms for each of its stations. For at least the Casa Grande and Nogales stations, these forms appear to be filled out inconsistently and, in the case of Casa Grande, occasionally not completed at all. (Ex. 104 at USA000706-708, USA000718-719, USA000722-724, USA000728-749; Ex. 107 at USA001021, USA001029; Ex. 112 at USA001570-1571.)

84. According to CBP's own logs, sinks and toilets at Tucson Station frequently malfunction and often do not work for weeks at a time. (Ex. 114 at USA001758-1776; Ex. 115 at USA001872-1898 (sinks); Ex. 114 at USA001758-1776, USA001843-1854; Ex. 115 at USA001873-1902; Ex. 116 at USA001968-1987 (toilets).)

85. Likewise for Casa Grande Station (Ex. 104 at USA000764-777 (drinking fountains and toilets); Ex. 104 at USA000780-785, Ex. 105 at USA000862-866; Ex. 106 at USA000972-974 (toilets)), Douglas Station (Ex. 109 at USA001201, 1228, 1262-1264; Ex. 110 at USA001281; Ex. 111 at USA001504-1555 (toilets)), and Nogales Station (Ex. 112 at USA001570-1571, 1574-1597, 1601-1603-1606, 1608, 1610-1619, 1621, 1641-1657, 1659-1660, 1668; Ex. 113 at USA001671-1672, 1674, 1683-1685, 1688-1694, 1729, 1731-1733, 1735, 1750 (drinking fountains)).

86. Former detainees' declarations also show that toilets and sinks were frequently malfunctioning. (*See, e.g.*, ECF No. 2-1, Ex. 16 ¶ 12 (broken toilet); ECF No. 2-2, Ex. 34 ¶ 11 (same); *id.*, Ex. 36 ¶ 19 (same); ECF No. 2-3, Ex. 43 ¶ 16 (broken sink).)

87. Given the fact that some problems identified by CBP agents remain unfixed for weeks, I believe Defendants do not have a regular or appropriate maintenance program.

88. We were shown janitor supply closets at each station and found various haphazard collections of brooms, dust pans, wet mops, buckets, and a variety of

1 household chemical cleaners. (Ex. 6; Ex. 38.) There was no indication that different
2 brooms, wet mops, and buckets were used to clean different areas. As a result, the same
3 mop or broom might be used to clean toilet areas and food storage/preparation areas
4 alike. Cleaning equipment such as mops heads, mop pads, mop handles, and wipe cloths
5 should not be used interchangeably for cleaning toilet and food storage/handling areas.
6 They should be separated in storage and recognizable by color. Defendants' failure to
7 sequester and separate cleaning utensils and supplies violates universally recognized
8 sanitary practices.

9 89. Unsanitary conditions favor the growth and survival of disease-causing
10 microorganisms. Clean environments—and, in particular, clean common-touch points—
11 help prevent illness spread by indirect contact. Crowding increases the chance that
12 contagion is deposited on common-touch objects such as seats, barrier partitions seats,
13 toilet flush handles, lavatory faucets, door push-plates, water coolers' recessed spigots,
14 and so forth. There was no evidence in any facility that a concerted effort was made to
15 frequently clean and sanitize the common-touch points in detainee areas. Unsanitary
16 conditions increase the risk that disease will be spread by indirect contact.

17 90. It is my professional opinion that, in light of the duration and manner in
18 which individuals are detained, the hold rooms are not adequately cleaned or maintained.
19 CBP's failure to implement a regular system to ensure the cleanliness of these hold
20 rooms serves no legitimate purpose and creates an unjustifiable risk to detainees.

21 **J. Inadequate Ventilation and Temperature**

22 91. Temperature and ventilation are interrelated. In my opinion, the hold
23 rooms do not have adequate ventilation and the detainees are not held in a room that has
24 an adequate temperature because detainees' outer clothing is removed upon detention.

25 92. The detainees surrender their outer garments when admitted to the
26 facilities. During our inspection, CBP agents informed us that all detainees' outer layers
27 of clothing were confiscated, and in all but a few instances, detainees were not given
28 replacement clothing.

1 93. The amount of thermal insulation worn by a person has a substantial impact
2 on thermal comfort, because it influences heat loss and, consequently, thermal balance.
3 Layers of insulating clothing prevent heat loss and can either help keep a person warm or
4 lead to overheating.

5 94. Surveillance video confirms that individuals are ordinarily detained
6 wearing only t-shirts or other short-sleeved shirts. (Exs. 126, 129, 165.)

7 95. Surveillance video also shows detainees huddled together under Mylar
8 sheets, even during the summer months. (Exs. 187, 188; Ex. 191.)

9 96. Temperature logs from Douglas Station in September (Ex. 111 at
10 USA001427-1569) show that temperature readings were in the low to mid-60s on a
11 regular basis, even reaching as low as 58.8 degrees Fahrenheit (Ex. 111 at USA001461).
12 No hold room temperatures were produced from winter, spring, or late fall months.

13 97. At Nogales Station, we were shown several thermostats, which controlled
14 temperatures in the different areas. (Exs. 48, 49.) Defendants later confirmed that two
15 units condition the processing area, while three other units are specifically for the hold
16 rooms, so that temperatures can be adjusted in each area as desired.

17 98. We were told during the inspections that temperatures for the other three
18 stations were controlled remotely from a different facility located in Tucson. This was
19 later confirmed in writing. Attached to the Appendix of Exhibits as Exhibit 100 is a true
20 and correct copy of a document produced by Defendants on or about October 20, 2015
21 and Bates labeled USA000675-676, which purports to be a signed declaration from
22 George Allen, Assistant Patrol Agent for the United States Border Patrol, Tucson Sector
23 describing Border Patrol's access to the thermostat and temperature control at Tucson,
24 Nogales, Douglas and Casa Grande stations.

25 99. I also understand that Defendants confirmed that the air conditioning
26 systems at Tucson and Douglas Stations are broken down into zones so that different
27 temperatures can be set in different zones, including the processing area and detainee
28 hold rooms. At Casa Grande Station, each holding room has a sensor connected to a

1 Variable Air Box which opens and closes proportionately to control the room
2 temperature and fan speed.

3 100. Former detainee declarations overwhelmingly complain of being subjected
4 to cold temperatures. There are even accounts of Border Patrol agents using cold
5 temperatures to punish inmates. (*See, e.g.*, ECF No. 2-1, Ex. 4 ¶ 6; *id.*, Ex. 6 ¶ 9.) CBP's
6 ability to alter temperatures in different zones is consistent with these claims.

7 101. During our inspections, I also observed the ventilation systems relative to
8 the air movement from the intakes and exhausts within all of the holding rooms
9 inspected. I also measured the air quality of each holding room inspected; specifically
10 the WBGT (Wet Bulb Globe Temperature that measures evaporative cooling/heat stress),
11 TA (Ambient Air Temperature), RH% (Relative Humidity) and TG (Black Globe
12 Temperature that measures radiant heat) where it was deemed applicable. I noted that air
13 flow in the hold rooms was variable within a given facility and inconsistent throughout
14 the system. The findings ranged from no detection of air movement to a distinct
15 noticeable draft that was felt throughout the room; where the air velocity was greater than
16 25 lfpm (linear feet per minute). The WBGT combines the effects of radiation,
17 humidity, temperature and wind speed on the perception of temperature. In virtually all
18 rooms, the WBGT was below 71° F; with measurement as low as 66.3°F and median
19 range between 67 to 69°F. To most individuals, and particularly those detainees who
20 were sedentary, this results in discomfort and chill. For the most part, the ambient air
21 temperature and slightly lower black globe temperature were in the mid-70 degree range.
22 However, the concrete benches and floors served as a heat-sink, thereby exacerbating the
23 discomfort level of the detainees. The heat-reflective, emergency Mylar blankets issued
24 to the detainees, do not effectively serve as a barrier to the radiant cooling of the
25 concrete.

26 102. The ventilation system operated at the Nogales Station did not maintain an
27 adequate temperature level for sedentary detainees. I noted that the ventilation system
28 shuts down when the ambient pre-set air temperature was reached, and reactivates when

1 the temperature rose. The static air temperature throughout the facility was 73°F (± ~
 2 1°F). The range of the WBGT was between 62.4° to 66.5°F; making each hold room
 3 unduly cool, and particularly when the intake blowers were activated resulting in a
 4 perceptible draft.

5 103. I found that the mechanical ventilation systems in all facilities cannot be
 6 adjusted to meet the health and comfort needs of the detainees. As such, there is a
 7 constant rate of air movement as well as temperature maintenance that is independent of
 8 the number of detainees housed in the multiple-occupancy cells.

9 104. Even CBP's own standards require hold rooms to be maintained as a
 10 "temperature within a reasonable and comfortable range." The standards also state that
 11 "[u]nder no circumstances will officers/agents use temperature controls in a punitive
 12 manner." (Ex. 95, 4.6.)

13 105. One of the most consistent complaints of detainees, however, is that the
 14 hold rooms are too cold, hence the nickname in Spanish for the hold rooms is "las
 15 hieleras" or the freezers. (ECF No. 2-1, Ex. 11¶ 13.)

16 106. In general, standards require hold rooms to be kept at a comfortable
 17 temperature. The Core Jail Standards also require ventilation to be adequate and for
 18 temperature to be maintained at an comfortable level:

19 *A ventilation system supplies at least 15 cubic feet per minute*
 20 *of circulated air per occupant, with a minimum of five cubic*
 21 *feet per minute of outside air. Toilet rooms and cells with*
 22 *toilets have no less than four air changes per hour unless state*
 23 *or local codes require a different number of air changes. Air*
quantities are documented by a qualified independent source
and are checked not less than once per accreditation cycle.
Temperatures are mechanically raised or lowered to
acceptable comfort levels.

24 (Ex. 199, 1-CORE-1A-10 (Ref. 4-ALDF-1A-19, 1A-20) at 4; *see also* Ex.195, 4-ALDF-
 25 1A-19, at 7; Ex. 200, Sec. 2.6.V.A.3 at 27.)

26 107. Similarly, standards generally require adequate clothing to be provided.
 27 For example, the Core Jail Standards Require:
 28

Inmates are issued clothing that is properly fitted and suitable for the climate. There are provisions for inmates to exchange clothing at least twice weekly.

(Ex. 199, 1-CORE-4B-02 (Ref. 4-ALDF-4B-03) at 25.)

108. The DOJ NIC Jail Standards also require adequate clothing to be provided:

Inmates must be provided with clean clothes and bedding. Clothing, towels, and bedding must be exchanged, laundered, and inspected on a regular basis. Failing to do so will result in an unhygienic facility for both the inmates and the staff.

(Ex. 196 at 4; *see also* Ex. 200, Sec. 2.6.V.D.4 at 57.)

109. Defendants' practice of confiscating detainee clothing, failing to replace it, and maintaining hold rooms at temperatures far below comfort levels serves no legitimate purpose. It violates nationally recognized standards including CBP's own standards and creates an unjustifiable risk of harm to detainees.

110. There are four effects resulting from human occupancy of poorly ventilated areas and rooms:

- A. The oxygen content is reduced;
- B. The amount of carbon dioxide is increased;
- C. The relative amount of organic matter shed and odors spread from occupants' skin, clothing, and mouths increases; and,
- D. The humidity is increased by the moisture in the breath and evaporation from the skin.

111. Poor indoor air quality also exacerbates chronic respiratory health conditions such as asthma.

112. Similarly, when the adaptive comfort temperature levels of the detainees are exceeded, there is a potential for behavioral and psychological changes. Continuous exposure to low WBGT temperatures also creates a health risk as most bodily function, such as circulation, appetite, and brain activity, are impaired when a person is cold for long periods of time.

K. Public Health Risks

113. The space afforded to inmates in the multiple-occupancy hold rooms—and mandated by Defendants policy (Exhibit 81)—is less than the space recommended for inmates in all acceptable correctional standards. In fact, the space afforded inmates in these hold rooms is less than the space allowed for laboratory animals of similar size and body mass. (See *Guide for the Care and Use of Laboratory Animals*, Eighth Edition, National Research Council National Academies Press, Washington, DC. 2011, Table 3.6, <http://grants.nih.gov/grants/olaw/Guide-for-the-Care-and-Use-of-Laboratory-Animals.pdf>.) This lack of space has direct implications on health, safety, and wellbeing.

114. Multiple cell occupancies pose the greatest risk of communicable disease spread. This is because the full health status of newly admitted detainees is unknown. These individuals can be in the prodromal stages of illness. While not manifesting symptoms of disease, they can spread contagion to others in close proximity through direct and indirect contact, particularly by contact with contaminated fomites in the detainees' immediate environment, and/or via airborne contagion.

115. To the extent detainees are held in hold rooms for 12 hours or more, their exposure experience is significantly increased through prolonged close contact with other detainees. This exposure experience becomes the confounding variable and a significant factor in the spread of communicable diseases amongst an institutionalized population. Since space is severely abridged in multiple occupancy rooms, the risk factors for institutionally acquired illnesses that are associated with crowding become more significant. The space restriction also increases the risk of unintentional injury because of limited free movement by detainees confined therein.

116. The seating areas in most multiple-occupancy cells are insufficient to accommodate the number of detainees at rated occupancy capacity. This may result in back and body pain, muscular-skeletal injuries, emotional stress and breathing problems, particularly if detainees are forced to use the floor for seating. The use of the floor also limits the availability of unencumbered space and movement.

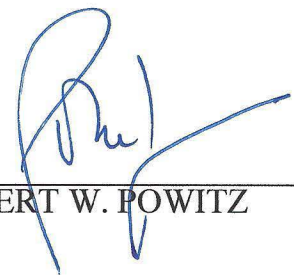
1 117. The overcrowding of hold rooms serves no legitimate purpose and creates
2 an unjustified risk to detainees.

3 **V. CONCLUSION**

4 118. Based on my experience, inspections, and review of documents and
5 surveillance footage, it is my opinion that the unclear, unhygienic, and unduly cold
6 conditions in which people are held at these stations serves no legitimate purpose and
7 creates an unjustifiable risk of harm to detainees.

8 119. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
9 foregoing is true and correct.

10
11 Executed this 4th day of December, 2015.

12
13 

14 ROBERT W. POWITZ
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attachment A

ROBERT W. POWITZ

April 2015

P.O. Box 502
8 Pheasant Hill Lane
Old Saybrook, Connecticut 06475-0502

Telephone:

home (860) 388-0827

work (860) 388-0893

mobile (860) 395-9214

E-mail: Powitz@sanitarian.com / rpowitz@yahoo.com

Web: <http://www.sanitarian.com>

CURRICULUM VITAE

PERSONAL DATA

Born: August 29, 1942, New York City, NY

Bilingual: English / German

Married: Alexandra Eva Fenczyn-Kip

EDUCATION

Ph.D. Environmental Health, 1978. University of Minnesota, Minneapolis, MN

Supporting Minors: Epidemiology and Environmental Microbiology

Thesis: Some Administrative and Microbiological Considerations in the Maintenance of the Sterile Integrity of Prepackaged, Disposable Items for use in Health Care Facilities.

M.P.H. Environmental Health, 1974. University of Minnesota, Minneapolis, MN

Major: Institutional Environmental Health

Supporting Minors: Industrial Hygiene; Epidemiology and Public Health Administration

B.S.A. Agriculture, 1964. University of Georgia, Athens, GA

Major: Plant Pathology (Nematology); Minor: Agronomy

A.A.S. Agricultural Production, 1962. State University of New York, Cobleskill, NY

Major: Agronomy; Minor: Animal Husbandry (Dairy)

Diploma - Wildlife, Forestry and Fishery Conservation, 1967,

North American School of Conservation, Newport Beach, CA

Regents Diploma (Science), 1960, Stuyvesant High School, New York, NY

PROFESSIONAL EXPERIENCE

1994 - present R.W.POWITZ & ASSOCIATES, P.C.

Old Saybrook, Connecticut

PRINCIPAL ASSOCIATE: FORENSIC SANITARIAN

Provide consultation and expert witness services in environmental health, safety and environmental protection to attorneys, governmental agencies, institutions and private industry.

Primary work emphasis: Litigation support with public health issues.

1992 – 1994 UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Research Service, Plum Island Animal Disease Center
Greenport, New York
DIRECTOR: BIOLOGICAL SAFETY AND ENVIRONMENT, and, BIOSAFETY OFFICER
Established biological safety, environmental health, safety and environmental conservation policy and provided contractual oversight of all activities relating to these policies. Directed biological, chemical, environmental protection and radiological safety programs.

1980 - 1992 WAYNE STATE UNIVERSITY
Office of Environmental Health and Safety
Detroit, Michigan
DIRECTOR & BIOSAFETY OFFICER
Established and directed research support service unit with nine professional employees and a support budget in excess of \$ 250,000.00. Served as adjunct professor in the College of Engineering, Pharmacy and Allied Health and Biological Sciences.

1979 - 1981 SAMARITAN HEALTH CENTER
St. Joseph Mercy Hospital Unit
Detroit, Michigan
EPIDEMIOLOGIST (1980 - 1981)
INFECTION CONTROL COORDINATOR (1979 - 1980)
Directed epidemiological and infection control activities in a 450 bed acute care community hospital.

1979 - HEALTH CARE RISK MANAGEMENT, INC.
Ann Arbor, Michigan and Rennselaer, New York
VICE PRESIDENT, and, DIRECTOR OF OPERATIONS
Managed the technical operations of a consulting firm. Served as environmental health and safety expert.

1978 - NATIONAL ENVIRONMENTAL HEALTH ASSOCIATION
Denver, Colorado
POST DOCTORAL RESEARCH ASSOCIATE
Developed performance and knowledge criteria document for the environmental health sanitarian profession.

1975 - 1978 UNIVERSITY OF MINNESOTA
School of Public Health
Minneapolis, Minnesota
GRADUATE RESEARCH ASSISTANT, and, DOCTORAL CANDIDATE
Conducted thesis research on passive contamination of sterile medical supplies.

1974 - 1975 RINGWOOD HEALTH DEPARTMENT
Ringwood, New Jersey
HEALTH OFFICER
Established and directed a full service municipal health department.

1966 - 1974 STATE OF NEW JERSEY
Department of Health, Metropolitan Health District, Newark, NJ
Department of Institutions and Agencies, Trenton, NJ
SENIOR SANITARIAN: Department of Institutions & Agencies (1969- 1974)
SANITARIAN: Department of Health (1967- 1969)
INDUSTRIAL HYGIENIST: Department of Health, Air Pollution Control (1966- 1967)

Provided on-site environmental health and safety services for the State agency. Conducted law and health regulation enforcement activities, and, served as resource consultant to local health agencies, departments and boards.

OTHER PROFESSIONAL ACTIVITIES

2003 – present	Health Director: Towns of Franklin and Lebanon, CT
2003 – 2014	Health Director: Town of Salem, CT
2003 – 2005	Health Director: Town of Sprague, CT
2000 – 2003	Special Consultant to the Commissioner, Philadelphia Department of Corrections
2000 – 2002	Associate: Risk Associates, LLC, Old Saybrook, CT
1998 – 2005	Health Director: Town of Westbrook, CT
1996 – present	Member, Chairman, Asst. Chairman: Old Saybrook Water Pollution Control Authority
1992 – present	Member/Manager: Terry Plum's, LLC, Old Saybrook, CT
1990 - 1992	Biological Safety Officer: Henry Ford Hospital, Detroit, MI
1981 - 1988	President: Biosafety Systems, Inc., Detroit, MI
1978 - 1980	President: Burns Park Condominium Association, Ann Arbor, MI

CREDENTIALS

LICENSES

State of Connecticut: Registered Sanitarian, #543
 State of Michigan: Registered Sanitarian, #733 (inactive)
 Certified Pesticide Applicator, AG0023082 (expired)
 State of New Jersey: Health Officer, #A194 (inactive);
 Sanitary Inspector, First Grade, #B-489 (inactive);
 Public Health Laboratory Technician, #Ie-258 (inactive);
 State of Ohio: Registered Sanitarian, #1870 (inactive)

CERTIFICATIONS

The American College of Forensic Examiners: Diplomate: Forensic Technology, #19025
 State of Pennsylvania: Registered Sanitarian, #259I
 State of California: Registered Environmental Assessor I, #01983 (expired)
 State of Connecticut: Notary Public, #102136
 National Environmental Health Association: Registered Sanitarian, #70095;
 Certified Specialist - Food Safety, #181
 Registered Food Safety Trainer, #18
 New York State Registry of Sanitarians: Registered Sanitarian, #00415 (inactive)
 National Registry of Food Safety Professionals: Trainer #1429
 National Recreation and Park Association: Certified Playground Inspector, #4502 (expired)
 American Biological Safety Association: Registered Biological Safety Professional, #016 (retired)
 Professional Certification Board: Certified Hazard Control Manager, #1398 (inactive)
 Cert. Hazardous Materials Mgr., #0506 (inactive)
 Certified Healthcare Safety Professional, #0017 (inactive)
 National Registry of Environmental Professionals:
 Registered Environmental Laboratory Analyst, #837I (inactive)
 Certified Environmental Auditor, #623 (inactive)
 Registered Environmental Property Assessor, #1504 (inactive)
 Environmental Assessment Association: Certified Environmental Inspector, CEI 9235 (expired)
 Water Quality Association: Certified Water Specialist – V (retired)

HONORS

Diplomate Laureate: American Academy of Sanitarians, Certificate # 001
Diplomate: American Academy of Sanitarians, Certificate # 336
Davis Calvin Wagner Award, 1996, American Academy of Sanitarians
Distinguished Service Award, 2004, American Academy of Sanitarians
Harry Bliss Journal Technical Editor's Award, 1999, National Environmental Health Association
Harry R.H. Nicholas Award, 2006, New Jersey Environmental Health Association
Honorable Order of Kentucky Colonels: 1987
President's Award, 1990, Academy of Certified Hazardous Materials Managers
Phi Theta Kappa
Walter F. Snyder Award: 2001, NSF & NEHA

PROFESSIONAL AFFILIATIONS

American Association of Sanitarians
American Biological Safety Association (Emeritus)
American Jail Association
Cleaning Industry Research Institute
Connecticut Environmental Health Association
International Association for Food Protection
International Executive Housekeepers Association
National Environmental Health Association
Water Quality Association (retired)

ORGANIZATIONAL ACTIVITIES

KaiScience Advisory Board: 2007 – 2010
Cleaning Industry Research Institute: 2006 – present, Institutional Review Board
Conference for Food Protection
 Vice Chairman – Plan Review Committee: 2004
Underwriter Laboratories, Inc.,
 Consumer Advisory Council: 1990-present;
 Corporate Council: 1993; 2001-present.
 Member: Standards Joint Committees
Academy of Certified Hazardous Materials Managers,
 Board of Directors: 1990-1991
 Connecticut Chapter: Board of Directors: 1994 - 2004
 CHMM-Michigan, President: 1988-1990; Member, Board of Directors: 1988-1991.
American Academy of Sanitarians, Inc.
 Chairman: 2001 – 2004; 2010 - 2012
 Vice Chairman: 2000 – 2001; 2008 - 2010
 Board of Directors: 1990 - present
 Chairman, Credentialing Committee: 1992 - 2012
Water Pollution Control Authority, Old Saybrook, CT, Member: 1995 – 2011
 Chairman: 2004 – 2009; Vice Chairman: 2009 - 2011
Wayne County (Michigan):
 Commission, Hazardous Waste Facility Site Review Board: 1987 - 1988.
State of Michigan:
 Agricultural Advisory Comm. - Occupational Health Standards Commission: 1985-1987
Institute of Hazardous Materials Management
 Member, Board of Examiners: 1985 - 1990
Institute of Environmental Sciences

Vice Chairman: Michigan Section, 1986
Wayne State University: 1980 - 1992
Chairman & Member, Institutional Biosafety Committee
Chairman, Laboratory Safety Committee
Member, Radiation Safety and Radioisotope Committee
Member, Loss Control Committee
Member (ex officio), Animal Care Committee I
National Environmental Health Association: 1969 - present
Chairman, Institutional Section: 1987 - 1991
Chairman, Correctional Facilities Section: 1992
Member, Scholarship Committee: 1998 – present
Member, Credential Development Committee: 2006
National Safety Council: 1978 - 2004
Executive Committee Member, Health Care Section
Executive Committee Member, Campus Safety Association
Member, Environmental Health Committee, R & D Section
National Sanitation Foundation International, 1978 – present
Council of Public Health Consultants: 2001 – present;
Vice Chairman: 2007 – 2008
Chairman: 2008 - 2009
Member, Standards 42, 49, 53, 54, 55, 330 and 376 Joint Committees
Joint Committee Chairman: Standards 14, 24, 49, 330 and 376
University of Minnesota, Member, Biohazard Advisory Committee: 1976 - 1977
Health Officers of Passaic County, Chairman, 1974 - 1975
New Jersey Environmental Health Association, 1967 - 1973
Corresponding Secretary and Treasurer;
Chairman, Registration Committee

TEACHING EXPERIENCE

Wayne State University
Adjunct Associate Professor, College of Engineering: 1986 - present
CHE 551 Introduction to Hazardous Waste Management
CHE 556 Transportation and Emergency Spill
CHE 557 Introduction to Safety Assessment
CHE 651 Public Issues of Hazardous Waste
CHE 726 Waste Management Internship
CHE 727 Hazardous Waste Laboratory
Adjunct Assistant Professor, College of Pharmacy and Allied Health: 1982 - 1992
OEH 762 Control of Industrial Wastes
Adjunct Assistant Professor, Department of Biological Sciences: 1980 - 1992
BIO 523 Environmental Microbiology
Adjunct Assistant Professor, Division of Health and Physical Education: 1988 - 1991
HEA 232 Environmental Health
Additional Activities:
Assisted in the development of the Graduate Certificate in Hazardous Waste Management and Environmental Auditing; the Masters Degree in Hazardous Materials Management and the Degree in Environmental Hazards Management within the College of Engineering.
Ferris State University
Adjunct Associate Professor, Allied Health Sciences, Environmental Health: 1981 - 1992
EHN 230 Epidemiology
EHN 302 Communicable Disease Control
EAH 320 Institutional Environmental Health

EAH 101 Environmental Health Practice
 EAH 315 Occupational Health Practice
 EAH 330 Industrial Hygiene
 EAH 400 Industrial Toxicology
 St. Clair College, Windsor, Ontario, Instructor, Division of Continuing Education: 1990 - 1992
 OH 223 Fundamentals of Occupational Toxicology
 NSF International: 2000 - 2006
 Food Safety in Retail Operations
 Plan Review for Retail Food Operations
 HACCP

CONTRACTS AND AWARDS

2007 Charm Science: Development of ATP Systems Use Instructions
 2007 - present Kaivac Systems: CMI Consultant
 2004 NSF International: Training and Course Development, \$2,000 per month.
 2003 – present Special Consultant to Bucks County Department of Corrections
 2001 ASPH Project #S1404-20/20 (University of Oklahoma, Health Sciences Center),
 Contributing author: Sanitarian's Desk Reference; \$11,100.
 1988 - 1989 U.S. Department of Health and Human Services, Contract No. 240-88-0069
 Evaluation of Hazardous Waste Education and Training, \$180,000.
 1984 Ultrasonix Research, Inc.
 Development of Ultraviolet Light Water Purification Technology, \$20,000.
 1975 - 1978 U.S. Veterans Administration, Doctoral Research Contract, \$56,000

PUBLICATION ACTIVITIES

2004 - 2007 Contributor: American Jails Magazine
 2003 - present Contributor and Editorial Advisory Board: Food Safety Magazine
 1995 - 2008 Contributing Editor: Corrections Managers' Report
 1997 - 2003 Contributor, Journal of Environmental Health (NEHA)
 1978 - present Reviewer, Journal of Environmental Health (NEHA)
 1989 - 1992 Editor, ABSA Newsletter
 1986 - 1987 Editor, Current Topics In Campus Health and Safety
 1982 - 1987 Contributing Editor, Canon Communications:
 Microcontamination; Pharmaceutical Manufacturing; Particulate and Microbial
 Control
 1982 - 1986 Editor, National Safety Council, Campus Safety Newsletter Health Care Newsletter

PUBLICATIONS: Non-peer reviewed Trade Publications

Journal of Environmental Health: Tools for Environmental Health

Published by: National Environmental Health Association

April 1997 Introduction
 April 1997 The Dial and Temperature Standard Thermometer
 May 1997 The Hand-Held Infrared Thermometer
 June 1997 An Inexpensive Sound Level Meter
 July/August 1997 Measuring Illuminance – the Type 217 Light Meter
 September 1997 The LCD Light Meter
 October 1997 The Biotest Reuter Centrifugal Air Sampler
 November 1997 Basic Testing Equipment for Electrical Circuits and Receptacles
 December 1997 Disabled Access Survey Tools

Jan/Feb 1998	Some Simple Field Tests for Use in Food Inspections
March 1998	Easy Lead-Screening Kits for Use in the Field
April 1998	The Millipore Sanitarian's Kit
May 1998	A Practical Ultraviolet Inspection Light for the Detection of Rodent Urine Contamination: The Blak-Ray ULV-26P
June 1998	Audit and Inspection Tools for Children's Play Areas
July/August 1998	The "Lollypop" Thermometer
September 1998	Disposable Indicating Thermometers
October 1998	More on Handheld Infrared Thermometers
November 1998	The Germ Detective Kit
December 1998	Doing it by the Numbers: ANSI/ASQC Z1.4
Jan/Feb 1999	The Basic Inspection Kit: Some Not-So-Random Thoughts on Stuff We take for Granted
March, 1999	Would You Believe - Another Thermometer?
April 1999	Moisture Detection Meters: Tools for all Occasions
May 1999	Swimming Pool Test Kits
June 1999	On Buying Tools for the Sanitarian
July/August 1999	The Dog Days of Summer: Humidity-Measuring Devices
September 1999	Need Definitive Answers? Go to the Standards.
October, 1999	Infrared Thermometers Again: Temperature Verification, Other Useful Information, and a New Model
November, 1999	Two Credentialing Courses for the Professional Sanitarian
December, 1999	Measuring Thermal Comfort
Jan/Feb, 2000	Two Great Little Tools: A Probe Thermometer and a Pocket Scale for Institutional Suicide Prevention
March, 2000	A Simple, Scruffy Device for Measuring Water Pressure and Flow
April, 2000	Tracking Air Movement
May, 2000	Good Tools for Preventing Slips and Falls
June, 2000	The Yin and Yang of the Sure Temp Temperature-Sensing Device
July/August 2000	Books as Tools
September 2000	A Proposed Standard for Infrared Thermometers Intended for Food Safety and, Two New Portable IR Thermometers with Unique Features
October 2000	Two by Dwyer: 460 Air Meter and Wind Meter
November 2000	The APC Plus Airborne Particle Counter
December 2000	Calibration, Calibration Logs and the Check-Temp
Jan/Feb 2001	The Best of the Best – An Update on Our Basic Inspection Kit
March 2001	Measuring Water Activity in Foods: the Pawkit AquaLab
April 2001	Safety, Septics and Scholarly Pursuits: Web sites and Mirrors
May 2001	The KD451 Indoor Air Quality Monitor
June 2001	A Thermometer Update and Other Valuable Information
July/August 2001	The Long-Forgotten Refractometer
September 2001	The Zylux Rapid Hygiene System for Measuring Cleanliness of Food Contact Surfaces
October 2001	Thermometrics
November 2001	The Atkins HACCP Kit + One
December 2001	A Thermometer Editorial
Jan/Feb 2002	A Superbly Accurate Motorized Psychrometer
March 2002	At Last, an Affordable Thermocouple Calibrator
April 2002	A Unique UV Penlight and the Latest Information on Hand Hygiene
May 2002	A Primer on Sampling for Biological Contaminants, Part One: Science and Theory
June 2002	A Primer on Sampling for Biological Contaminants, Part Two: Air Sampling Instrumentation

July/August 2002	A Primer on Sampling for Biological Contaminants, Part Three: Surface Sampling Techniques
September 2002	An IR Calibrator; A garage Door Safety Stop Pressure Gauge
October 2002	Thermometer Forks
November 2002	Radiation Monitor
December 2002	Monitoring pH
Jan/Feb 2003	The Best of the Best '03
Jan/Feb 2015	A History of the American Academy of Sanitarians

Published tutorials presented at the National and Affiliate Annual Educational Conferences

- Portable Instrumentation Workshop
- The Art and Science of Inspection
- Being an Expert Witness
- Establishing a Consulting Practice as a Sanitarian
- Principles of Biological Safety
- A Brief History of the Sanitarian Profession
- Fundamentals of Water Activity
- ATP Monitoring Systems: Measuring Cleanliness
- The Role of the Sanitarian in Disaster Response
- Sampling and Enumeration of Environmental Microbes
- Update to the 2005 Food Code: Implications to Inspections
- What Constitutes a Foodborne Outbreak?
- A Quick Guide to Field Sampling
- History of the Sanitarian Profession
- Integrated Cleaning and Measurement
- Effective Use of ATP Monitoring
- How Clean is Clean?
- Best of the Best: Field Instrumentation
- Street HACCP
- Green Housekeeping
- Field Instrumentation for Food Code Compliance Activities
- Measuring Cleanliness

Corrections Managers' Report: **The Corrections Advisor** 1995 - 2003
A Sanitarian's Notebook 2006 - 2007

Published by: Civic Research Institute, Inc.

August/September 1995	Prisons and Jails from an Environmental Health Perspective
October/November 1995	Life Safety in Correctional Facilities
February/March 1996	Facility Management: Sanitation and Noise
April/May 1996	Rating Cell Space; Improving Ventilation Quality
June/July 1996	Reducing Infection Risk: TB Isolation and Effective Use of Face-Masks
August/September 1996	Reducing Infection Risk: TB and Jail Intake Facilities
October/November 1996	Use Lighting to Improve Security in Older Prisons and Jails; Barber Shop Sanitation
December/January 1997	Keeping Inmates and Staff Healthy; TB Screening and Commissary Sanitation
February/March 1997	Proper Hand-Washing Facilities Protects Staff and Inmate Health; Maintaining a Comfortable Humidity
April/May 1997	Key Environmental Health Considerations for Food Service Providers; Debunking the Fluorescent lamp Health Risk Myth
August/September 1997	New FDA Food Code Emphasizes Safe-Handling Practices;

October/November 1997	Cross Connections What Steps should be taken when a CO Is Exposed to Hepatitis?; Control of House Flies
February/March 1998	Take Steps to Avoid Staff Problems with Latex Allergies; Return-to-Work Assessments
April/May 1998	Effective TB Prevention and Control; Nosocomial Infections in the Correctional Setting
August/September 1998	A Simple and Quick Self-Inspection Program
October/November 1998	How to Prevent Slip-and-Fall Injuries; Non-Health Consequences of Environmental Tobacco Smoke
December/January 1999	Tips for Designing a Safe and Comfortable Visiting Area; Odor Control
February/March 1999	Tips on Flashlight Safety; Hand Washing Policy and Guidelines
June/July 1999	Purchasing and Maintaining Small Equipment; Maintaining the Sanitary Integrity of Ice
August/September 1999	Handling Lead Contamination on the Firing Range; Introducing "HACCP" to the Correctional Kitchen
October/November 1999	Regulating Building Temperatures; Controlling Mice
February/March 2000	Tracing the Origin of Skin Irritation; Cleaning Scale Buildup on Vitreous China; Defining the Out-of-Order Cell
June/July 2000	Writing a Fire Safety Operations Plan; NSF Standards and Food Equipment Selection
April/May 2001	Cell Window Area and Daylight Orientation; Handling Food Service Complaints
June/July 2001	Mop Head Selection; Lighting Maintenance and Energy Conservation; Update on Latex Glove Allergy
August/September 2001	Evaluating "Trip-and-Fall" Potential in Tiling; Bringing Sink Operations to Regulatory Compliance; Assessing Seriousness of Label Warnings
October/November 2001	Pigeons and Pepper Spray
February/March 2002	Responding to Airborne Hazard Threats
April/May 2002	Addressing and Preventing Mold Problems; Rethinking the Need to Disinfect
June/July 2002	Addressing Temperature and Ventilation Problems; Maintaining a Clean Warehouse
December/January 2003	Turning Down the Noise Volume; Avoiding Musculoskeletal Injuries
February/March 2003	Dealing with Poisonous Plants; Avoiding Spreading Germs
June/July 2003	Food Allergies and Hospice Emergencies
August/September 2003	Infectious Disease control in Prisons: MRSA and Tuberculosis
June/July 2006: 12(1)	The Control of Filth Flies
Aug/Sept 2006: 12(2)	Mushfake and its Consequences
Oct/Nov 2006: 12(3)	Norovirus and its Control
Dec/Jan 2007: 12(4)	Floor Safety: A Realistic Approach to the Prevention of Slips and Falls
Feb/Mar 2007: 12(5)	Preventing the Spread of MRSA
April/May 2007: 12(6)	Infection Control and the Sanitation of Inmate Medication
June/July 2007: 13(1)	Laundry Operations: Efficiency and Economy

Aug/Septe 2007: 13(2)	Drinking Water Safety
Oct/Nov 2007: 13(3)	Washcloths and MRSA
Dec/Jan 2008: 13(4)	Lessons Learned: Histrionics and Environmental Health in Corrections

CleanRooms: The Magazine of Contamination Control Technology

Published by: PennWell Publishing Company

January 1997	Microbial Contamination
	Biological Contaminants: Strategies of Investigation and Control
June 2002	Unfiltered – Principles of Biological Safety

CleanRooms: Life Sciences Supplement

January 1998	Biotech Safety Factors: Biological safety principles enhance contamination control
January 1999	A Rational Approach to Disinfectants
1997 - 2003: CleanRooms Published Tutorials	▪ Principles, Practices and Management of Biological Safety in Clean Room Environments ▪ Principles of Clean Room Disinfection, Sterilization and Biological Validation ▪ Detection, Enumeration and Control of Biological Contaminants in Clean Room Environments ▪ HACCP – A Scientific Approach to Compliance Monitoring

A²C²

Published by: Vicon Publishing, Inc.

February 2000 5(2): Sampling for Airborne Biological Contaminants: A Rational Approach

Food Safety Magazine: The Sanitarian's File

Published by: The Target Group, Inc.

August/September 2002 8(4):	A Rational Approach to Using and Selecting Hard Surface Disinfectants and Sanitizers
April/May 2003 9(2):	Getting on the Same Page: Glossary Useful in Defining Industry Terms
June/July 2003 9(3):	A Practical Perspective on Hand Washing
August/September 2003 9(4):	A Simple Introduction to Thermometry and Basic Calibration
October/November 2003 9(5):	Hot Tips for Using and Selecting Portable Thermometers
December 2003/January 2004 9(6):	Inspections, Part 1: The Professional Sanitarian
February/March 2004 10(1):	Inspections, Part 2: Expectations of the Regulator
April/May 2004 10(2):	Inspections, Part 3: Compliance
June/July 2004 10(3):	The Food Establishment Plan Review
August/September 2004 10(4):	Successful Sampling, Part I: Essential Approaches

October/November 2004 10(5):
 Successful Sampling, Part II: A Brief Primer on Biological Sampling

December 2004/January 2005 10(6):
 Successful Sampling Program, Part III: Environmental Air and Surface Techniques

February/March 2005 11(1):
 The Cold Hard Facts about Refrigeration Equipment

April/May 2005 11(2):
 Street HACCP: Paving the Way for Small Retail Operations

June/July 2005 11(3):
 7 Simple Rules for Effective and Hygienic Dry Goods Storage

August/September 2005 11(4):
 Top 7 Processing and Foodservice Equipment Standards

October/November 2005 11(5):
 Shedding Light on the Art and Science of Lighting

December 2005/January 2006 11(6):
 Is Your Kitchen Certifiable? A Case for the Sanity of Food Protection Manager Programs

February/March 2006 12(1):
 The 2005 Food Code: A Regulator's Reading and Perspective

April/May 2006 12(2):
 The Best of the Best: A Critical Look at Basic Inspection Tools

June/July 2006 12(3):
 Complaints and Crisis Management

August/September 2006 12(4):
 Green Housekeeping: Strategies and Sanitation Tools

October/November 2006 12(5):
 Infrared Thermometry

December 2006/January 2007 12(6):
 Food Security for the Small Retail Food Operation

February/March 2007 13(1):
 Regulatory Credentialing in Food Safety

April/May 2007 13(2):
 Ensuring Water Quality and Safety in Food Operations

June/July 2007 13(3):
 ATP Systems Help Put Clean to the Test

August/September 2007 13(4):
 Creating a Great Cutting Board and Wipe Rag Program

October/November 2007 13(5):
 Water Activity: A New Food Safety Tool

December 2007/January 2008 13(6):
 Egg Safety: Avoiding Shell Shock at Retail

February/March 2008 14(1):
 The Best of the Best: Portable Tools for the Food Sanitarian

April/May 2008 14(2):
 The Five W's of Food Safety Forensics

June/July 2008 14(3):
 "Allergy Consciousness" for the Retail Food Industry

August/September 2008 14(4):
 SSOPs for the Retail Food Industry

October/November 2008 14(5):
 Bioaerosols

December 2008/January 2009 14(6):
 Cross-connections' Contamination Woes

February/March 2009 15(1):

Integrated Cleaning and Measurement: A New Approach to Housekeeping and Sanitation

April/May 2009 15(2):

The "M" in ICM: Using ATP to Evaluate Sanitation

June/July 2009 15(3):

Taking a Closer Look at Inspections

August/September 2009 15(4):

Ethnic Foods and the Sanitarian

October/November 2009 15(5):

Sanitation in the Deli: Contamination-prone Equipment

December/January 2009 15(6):

What "Bugs" Sanitarians About IPM

April/May 2010 16(2):

Sampling, Part 1: The Basics

June/July 2010 16(3):

Sampling, Part 2: Sampling Strategies

August/September 2013 19(4):

The Sanitation of Ice Making Equipment

October/November 2014 20(5):

Chemical Free Cleaning Revisited

Organic Processing

Published by The Target Group, Inc.

October-December 2006 3(4). Toward Greener Housekeeping

American Jails: Sanitarian Files

Published by: American Jail Association

March/April 2004	Introduction and Jail Lighting
May/June 2004	Determining Out-of-Service Cells
July/August 2004	Controlling Firing Range Hazards
Sept./Oct. 2004	Dealing With Food Complaints and Grievances
Nov./Dec. 2004	Bunk Beds
Jan./Feb. 2005	Laundry Operations - Safety
March/April 2005	Laundry Operations – Infection Control
May/June 2005	Laundry Operations – Design, Equipment and Operations
July/August 2005	The Strange World of Jail Ventilation Standards
Sept./Oct. 2005	Light and Color: A Low-Tech, Inexpensive Enhancement to Security
Nov./Dec. 2005	Integrated Pest Management
Jan./Feb. 2006	Preventing Slip and Falls in the Correctional Kitchen
March/April 2006	Jailhouse Slips, Trips and Falls
May/June 2006	Barbering and Infection Control
July/August 2006	Keeping it Green: Purchasing Safe Housekeeping Products
Sept./Oct. 2006	Jailhouse Tattooing
Nov./Dec. 2006	Developing Emergency Evacuation Plans for Jail Health Care Facilities
Jan./Feb. 2007	Mops
March/April 2007	Keeping it Green: Purchasing Safe Housekeeping Products
May/June 2007	Sanitation and Inmate Medications
July/August 2007	Safe Jail Water Systems
Sept./Oct. 2007	Noise Control
Nov./Dec. 2007	Lessons Learned: A Rational Approach to Correctional Public Health

KaiScience: www.kaiscience.com 2007 – 2009

- A Rational Approach to Hard Surface Disinfectants
- Remove It and Prove It: Better Cleaning Through Scientific Validation
- ATP Systems Help Put Clean to the Test
- Learning from B.F. Skinner
- The Science and Technology of ATP
- Bioaerosols
- Integrated Cleaning and Measurement for Retail Food Operations

Executive Housekeeping Today

Published by the International Executive Housekeepers Association

March 2009: Integrated Cleaning and Measurement: A New Approach to Housekeeping and Sanitation

March 2012: Measuring Cleanliness

Gluten-Free Living

Number 1, 2010: A Clean Sweep for your GF Kitchen: Food Safety Expert's Tips for Controlling Cross-contamination

Rental Management

May 2013: Helping Customers Eliminate Bedbugs: Vacuums and Steamers can Help do the Job.

The Journal of Cleaning, Restoration & Inspection

August 2014: 1(4): Measuring Cleanliness

PUBLICATIONS: PEER REVIEWED

J. McMicking, Kummeler, R. and Powitz, R., 1990. Wayne State University programs in hazardous waste education. Proceedings of the Fourth Annual National Meeting, Academy of Certified Hazardous Materials Managers, Ann Arbor, Michigan.

R. Kummeler, Powitz, R. and Witt, C., 1990. USDHHS evaluation of hazardous waste training in the United States. Proceedings of the Fourth Annual National Meeting, Academy of Certified Hazardous Materials Managers, Ann Arbor, Michigan.

R. Powitz, R. Kummeler and Hughes, C., 1990. Hazardous waste professional credentialing. Proceedings of the Fourth Annual National Meeting, Academy of Certified Hazardous Materials Managers, Ann Arbor, Michigan.

C. Miller, Kummeler, R., Powitz, R. and McMicking, J., 1990. Education Program for hazardous waste management. ASCE Journal, April 1990.

R. Powitz, Kummeler, R. and McMicking, J., 1990. A graduate certificate program: Education and training for hazardous waste specialist. Journal of Environmental Health, 52: 230.

R. Kummeler, Powitz, R. and McMicking, J., 1990. The USDHHS study of hazardous waste education. Proceedings of the National Forum on Education and Continuing Development for the Civil Engineer, American Society of Civil Engineers, New York.

R. Kummeler, Powitz, R., Witt, C. and Stern, B., 1990. DHHS evaluation of the hazardous waste education and training in the United States. Proceedings of the HAZMAT '90 Conference, Rosemont, Illinois.

R. Kummeler, Powitz, R., Witt, C. and Stern, B., 1990. A comprehensive survey of graduate education and training in hazardous waste management. J. Air and Waste Management Assoc., (40): 32.

J. McMicking, Kummeler, R. and Powitz, R., 1989. Graduate programs for the 90's in hazardous waste management - Dealing with the shortage of professionals. Proceedings of the International Specialty Conference on Hazardous Waste Management in the 90's. Banff, Alberta, Canada.

Powitz, R.W. 1989. A cross-disciplinary approach to the control of microbial fouling in ultrapure water systems. Conference Transcripts: Eighth Annual Semiconductor Pure Water Conference. Santa Clara, California, 11 pages.

J. McMicking, Powitz, R. and Kummeler, R., 1987. Continuing education in hazard waste management: The graduate certificate. Proceedings of International Congress on Hazardous Materials Management. Pudvan Publishing Co. pp.596-604

Powitz, R.W. 1986. A comprehensive program for the management of hazardous wastes on a medical campus. Proceedings of the Second Annual Hazardous Materials Management Conference. West Tower Conference Management Co. Wheaton, IL. pp. 402-406.

Powitz, R.W. and Hunter, J. 1986. The development of Simple and Inexpensive devices to control microbial contamination in laboratory water systems. Proceedings of the Twenty-ninth Biological Safety Conference, Lexington, KY. (Abstracts only).

Powitz, R.W. and Hunter, J. 1985. Design and performance of single-lamp, high flow ultraviolet disinfectors. Ultrapure Water 2(1): 32-34.

Powitz, R.W. and Hunter, J. 1985. Design and performance of single lamp, high flow ultraviolet disinfectors. Conference Transcripts: Fourth Annual Semiconductor Purewater Conference. San Francisco, CA. pp. 37-46.

Powitz, R.W., Hunter, J. and Layton, L.E. 1984. Contamination in high purity laboratory water production systems. Proceedings of the XXVII Biological Safety Conference. Raleigh, NC. (Abstracts only).

Powitz, R.W. 1983. Managing hazardous wastes on campus: the evolution of a comprehensive program. Monograph No. 46, Thirtieth National Conference on Campus Safety. National Safety Council, Chicago, IL. 1983.

Powitz, R.W. 1982. An inexpensive needlestick prevention program. Proceedings of the XXV Biological Safety Conference. Boston, MA. pp. 105-107.
Poster Session: A safe needle disposal program., 25th Annual Biological Safety Conference. Boston, Massachusetts.

Krone, L.J., Powitz, R.W. and Worrell, L.F. 1978. Identification of the role performed by the sanitarian as a health professional: final report. National Environmental Health Association. Denver, CO.

Powitz, R.W., Hinden, M.N. and McComb, R.C. 1978. The safe use of tap water in bubble style humidifiers. Prepared for the Department of Respiratory Therapy, University of Minnesota, Minneapolis, MN.

Powitz, R.W., Vesley, D. and Greene, V.W. 1977. Some administrative and microbiological considerations in maintenance of the sterile integrity of prepackaged, disposable items for use in health care facilities: final report. Contract V101 (134) pA475, Veterans Administration, Washington, DC.

Powitz, R.W. 1976. Are microbiological air quality standards for hospitals realistic? Journal of Environmental Health, 39(3): 196-197.

Contributing author. 1976. Standards for Health Services in Correctional Institutions. American Public Health Association, Washington, DC.

Harold J. McElhinny*
Kevin M. Coles*
Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Facsimile: (415) 268-7522
Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
Email: EBalassone@mofo.com

Attorneys for Plaintiffs

* *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

Additional counsel listed on next page

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jane Doe #1; Jane Doe #2; Norlan
FLORES, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
Commissioner, United States Customs &
Border Protection, in his official
capacity; Michael J. Fisher, Chief of the
United States Border Patrol, in his
official capacity; Jeffrey Self,
Commander, Arizona Joint Field
Command, in his official capacity;
Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

Defendants.

Case No. 4:15-cv-00250-TUC-DCB

**DECLARATION OF JOE
GOLDENSON, M.D. IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)
** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 I, JOE GOLDENSON, M.D., submit the following declaration on behalf of Plaintiffs in
2 support of their Motion for Preliminary Injunction:

3 **I. BACKGROUND**

4 1. I am a medical physician with 28 years of experience as the
5 Director/Medical Director for Jail Health Services for the San Francisco Department of
6 Public Health. In that role, I provided direct clinical services and managed the
7 correctional health enterprise, including the budget, human resources and medical, mental
8 health, dental and pharmacy services.

9 2. I am currently a member of the Board of Directors of the National
10 Commission on Correctional Health Care and past President of the California chapter of
11 the American Correctional Health Services Association.

12 3. I have worked extensively as a correctional health medical expert and court
13 monitor. I am currently one of the medical experts retained by the federal district court
14 *Plata v. Brown*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to
15 inmate patients in the California Department of Correctional Rehabilitation. I have been a
16 medical expert/monitor for Cook County Jail in Chicago, as well as in jails in
17 Washington, Texas, and Florida, and in State Departments of Corrections in Illinois, Ohio,
18 and Wisconsin.

19 4. A true and correct copy of my current resume is attached as Attachment A
20 to this report.

21 5. I have been retained to consult with Plaintiffs' counsel, review documents
22 and other information, prepare declarations, and be available to testify regarding my
23 opinions on behalf of Plaintiffs in connection with litigation brought against Defendants.

24 6. I have been asked to render opinions concerning the medical screening and
25 medical care of detainees in U.S. Customs and Border Protection facilities within the
26 Tucson Sector of the U.S. Border Patrol, and related matters as discussed in this
27 declaration.
28

II. MATERIALS CONSIDERED

7. In forming my opinions, I reviewed documents produced by Defendants in this case, including documents related to medical screening and medical care of detainees in U.S. Customs and Border Protection facilities within the Tucson Sector of the U.S. Border Patrol.

8. I also reviewed the declarations of individuals who were formerly detained in U.S. Customs and Border Protection facilities within the Tucson Sector of the U.S. Border Patrol submitted in support of Plaintiffs' Motion for Class Certification.

9. I am informed that sanitarian Robert Powitz and corrections expert Eldon Vail personally inspected all four of the Border Patrol Stations made available to Plaintiffs for inspection—Tucson, Casa Grande, Douglas and Nogales—on September 8 through September 11, 2015. I have read the declarations of Robert Powitz and Eldon Vail submitted in support of Plaintiffs' Motion for Preliminary Injunction. Specifically, Mr. Vail reports that he was told by Defendants' personnel, during these inspections, that no medical screening is conducted at any of these facilities. (Decl. of Eldon Vail ("Vail Decl.") In Support of Motion for Preliminary Injunction ¶ 138.)

10. I also reviewed the declaration of Joseph Gaston, data analyst at Morrison & Foerster LLP, regarding "e3DM" spreadsheet data produced by Defendants, which purportedly reflects Defendants' logging system that tracks certain data points for detainees confined in a U.S. Customs and Border Protection facility within the Tucson Sector of the U.S. Border Patrol. (Decl. of Joseph Gaston in Support of Motion for Preliminary Injunction.) Specifically, I reviewed the analysis related to any indications of medical treatment of detainees held in a facility within the Tucson Sector. (*Id.* ¶¶ 54-55.)

III. MEDICAL SCREENING STANDARDS IN DETENTION SETTINGS

11. The National Commission on Correctional Health Care ("NCCHC") is an organization that sets widely recognized standards for health services in correctional facilities. Informed by health, legal, and corrections professions, NCCHC establishes Standards for the management of a correctional health services system. Written in

1 separate volumes for prisons, jails and juvenile confinement facilities, plus a manual for
2 mental health services and another for opioid treatment programs, the Standards cover the
3 areas of care and treatment, health records, administration, personnel and medical-legal
4 issues. Since the 1970s, NCCHC offers an accreditation program based on its Standards,
5 to determine whether correctional institutions meet the standards in provision of health
6 services.

7 12. Among its other Standards, NCCHC has established a Receiving Screening
8 Standard to take place for all detainees as soon as they are admitted into a facility, by
9 qualified health care professionals or health-trained correctional officers. (Ex. 202.)¹

10 13. Consistent with this Standard, medical intake in a detention setting consists
11 of two components: (1) immediate medical triage to determine if there are any issues that
12 would preclude acceptance into the facility and (2) a more thorough medical and mental
13 health screening. In many facilities, this is a two-step process with medical triage
14 performed upon entry into the facility, and the more thorough screening soon after the
15 person has been accepted into the facility.

16 14. This screening includes both a face-to-face interview using a structured
17 questionnaire and, whenever possible, a review of the individual's prior medical record.
18 The questionnaire enquires into an individual's current problems and medications; past
19 history, including hospitalizations; mental health history, including current or past suicidal
20 ideation; symptoms of chronic illness; medication and/or food allergies; and dental
21 problems. For female detainees, it is important to obtain a history of current and past
22 pregnancy, as well as the date of last menstrual period.

23 15. Whenever possible, intake screening is performed by qualified health
24 professionals. In smaller detention settings, where health care staff is not present at all
25 times, specially trained custodial staff conducts the intake screening.

27 ¹ All exhibits referenced in this declaration are to the Appendix of Exhibits In Support of
28 Plaintiffs' Motion for Preliminary Injunction.

1 16. Training given to correctional officers who conduct the receiving screening
2 is a crucial aspect of the process. At a minimum, they should receive periodic training on
3 taking a medical history, making necessary observations, documentation of findings,
4 appropriate actions to take for common medical and mental health issues, and medical
5 confidentiality. There must also be a procedure for officers to obtain guidance and
6 direction from a health care professional for problems beyond the scope of their training
7 and experience.

8 17. Finally, information obtained as part of the screening process should be kept
9 as accessible records so that a detention facility has information regarding the medical
10 status of individuals in its custody, and can provide that information to health care
11 professionals as needed.

12 **IV. FAILURE TO SCREEN AT TUCSON SECTOR CBP FACILITIES**

13 18. U.S. Customs and Border Protection has adopted limited policies related to
14 medical screening. For example, Section 4.3 of the “U.S. Customs and Border Protection
15 National Standards on Transport, Escort, Detention, and Search” states that “[u]pon a
16 detainee’s entry into any CBP hold room, officers/agents must ask detainees about, and
17 visually inspect for any sign of injury, illness, or physical or mental health concerns and
18 question the detainee about any prescription medications.” (Ex. 95 at USA000631.) It
19 also states that “Observed or reported injuries or illnesses should be communicated to a
20 supervisor, documented in the appropriate electronic system(s) of record, and appropriate
21 medical care should be provided or sought in a timely manner.” (*Id.*)

22 19. According to the statements from Defendants’ personnel during the
23 inspections performed by Plaintiffs and their experts, as well as the declarations of former
24 detainees submitted in this case, however, medical screening is not performed at these
25 facilities in the Tucson sector.

26 20. As explained above, Mr. Vail reports that he was told by Defendants’
27 personnel that no medical screening is conducted at any of these facilities. (Vail Decl. ¶
28 138.)

21. The declarations of former detainees are consistent with this representation that there is no medical intake screening performed at these facilities. For example, Odilla Velasquez Vasquez was detained by Border Patrol and transported to the Douglas Border Patrol Station and held in a cell for 18 hours. (ECF No. 2-2, Ex. 19 ¶ 7.) Ms. Vasquez declared that when she arrived with her daughter to the facility “we were never asked about our health nor given a formal medical exam.” (*Id.* ¶ 19.) And when she asked officials at the facility for help and explained that her daughter had an ear infection, they said “there is no medicine here.” (*Id.*)

22. Valdemar Perez Perez and his son were also held at the Douglas Station, for 16 hours, before being transferred to the Tucson Border Patrol Station and detained in that station in a cell for 20 hours. (ECF No. 2-2, Ex. 21 ¶¶ 7, 18.) Neither Mr. Perez nor his son was given a formal medical exam or asked about his medical health. (*Id.* ¶ 24.)

23. The declarations of numerous other former detainees confirm that these facilities do not have appropriate medical screening as part of the intake process. (*E.g.*, ECF No. 2-2, Ex. 30 ¶ 20 (no medical screening despite both her and her 2 year old son having bad coughs); *id.*, Ex. 29 ¶¶ 19, 24 (no medical screening despite 1.5 year old daughter having stomach pain); *id.*, Ex. 28 ¶ 30 (no medical screening despite her two children feeling sick); ECF No. 2-3, Ex. 42 ¶ 9 (no medical screening and, after disclosing she was pregnant, agents insulted her, poked her stomach, and contended she was not pregnant); ECF No. 2-1, Ex. 16 ¶ 16 (was not asked about her health despite being five months pregnant); ECF No. 2-2, Ex. 23 ¶ 7 (no medical screening upon entry to facility); ECF No. 2-3, Ex. 36 ¶ 25 (same).)

V. FAILURE TO SCREEN PUTS DETAINEES AT MEDICAL RISK

24. Medical screening during the intake process at a detention facility is one of the most essential components of the health care program in a detention setting. Correctional officers who conduct such screening are the gatekeepers—this process ensures the safety of both detainees and staff. All individuals entering a detention facility, whether newly apprehended or transferring from another facility, must be screened so that

1 correctional staff are aware of the medical and mental health of each individual entering
2 detention and are able to respond appropriately, including enlisting assistance of medical
3 professionals whenever this is necessary.

4 25. Any screening conducted in the field prior to an individual's arrival at a
5 detention facility is not an adequate replacement for this intake screening process for a
6 variety of reasons. First, it is unclear whether agents in the field receive sufficient
7 medical training to make determinations regarding the medical and mental health
8 conditions of apprehended individuals. Second, nothing in Defendants' production
9 suggests that field screening is standardized by any protocol or procedure.

10 26. Moreover, a significant period of time lapses between the time of
11 apprehension and the time of admission into a detention facility—which provides an
12 opportunity for the conditions of a detainee to change.

13 27. Lastly, it does not appear that any such screening is documented, or that
14 written documentation is transferred to the detention facility. Without the appropriate
15 recordkeeping, any such screening is useless to understand the medical conditions of each
16 detainee and the medical risks for the facility once that individual is admitted.

17 28. Intake screening is so critical because it allows staff to determine whether
18 newly arriving detainees have any urgent or emergent health care needs; are suffering
19 from a potentially communicable disease requiring isolation and enhanced disinfection
20 processes following their transfer or release; are receiving medications that must be
21 continued; or have medical or mental health conditions that require referral for follow-up.

22 29. Failure to perform medical screening at intake puts detainees at medical risk
23 across all of these areas. Individuals with urgent or emergent health care needs often
24 require care that cannot be adequately provided in a detention facility or by correctional
25 officers without medical training and certification. If individuals are not screened at
26 intake, those with urgent or emergent medical problems may not be promptly identified
27 and sent to an outside medical facility or emergency room for care and clearance.
28

30. Failure to adequately screen detainees also puts these individuals—and staff at the facility—at additional medical risk of infectious disease. The spread of infectious diseases is a substantial health and public health concern in a detention setting. Documents from the Tucson Coordination Center show that highly contagious skin diseases, like scabies, are an issue for facilities in the Tucson sector. (Ex. 84 at USA00167 (“We must be prepared for the onslaught of Scabies, Chiggers and other bites and bumps.”).) Given the proximity of physical space in which individuals are detained, unidentified infectious diseases can create an emergency health care issue that a detention facility is not equipped to address. Moreover, if unrecognized and untreated prior to release, these individuals pose a serious public health threat when they are released.

VI. DETAINEES IN TUCSON SECTOR CBP FACILITIES HAVE HIGHER MEDICAL RISK

31. The risk associated with CBP’s failure to perform adequate medical screening is escalated by the condition of detainees arriving in the Tucson Sector facilities. The journey for individuals attempting to cross the Tucson border is often one of extreme physical hardship—extended physical exertion from walking, lack of sufficient water and food, and no access to medications and other medical supplies.

32. For example, former detainee Maria Lorena Lopez Lopez describes in her declaration that the group she was with “had been abandoned in the desert for approximately one week without enough food or water, so I was relieved when Border Patrol found us.” (ECF No. 2-2, Ex. 23 ¶ 5; *see also, e.g., id.*, Ex. 29 ¶¶ 3, 16, 19 (mother and 1.5 year old daughter had not eaten in four days before they were detained); ECF No. 2-3 ¶¶ 3, 12 (mother and two year old daughter had been walking for 15 hours in the desert, were cold, hungry, tired, and suffering from headache and earache pain before they were detained); *id.*, Ex. 35 ¶ 13 (mother and three year old daughter had not eaten for a day before they were detained); ECF No. 2-1, Ex. 16 ¶ 3 (mother with 10 year old daughter and 8 year old son had not eaten for a day before they were detained).)

1 33. The former detainee declarations describe how these conditions can
2 continue throughout an individual's detention in a Tucson Sector facility, including being
3 held in detention for 12 or more hours without provision of adequate food and water. For
4 example, Anselma Angela Ambrosio Diaz and her 7 year old son were detained at the
5 detention facility in Douglas for one night and then transferred to the Tucson facility.
6 (ECF No. 2-1, Ex. 5 ¶¶ 3, 14, 16.) They were detained for almost 24 hours but did not
7 receive any food or drinking water, only two small juice boxes each. (*Id.* ¶¶ 13, 17.)

8 34. Jesus Alfredo Mesa Barbosa was held in a cell for 16 hours at the Nogales
9 facility. (ECF No. 2-3, Ex. 43 ¶¶ 4, 22.) He was not given any food or drinking water
10 during that time. (*Id.* ¶¶ 18-19.) He was then transferred to the Tucson facility where he
11 was detained for three days. (*Id.* ¶ 22.) For the next two days, he continued to be held
12 without food and water (*id.* ¶ 28, 32), which he finally received on his final day at the
13 Tucson facility (*id.* ¶ 38, 39).

14 35. The former detainee declarations also evidence the unhygienic and
15 unsanitary conditions of the holding cells or detention rooms in Tucson Sector facilities.
16 (*See, e.g.*, ECF No. 2-1, Ex. 5 ¶¶ 10, 12, 15 (no soap or way to wash hands at either
17 Tucson or Douglas facility, while 6 year old boy also in cell at Douglas became sick
18 during the night and was vomiting); *id.*, Ex. 9 ¶ 28 (used toilet paper scattered on ground
19 in cell, no waste container); *id.*, Ex. 8 ¶ 11 (diapers and toilet paper strewn around toilet in
20 cell, no waste container).)

21 36. The lack of sufficient hydration and nutrition both prior to and during
22 detention in a Tucson Sector facility, coupled with the hygiene and sanitation issues in
23 each of these facilities, puts detainees at higher medical risk.

24 37. Severe dehydration is a medical emergency and requires immediate medical
25 attention. Prolonged lack of water can result in severe dehydration. Potential
26 complications of dehydration are heat stroke, seizures, shock, kidney failure, coma, and
27 death.
28

1 38. Inadequate hygiene can cause outbreaks of serious medical illnesses such as
2 food poisoning, amebic dysentery, hepatitis, and skin infections, such as life-threatening
3 staphylococcal infections.

4 39. Under these circumstances, medical screening to identify and address urgent
5 or emergent medical issues is even more critical.

6 **VII. ACCESS TO MEDICAL CARE AT TUCSON SECTOR CBP FACILITIES**

7 40. In addition to its provisions regarding medical screening, Section 4.3 of the
8 “U.S. Customs and Border Protection National Standards on Transport, Escort, Detention,
9 and Search” states that “[o]bserved or reported injuries or illnesses should be
10 communicated to a supervisor, documented in the appropriate electronic system(s) of
11 record, and appropriate medical care should be provided or sought in a timely manner.”
12 (Ex. 95 at USA000631.)

13 41. The documents produced by Defendants also suggest that facilities in the
14 Tucson Sector rely upon emergency rooms and ambulance staff for medical care of
15 detainees, as there are usually not health care professionals on staff at these detention
16 facilities. (Ex. 84 at USA000164 (“Any subject that requests medical attention, or visible
17 [sic] appears to need medical attention should be evaluated by an EMT. If there is not an
18 EMT on duty then the subject should be taken to University Medical Center – South
19 Campus for treatment.”).)

20 **VIII. FAILURE TO PROVIDE ACCESS TO MEDICAL CARE AT TUCSON** 21 **SECTOR CBP FACILITIES**

22 42. According to the declaration of data analyst Joseph Gaston, the e3DM data
23 shows that between June 10, 2015 to September 28, 2015, there were approximately 527
24 incidents of medical treatment reportedly provided to a detainee, out of 17,006
25 “deportable aliens” detained at U.S. Customs and Border Protection facilities within the
26 Tucson Sector of the U.S. Border Patrol. (Decl. of Joseph Gaston in Support of Motion
27 for Preliminary Injunction ¶ 54.)
28

1 43. But numerous declarations of former detainees in different facilities indicate
2 a practice that is contrary to the U.S. Customs and Border Protection National Standards
3 regarding the provision of medical care: officers ignore medical issues raised by
4 detainees, as well as their explicit requests for medical attention.

5 44. For example, Maria Lorena Lopez Lopez declares that upon her arrival at
6 the Naco Border Patrol station: “I did not receive a medical evaluation, even though I was
7 experiencing heavy, sustained vaginal bleeding.” (ECF No. 2-2, Ex. 23 ¶ 7.) “I asked for
8 medical attention but the agents said was just my period and gave me some tampons. I
9 was very worried about my health but I did not receive a medical examination until after I
10 was transferred to ICE custody, approximately five days later.” (*Id.*)

11 45. Luis Carlos Valladares Martinez was detained in Agua Prieta and
12 transported to the Douglas Border Patrol station, where he was kept in a cell for
13 approximately two days and two nights, then transferred to the Tucson station and kept in
14 a cell for another eight hours. (ECF No. 2-3, Ex. 40 ¶¶ 3-4, 8.) He explains: “I would
15 have liked medical treatment for a large, deep gash I got on my chest when trying to cross
16 the border. But when I showed it to an agent he said it was nothing. I didn’t bring it up
17 again because they don’t listen, they get mad just by us talking.” (*Id.* ¶ 15.)

18 46. Several other former detainees described various injuries and medical
19 conditions for which they requested medical attention but were denied. (*E.g.*, ECF No. 2-
20 3, Ex. 39 ¶ 4 (asked to see a doctor for head pain and sickness, agents said they would
21 call, but no one ever came); ECF No. 2-2, Ex. 19 ¶ 19 (seven year old daughter developed
22 ear infection while in detention, told officials and asked for help but they said “there is no
23 medicine here”); *id.*, Ex. 30 ¶¶ 20, 21 (she and her 2 year old son did not receive medical
24 treatment for severe coughs, and also observed agent tell other detainee reporting illness
25 that he would have to “put up with the sickness because there was no way to get medical
26 attention); ECF No. 2-3, Ex. 35 ¶ 30 (told agent that her head and stomach hurt but agent
27 did not offer medical care, and also observed agent telling woman crying from stomach
28 paid that “it was just because of the hunger or cold and was unimportant and she did not

need medical attention”); ECF No. 2-1, Ex. 7 ¶ 17 (another man in cell was suffering from allergy attack, requested help but agents did nothing); *id.*, Ex. 9 ¶ 13 (told guard she had a headache and fever, guard said “I am not a doctor” and that even if he had pills, he would not give them to her); *see also id.*, Ex. 5 ¶ 10 (in cell with 6 yr old boy who was vomiting, with no way to get agents’ attention for help); *id.*, Ex. 11 ¶ 20 (hurt shoulder while walking for 10 days before detention, had no opportunity to access medical care).)

IX. PRESCRIPTION CONTINUATION AND ACCESS TO MEDICATION AT TUCSON SECTOR CBP FACILITIES

47. It is standard in detention facilities similar those within the Tucson Sector of the U.S. Border Patrol to have in place a policy maximizing a detainee’s ability to continue prescribed medication.

48. For detainees who arrive at Tucson Sector facilities with prescribed medication, Section 4.10 of the “U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search” states that a non “U.S.-prescribed” medication must either be “validated by a medical professional” before it can be self-administered by a detainee, or otherwise that detainee “should be taken in a timely manner to a medical practitioner to obtain an equivalent U.S. prescription.” (Ex. 95 at USA000634.)

X. FAILURE TO PROVIDE PRESCRIPTION CONTINUATION AND ACCESS TO MEDICATION AT TUCSON SECTOR CBP FACILITIES

49. Like the policies related to medical care, the declarations of former detainees show that, in practice, officers deny detainee requests for medication, even prescription medication, rather than follow the policies and procedures related to medication in the U.S. Customs and Border Protection National Standards.

50. For example, Fernando Munguilla Erasno was detained at the Douglas facility for 24 hours, then transferred to the Sonoita facility for another 24 hours. (ECF No. 2-1, Ex. 6 ¶¶ 8, 18.) Mr. Erasno had a prescription for a heart condition, which causes him to have heart pain and numbness in his left arm. (*Id.* ¶ 15.) While he did not

1 have this prescription with him when he was detained, he told agents about his heart
 2 condition. (*Id.*) The agents told him that they could not prescribe anything for him. (*Id.*)
 3 He also told the guards about his heart condition at the Sonoita facility, but again the
 4 guards said they could not give him anything and that a doctor had to see him first. (*Id.*)

5 51. Maria de Jesus Lopez Magdaleno was detained in a cell at the Nogales
 6 facility overnight for 12 hours. (*Id.*, Ex. 9 ¶¶ 5-6.) She states: “I was taking medication
 7 for an ovarian cyst that I had been diagnosed with. The guards did not let me take the
 8 medication. . . . I was supposed to take the medicine for five days but I had only taken two
 9 or three days of the medicine when I was detained and they didn’t let me take any more.”
 10 (*Id.* ¶ 14; *see also* ECF No. 2-3, Ex. 35 ¶ 14 (carrying medication for severe migraines and
 11 stomach pain which was taken away).)

12 52. Beyond medication that a detainee has been prescribed or is carrying when
 13 they are detained, the declarations also show that agents refuse requests for medication
 14 based on sickness or pain experienced by individuals while in detention. (*See, e.g.*, ECF
 15 No. 2-2, Ex. 25 ¶ 17 (woman detained with her asked for medicine for fever but said they
 16 could not give her anything because they were not doctors); ECF No. 2-3, Ex. 36 ¶ 25
 17 (she and her 9 and 15 yr old daughters asked for medication for headache pain, agents told
 18 them that they did not give out medication).)

19 **XI. FAILURE TO PROVIDE ACCESS TO MEDICAL CARE PUTS** 20 **DETAINEES AT MEDICAL RISK**

21 53. Failure to provide access to medical care and medications, including
 22 prescribed medication, imposes obvious but serious medical risks on detainees. Denying
 23 or delaying access to medical care for a detainee could exacerbate his or her medical
 24 condition and, depending on the condition, could be life threatening.

25 54. Withholding prescribed medication—or access to obtaining that medication
 26 through a new prescriber—is particularly serious for those whose medications must be
 27 continued in order to avoid urgent health care problems.
 28

XII. CONCLUSIONS

55. Based on my review of documents, former detainee declarations, and my understanding from representations by Defendants' personnel during the inspection of the four Border Patrol Stations, it is my opinion that the failure to perform adequate medical screening of detainees and provide adequate access to medical care in U.S. Customs and Border Protection facilities within the Tucson Sector of the U.S. Border Patrol results in serious risk of present or future harm to detainees and staff in these facilities.

Executed this 4th day of December, 2015.



JOE GOLDENSON, M.D.

Attachment A

CURRICULUM VITAE

**JOE GOLDENSON, MD
1406 CYPRESS STREET
BERKELEY, CA 94703
(510) 524-3102
jgoldenson@gmail.com**

EDUCATION

Post Graduate Training

February 1992	University of California, San Francisco, CPAT/APEX Mini-Residency in HIV Care
1979-1980	Robert Wood Johnson Fellowship in Family Practice
1976-1979	University of California, San Francisco Residency in Family Practice

Medical School

1973-1975	Mt. Sinai School of Medicine, New York M.D. Degree
1971-1973	University of Michigan, Ann Arbor

Undergraduate Education

1967-1971	University of Michigan, Ann Arbor B.A. in Psychology
-----------	---

PROFESSIONAL EXPERIENCE

Practice Experience

1993-2015	Director/Medical Director Jail Health Services San Francisco Department of Public Health
1991-1993	Medical Director Jail Health Services San Francisco Department of Public Health
1990-1991	Chief of Medical Services, Hall of Justice Jail Health Services San Francisco Department of Public Health
1987-1990	Staff Physician Jail Health Services San Francisco Department of Public Health
1980-1987	Sabbatical
1975-1976	Staff Physician United Farm Workers Health Center, Salinas, CA

Consulting

6/14-9/14	Medical expert for the Illinois Department of Corrections and the ACLU of Illinois
6/10-12/13	Federal Court appointed Medical Monitor, U.S. v. Cook County, et al., 10 C 2946, re: medical care in the Cook County Jail
6/08-6/12	Member, <i>Plata v. Schwarzenegger</i> Advisory Board to the Honorable Thelton E. Henderson, U.S. District Court Judge
5/08-9/09	Medical Expert for ACLU re Maricopa County Jail, Phoenix, AZ
1/08	Member of the National Commission on Correctional Health Care's Technical Assistance Review Team for the Miami Dade Department of Corrections
9/07-1/10	Federal Court appointed Medical Expert, <i>Herrera v. Pierce County, et al.</i> , re: medical care at the Pierce County Jail, Tacoma, WA
8/06-8/12	State Court Appointed Medical Expert, <i>Farrell v. Allen</i> , Superior Court of California Consent Decree re medical care in the California Department of Juvenile Justice
6/05	Member of Technical Assistance Review Team for the Dallas County Jail
11/02-4/03	Medical Expert for ACLU re Jefferson County Jail, Port Townsend, Washington
4/02-8/06	Federal Court Medical Expert, <i>Austin, et. al vs Wilkinson, et al</i> , Class Action Law Suit re: Prisoner medical care at the Ohio State Penitentiary Supermax Facility
4/02-Present	Federal Court Medical Expert, <i>Plata v. Schwarzenegger</i> , Class Action Law Suit re: Prisoner medical care in California State Prison System
1/02-3/02	Consultant to the Francis J. Curry, National Tuberculosis Center re: <i>Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)</i> ,
8/01-4/02	Medical Expert for ACLU re Wisconsin Supermax Correctional Facility, Boscobel, WI
7/01-4/02	Medical Expert for Ohio Attorney General's Office re Ohio State Prison, Youngstown, OH
1/96-1/14	Member and Surveyor, California Medical Association Corrections and Detentions Health Care Committee
5/95-6/08	Medical Expert for the Office of the Special Master, <i>Madrid vs Alameida</i> , Federal Class Action Law Suit re: Prisoner medical care at the Pelican Bay State Prison Supermax Facility
3/98-12/98	Member, Los Angeles County Department of Public Health Jail Health Services Task Force
2/98	Medical Expert, Department Of Justice Investigation of Clark County Detention Center, Las Vegas, Nevada
6/94	Surveyor, National Commission on Correctional Health Care,

INS Detention Center, El Centro, CA

Work Related Committees

1/14 to present	Member, Editorial Advisory Board, <i>Correctional Health Care Report</i>
10/11 to present	Member, Board of Directors of the National Commission on Correctional Health Care
5/07-10/12	Liaison to the CDC Advisory Council for the Elimination of Tuberculosis (ACET) from the National Commission on Correctional Health Care
12/04-3/06	Member of the CDC Advisory Council for the Elimination of Tuberculosis (ACET) Ad Hoc Working Group on the <i>Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC</i> (MMWR 2006; 55(No. RR-9))
6/03-8/03	Member of the Advisory Panel for the Francis J. Curry National Tuberculosis Center and National Commission on Correctional Health Care, 2003: <i>Corrections Tuberculosis Training and Education Resource Guide</i>
3/02-1/03	Member of the Advisory Committee to Develop the <i>Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)</i> , Francis J. Curry, National Tuberculosis Center
6/01-Present	Director's Cabinet San Francisco Department of Public Health
3/01	Consultant to Centers for Disease Control on the Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings (MMWR 2003; 52(No. RR-1))
9/97-6/02	Member, Executive Committee of Medical Practice Group, San Francisco Department of Public Health
3/97-3/02	American Correctional Health Services Association Liaison with American Public Health Association
3/96-6/12	Chairperson, Bay Area Corrections Committee (on tuberculosis)
2/00-12/00	Medical Providers' Subcommittee of the Office-based Opiate Treatment Program, San Francisco Department of public Health
12/98-12/00	Associate Chairperson, Corrections Sub-Committee, California Tuberculosis Elimination Advisory Committee
7/94-7/96	Advisory Committee for the Control And Elimination of Tuberculosis, San Francisco Department of Public Health
6/93-6/95	Managed Care Clinical Implementation Committee, San Francisco Department of Public Health
2/92-2/96	Tuberculosis Control Task Force, San Francisco Department of Public Health
3/90-7/97	San Francisco General Hospital Blood Borne Pathogen Committee
1/93-7/93	Medical Staff Bylaws Committee, San Francisco Department of Public Health

ACADEMIC APPOINTMENT

1980-2015 Assistant Clinical Professor
University of California, San Francisco

PROFESSIONAL AFFILIATIONS

Society of Correctional Physicians, Member of President's Council, Past-Treasurer and Secretary
American Correctional Health Services Association, Past-President of California Chapter
American Public Health Association, Jails and Prison's Subcommittee
Academy of Correctional Health Professionals

PROFESSIONAL PRESENTATIONS

Caring for the Inmate Health Population: A Public Health Imperative, Correctional Health Care Leadership Institutes, July 2015
Correctional Medicine and Community Health, Society of Correctional Physicians Annual Meeting, October, 2014
Identifying Pulmonary TB in Jails: A Roundtable Discussion, National Commission on Correctional Health Care Annual Conference, October 31, 2006
A Community Health Approach to Correctional Health Care, Society of Correctional Physicians, October 29, 2006
Prisoners the Unwanted and Underserved Population, Why Public Health Should Be in Jail, San Francisco General Hospital Medical Center, Medical Grand Rounds, 10/12/04
TB in Jail: A Contact Investigation Course, Legal and Administrative Responsibilities, Francis J. Curry National Tuberculosis Center, 10/7/04
Public Health and Correctional Medicine, American Public Health Association Annual Conference, 11/19/2003
Hepatitis in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 1/17/02
Correctional Medicine, San Francisco General Hospital Medical Center, Medical Grand Rounds, 12/16/02
SuperMax Prisons, American Public Health Association Annual Conference, 11/8/01
Chronic Care Programs in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 9/19/02
Tuberculosis in Corrections - Continuity of Care, California Tuberculosis Controllers Association Spring Conference, 5/12/98
HIV Care Incarcerated in Incarcerated Populations, UCSF Clinical Care of the AIDS Patient Conference, 12/5/97
Tuberculosis in Correctional Facilities, Pennsylvania AIDS Education and Training Center, 3/25/93
Tuberculosis Control in Jails, AIDS and Prison Conference, 10/15/93
The Interface of Public Health and Correctional Health Care, American Public Health Association Annual Meeting, 10/26/93

HIV Education for Correctional Health Care Workers, American Public Health Association Annual Meeting, 10/26/93

PUBLICATIONS

Structure and Administration of a Jail Medical Program – Part II. Correctional Health Care Report. Volume 16, No. 2, January-February 2015.

Structure and Administration of a Jail Medical Program – Part I. Correctional Health Care Report. Volume 16, No. 1, November-December 2014.

Pain Behind Bars: The Epidemiology of Pain in Older Jail Inmates in a County Jail. Journal of Palliative Medicine. 09/2014; DOI: 10.1089/jpm.2014.0160

Older jail inmates and community acute care use. Am J Public Health. 2014 Sep; 104(9):1728-33.

Correctional Health Care Must be Recognized as an Integral Part of the Public Health Sector, Sexually Transmitted Diseases, February Supplement 2009, Vol. 36, No. 2, p.S3-S4

Use of sentinel surveillance and geographic information systems to monitor trends in HIV prevalence, incidence, and related risk behavior among women undergoing syphilis screening in a jail setting. Journal of Urban Health 10/2008; 86(1):79-92.

Discharge Planning and Continuity of Health Care: Findings From the San Francisco County Jail, American Journal of Public Health, 98:2182-2184, 2008

Public Health Behind Bars, Deputy Editor, Springer, 2007

Diabetes Care in the San Francisco County Jail, American Journal of Public Health, 96:1571-73, 2006

Clinical Practice in Correctional Medicine, 2nd Edition, Associate Editor, Mosby, 2006.

Tuberculosis in the Correctional Facility, Mark Lobato, MD and Joe Goldenson, MD, *Clinical Practice in Correctional Medicine*, 2nd Edition, Mosby, 2006.

Incidence of TB in inmates with latent TB infection: 5-year follow-up. American Journal of Preventive Medicine. 11/2005; 29(4):295-301.

Cancer Screening Among Jail Inmates: Frequency, Knowledge, and Willingness Am J Public Health. 2005 October; 95(10): 1781-1787

Improving tuberculosis therapy completion after jail: translation of research to practice. Health Education Research. 05/2005; 20(2):163-74.

Incidence of TB in Inmates with Latent TB Infection, 5-Year Follow-up, American Journal of Preventive Medicine, 29(4), 2005

Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings, Morbidity and Mortality Reports, (External Consultant to Centers for Disease Control), Vol. 52/No. RR-1 January 24, 2003

Randomized Controlled Trial of Interventions to Improve Follow-up for Latent Tuberculosis Infection After Release from Jail, Archives of Internal Medicine, 162:1044-1050, 2002

Jail Inmates and HIV care: provision of antiretroviral therapy and Pneumocystis carinii pneumonia prophylaxis, International Journal of STD & AIDS; 12: 380-385, 2001

Tuberculosis Prevalence in an urban jail: 1994 and 1998, International Journal of

Tuberculosis Lung Disease, 5(5):400-404, 2001

Screening for Tuberculosis in Jail and Clinic Follow-up after Release, American Journal of Public Health, 88(2):223-226, 1998

A Clinical Trial of a Financial Incentive to Go to the Tuberculosis Clinic for Isoniazid after Release from Jail, International Journal of Tuberculosis Lung Disease, 2(6):506-512, 1998

AWARDS

Armond Start Award of Excellence, Society of Correctional Physicians, 2014

Award of Honor, San Francisco Board of Supervisors, 2014

Award of Honor, San Francisco Health Commission, 2014

Certificate of Appreciation, San Francisco Public Defender's Office, 2014

Certificate for Excellence in Teaching, California Department of Health Services, 2002

Employee Recognition Award, San Francisco Health Commission, July 2000

Public Managerial Excellence Award, Certificate of Merit, San Francisco, 1997

LICENSURE AND CERTIFICATION

Medical Board of California, Certificate #A32488

Fellow, Society of Correctional Physicians

Board Certified in Family Practice, 1979-1986 (Currently Board Eligible)

1 Harold J. McElhinny*
Kevin M. Coles*
2 Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
3 425 Market Street
San Francisco, CA 94105
4 Telephone: (415) 268-7000
Facsimile: (415) 268-7522
5 Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
6 Email: EBalassone@mofo.com

7 Attorneys for Plaintiffs

8 * *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

9 Additional counsel listed on next page

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA
13

14 Jane Doe #1; Jane Doe #2; Norlan Flores,
on behalf of themselves and all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
19 Commissioner, United States Customs &
Border Protection, in his official capacity;
20 Michael J. Fisher, Chief of the United States
Border Patrol, in his official capacity;
21 Jeffrey Self, Commander, Arizona Joint
Field Command, in his official capacity;
22 Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

23 Defendants.
24

Case No. 4:15-cv-00250-TUC-DCB

**DECLARATION OF JOSEPH
GASTON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)
** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 I, JOSEPH GASTON, hereby declare:

2 1. I am an eDiscovery Analyst at the law firm of Morrison & Foerster LLP and
3 counsel of record for Plaintiffs in this litigation. I have personal knowledge of the facts
4 stated herein and, if called as a witness, could and would competently testify thereto.

5 2. I have been employed at Morrison & Foerster LLP since October 2012. In
6 my role, I regularly perform data analysis on projects within the Litigation Department.
7 Prior to my position at Morrison & Foerster LLP, I was a data analyst at SFL Data (now
8 Discovia) and the law firm of Coblenz, Patch, Duffy, & Bass LLP.

9 **I. INTRODUCTION**

10 3. I was asked by Plaintiffs' counsel to analyze data produced by Defendants
11 in a native Excel spreadsheet, Bates stamped as USA000653, titled "USBP e3 Detention
12 Module Fields for Apprehensions Booked Into TCA Facilities, Booked in 6/10/15 -
13 9/28/15, *Data includes Deportable Aliens Only*, Data Source: EID (Unofficial) as of
14 10/7/15" (the "e3DM Spreadsheet"). I understand that the spreadsheet purports to be a
15 production of data from Defendants' logging system "e3DM," that includes various data
16 points for civil detainees held in a U.S. Customs and Border Protection facility within the
17 Tucson Sector of the U.S. Border Patrol booked from June 10, 2015 to September 28,
18 2015 (the "Relevant Time Period"). This spreadsheet contains nearly half a million rows
19 of records.

20 4. The e3DM spreadsheet title indicates that it pertains to "Deportable Aliens
21 Only." I understand that Defendants did not provide any explanation why records
22 associated with all other detainees, including U.S. citizens, were omitted.

23 5. I also reviewed the document produced by Defendants, Bates stamped as
24 USA000654-665 with the heading "Statistical Information – Information Redacted From
25 USA000653 Pursuant to 8 U.S.C. 1367" (the "e3DM Supplement").¹ I understand this
26

27 ¹ All exhibit references in this declaration are to an Appendix of Exhibits In
28 Support of Plaintiffs' Motion for Preliminary Injunction.

1 spreadsheet purports to be a supplemental production of data from Defendants' e3DM
2 logging system, which omits certain information Defendants allege to be protected from
3 disclosure under federal law.

4 6. I reviewed the document produced by Defendants, in conjunction with the
5 production of this spreadsheet, titled "e3 Detention Module Custodial Action Codes,"
6 Exhibit 96, that provides "Action Descriptions" for the "Action Codes" in the e3DM
7 Spreadsheet.

8 7. I reviewed the document produced by Defendants, Exhibit 119, that defines
9 the column headings in the e3DM Spreadsheet.

10 8. I also reviewed another document produced by Defendants, Exhibit 192 at
11 USA002184, titled "Station Abbreviations," that explains the abbreviations for each
12 facility listed in the "Station" column of the e3DM Spreadsheet.

13 9. I am informed that, although there are more than two dozen different
14 facilities indicated in the "Station Abbreviations" column, this lawsuit specifically
15 challenges conditions at facilities within the Tucson Sector of the U.S. Border Patrol: Ajo,
16 Brian A. Terry, Casa Grande, Douglas, Nogales, Sonoita, Tucson/TCC, and Willcox
17 stations (collectively, the "Tucson Sector Stations").

18 10. I understand that Defendants also produced a native Excel spreadsheet,
19 Bates stamped USA000699 with the heading "USBP e3 Detention Module Detention Cell,
20 Booked in 6/10/15 – 9/28/15" (the "EID Spreadsheet"). I understand this information
21 purports to be a production of data from Defendants' "Enforcement Integrated Database"
22 ("EID"), a Department of Homeland Security shared common database repository in
23 which information related to the investigation, arrest, booking, detention, and removal of
24 individuals encountered by U.S. Customs and Border Protection is maintained. I
25 understand that the spreadsheet produced contains information regarding the last known
26 holding cell in which individuals are detained while in Border Patrol custody.

11. I also understand that Defendants did not preserve comprehensive records regarding other Hold Rooms in which each detainee was held. It was therefore impossible to calculate from the data how many detainees were in any given Hold Room at one time.

12. The e3DM Spreadsheet, e3DM Supplement and EID Spreadsheet are voluminous and would likely span hundreds of thousands of pages if printed. I understand the spreadsheets were produced by Defendants and thus my analysis of the data contained in those spreadsheets can easily be verified by Defendants by reviewing the documents already in their possession.

II. e3DM SPREADSHEET ANALYSIS

13. As explained below, my initial quality control work for the e3DM Spreadsheet and e3DM Supplement resulted in 277,009 unique log entries and 17,006 unique Alien file Numbers, for individuals held in a U.S. Customs and Border Protection facility within the Tucson Sector of the U.S. Border Patrol during the Relevant Time Period (June 10, 2015 to September 28, 2015). Each of these 17,006 unique individuals were booked into at least one of the 8 “Tucson Sector Stations” (defined as Tucson/TCC, Casa Grande, Douglas, Nogales, Willcox, Sonoita, Ajo and Brian A. Terry (Naco) stations). Defendants withheld most of the data associated with 14 of these 17,006 detainees on the basis that federal law protects these records from disclosure. For instance, the data produced does not indicate one way or the other whether these 14 individuals were provided meals, mats, personal hygiene items or other supplies. Therefore, much of my analysis below reflects only the 16,992 individuals for whom full records were produced.

14. The analysis below reflects only records from the Relevant Time Period.

A. Sector-Wide Analysis

15. I performed the following analysis of the e3DM Spreadsheet data across the Tucson Sector of the U.S. Border Patrol.

16. I observed, however, that the e3DM Spreadsheet included some rows of data related to facilities outside of the Tucson Sector of the U.S. Border Patrol.

17. Based on my review of the e3DM Spreadsheet, the rows of data relating to facilities outside of the Tucson Sector appeared to be associated with individuals who were held at facilities both inside and outside of the Tucson Sector of the U.S. Border Patrol during the course of their detention(s).

18. I used the "Station Abbreviations" provided in the "Station" column of each row of data to determine there were 24,046 rows related to facilities outside of the Tucson Sector of the U.S. Border Patrol. That is 8.681% of the 277,009 unique log entries. In addition to the 8 relevant Border Patrol stations, the e3DM spreadsheet also included records from Border Patrol stations from other Border Patrol Sectors as far away as Louisiana. These stations included Baton Rouge, Calexico, Del Rio, Eagle Pass, El Centro, Falfurrias, Kingsville, Lordsburg, McAllen, Three Points, Yuma, and Welton Stations. Records were also included from various Border Patrol checkpoints and points of entry, both in and out of the Tucson Sector geographical area. Upon analysis of the e3DM data, it was determined that records from these facilities outside of Border Patrol's Tucson Sector were invariably related to detainees who at some point during their time in CBP custody, were brought to one of the 8 relevant Border Patrol stations.

19. The sector-wide analysis of various time periods detailed below incorporates these out-of-sector records. For example, according to the e3DM data produced by Defendants, starting on September 1, 2015, one detainee was held for 7.783 hours in the El Centro Station (which I am informed and believe to be located in California), then moved to the Del Rio Station (which I am informed and believe to be located in Texas) for 10.25 more hours of holding, then moved to the Tucson Sector Tucson Coordination Center for 20.8 more hours of holding. My Sector-wide analysis would reflect that this detainee was held in CBP custody for a total of 38.833 hours.

i. Hours in Detention

20. The following table represents the number of detainees held in CBP custody during the Relevant Time Period for more than the various numbers of hours listed in the

first column, as well as the corresponding percentages relating to the total number of unique individuals held in CBP Custody during the same Relevant Time Period:

Table 1		
Time in Detention	Number of Detainees	Percentage of 17,006 Total Detainees
12 hours or more	14,021	82.447%
24 hours or more	6,541	38.463%
36 hours or more	2,841	16.706%
48 hours or more	1,064	6.257%
72 hours or more	157	0.9%

21. The figures in Table 1 were calculated from the difference between the timestamp of the initial “In_BP_Station” action code and the final “Book_Out_DT” timestamp for a specific detainee, and the corresponding “EVENT_NUMBER” value reported. These detainee-specific timestamps and the associated “EVENT_NUMBER” are analyzed to calculate length of detainment time, and the resulting value is defined as a single “Detainment Event.” Individuals held in CBP custody more than once for each of the various numbers of hours listed in the first column are only counted once when calculating the respective percentages in the third column.

22. I observed that a significant number of individuals were recorded to have been in CBP custody on more than one occasion during the Relevant Time Period. While only 17,006 individuals were detained during this period, there were 20,145 “Detainment Events,” associated with those individuals. The reason for the higher number of Detainment Events is not clear from the e3DM spreadsheet. These individuals could have been apprehended more than once, or transferred to and from different U.S. government agencies before returning to CBP custody. Table 1 does not reflect the fact that some individuals are associated with multiple Detainment Events. Table 1.1, however, does

reflect the number of “Detainment Events” where any individual was detained for the various number of hours listed in the first column:

Table 1.1		
Time in Detention	Number of Detainment Events	Percentage of 20,145 Total Detainment Events
12 hours or more	15,782	78.342%
24 hours or more	6,881	34.157%
36 hours or more	2,891	14.351%
48 hours or more	1,069	5.307%
72 hours or more	157	0.779%

23. Table 1.1 reflects the number of hours each detainee was held on every occasion of detainment. For example, if a detainee were confined for 12 hours, released, then subsequently apprehended and detained for another 12 hours, Table 1 would only count that detainee once, in the “12 hours or more” category. Table 1.1 would instead count two Detainment Events, each under the category of “12 hours or more.” Thus, Table 1.1 more accurately reflects the hours of confinement a detainee is held on each occasion under CBP custody.

24. The difference between Table 1 and Table 1.1 also indicates that within the Relevant Time Period detainees were held more than once on over 3000 occasions. This indicates that a significant number of detainees experience the hold rooms more than once.

ii. Provision of Sleeping Mats

25. For all detainees held in U.S. Border Patrol custody over this time period, there are only 122 detainees who reportedly received a sleeping mat. That is 0.7% out of the 16,992 unique Alien file Numbers identified in the e3DM Spreadsheet.

26. To calculate this figure, I searched for any occurrence in the “DA_COMMENT_TEXT” column of terms related to sleeping mats: “bed,” “foam” or

1 “mat” (with an exclusion for “mat wit,” which I observed meant “material witness”). I
2 isolated those results and expunged the irrelevant hits to form a preliminary list of records
3 indicating that a mat had been provided. I then did a visual check of the rows not isolated
4 in my initial search with “DA_COMMENT_TEXT” entries for any other notes or remarks
5 which might indicate that a mat had been provided and added any relevant records to the
6 preliminary list.

7 **iii. Provision of Showers**

8 27. For all detainees held in U.S. Border Patrol custody over this time period,
9 there are only 115 detainees who reportedly received a shower. That is 0.677% of the
10 16,992 total number of individuals identified from the e3DM Spreadsheet.

11 28. To calculate this figure, I searched for any occurrence in the
12 “DA_COMMENT_TEXT” column for the term “shower.” Following that text search, I
13 also did a visual search for any other text related to showers on the remaining rows.

14 29. I also searched for any occurrence of the “SHWRP” action code (defined as
15 “Shower Provided”).

16 **iv. Provision of Dental Care Supplies**

17 30. For all detainees held in U.S. Border Patrol custody over this time period,
18 there are only 1,642 detainees who reportedly received provision of some dental care
19 supplies, including toothbrush or toothpaste. That is 9.663% out of the 16,992 unique
20 Alien file Numbers identified from the e3DM Spreadsheet.

21 31. To calculate this figure, I searched for any occurrence in the
22 “DA_COMMENT_TEXT” column of terms related to dental care: “tooth,” “teeth,” or
23 “brush.” Following that text search, I also did a visual search for any other text related to
24 dental care on the remaining rows.

25 **v. Provision of Feminine Hygiene Supplies**

26 32. For all detainees held in U.S. Border Patrol custody over this time period,
27 there are only 93 detainees who reportedly received toilet paper or feminine hygiene
28

1 supplies. That is 0.5473% of the 16,992 unique Alien file Numbers identified from the
2 e3DM Spreadsheet.

3 33. To calculate this figure, I searched for any occurrence in the
4 “DA_COMMENT_TEXT” column of terms related to toilet paper or feminine hygiene
5 supplies: “toilet paper,” “feminine hygiene products,” “feminine products,” “maxi pad,”
6 “pad,” and “pads.” Following that text search, I also did a visual search for any other text
7 related to toilet paper or feminine hygiene supplies on the remaining rows.

8 34. Regarding the provision of feminine hygiene supplies, I was not able to run
9 analysis of the data limited by gender because the e3DM Spreadsheet does not have
10 adequate data to determine the gender of any detainee.

11 **vi. Provision of Baby Supplies**

12 35. For all detainees held in U.S. Border Patrol custody over this time period,
13 there are only 208 detainees who reportedly received baby supplies. I calculated that
14 there were 372 infants under the age of three held in U.S. Border Patrol custody over this
15 time period.

16 36. To calculate the number of detainees who reportedly received baby supplies,
17 I searched for any occurrence in the “DA_COMMENT_TEXT” column of terms related
18 to baby supplies: “bottle,” “diaper,” “diapers,” “formula,” and “gerber,” and “nido.”
19 Following that text search, I also did a visual search for any other text related to baby
20 supplies on the remaining rows.

21 37. To calculate the number of infants held in U.S. Border Patrol custody over
22 this time period, I searched for individual detainees where the difference in their
23 “BIRTH_DT” (birth date) was three years or less from the timestamp of the initial
24 “In_BP_Station” action code.

25 **vii. Provision of Food**

26 **a. Gap Time Between Food Offerings**

27 38. For all detainees held in U.S. Border Patrol custody over this time period,
28 the average gap time between reported food offerings to detainees was 5.056 hours.

1 39. In calculating these figures, I considered both the “MLACC” action code
2 (described as “Served meal(Accepted)”) and “MLREF” action code (described as “Served
3 meal(Refused)”) as an incident of a detainee being offered food.

4 40. I also observed that there were occurrences in the
5 “DA_COMMENT_TEXT” where a detainee may have been offered food but those
6 occurrences were not logged with an “MLACC” or “MLREF” action code.

7 41. I searched for any occurrence in the “DA_COMMENT_TEXT” column of
8 terms related to food: “food,” “meal,” “breakfast,” “lunch,” “dinner,” “eat,” “eating,”
9 “bean,” “cheese,” “milk,” “drink,” “drinking,” “ate,” “water,” “juice,” “formula,”
10 “gerber,” “nido,” “pedialyte,” “electrolyte,” “snack,” “soup,” “burrito,” “burro,” “animal
11 crackers,” and “crackers.”

12 42. My search resulted in 2,168 occurrences. For example, “subject has blanket
13 and snack requires nothing further at this time.” For the purposes of this analysis, I
14 counted these log entries as an incident of a detainee being offered food.

15 43. Accordingly, the average gap time between food was calculated either from
16 1) the difference between the timestamps of an “MLACC” action code (described as
17 “Served meal(Accepted)”), an “MLREF” action code (described as “Served
18 meal(Refused)”), or occurrences in the “DA_COMMENT_TEXT” field as described
19 above; 2) the difference between the timestamps of an “MLACC” or “MLREF” action
20 code or food-related occurrence appearing in the “DA_COMMENT_TEXT” and a final
21 book out timestamp where no subsequent “MLACC” or “MLREF” action code or food-
22 related “DA_COMMENT_TEXT” appeared; or 3) the difference between the initial book
23 in timestamp and an initial “MLACC” or “MLREF” action code or food-related
24 occurrence appearing in the “DA_COMMENT_TEXT” field.

25 44. My analysis indicated that there were 6,719 instances of a gap extending 12
26 or more hours without an individual being offered food of any kind.

1 45. There were 4,474 instances of such a gap extending 15 or more hours; 2,425
2 instances of such a gap extending 20 or more hours; and 1,400 instances of such a gap
3 extending 24 or more hours.

4 **b. Gap Time Between Meals (Burrito)**

5 46. For the Tucson Sector Stations, the vast majority of the 87,712 results from
6 the food-related term search of the “DA_COMMENT_TEXT” column hit on terms
7 related to three types of food: burritos, juice, and crackers.

8 47. In order to isolate the incidents where a detainee was offered a burrito, I
9 searched for any occurrence in the “DA_COMMENT_TEXT” column of terms related to
10 burrito: “burrito,” “burritos,” and “burro.”

11 48. For all detainees held in U.S. Border Patrol custody during the Relevant
12 Time Period, there were 52,382 instances logged, where a meal (burrito) was offered.

13 49. For all detainees held in U.S. Border Patrol custody during the Relevant
14 Time Period, the average gap time between burritos reportedly offered to detainees was
15 7.336 hours.

16 50. The e3DM data produced by Defendants does not appear to reflect whether
17 meals were offered upon arrest or during times of transport between different facilities.
18 To my knowledge, Defendants have not produced any policies or procedures regarding
19 the provision of meals during transit or between time of arrest and initial book in at a
20 Border Patrol station.

21 **viii. Provision of Medical Screening**

22 51. For all detainees held in U.S. Border Patrol custody over this time period, I
23 did not identify any medical screening reportedly performed on a detainee.

24 52. I did not observe any columns or action codes with definitions related to
25 medical screening, either in the e3DM Spreadsheet itself or in the list of explanations,
26 Exhibit 119. I searched for any occurrence in the “DA_COMMENT_TEXT” column of
27 terms related to medical screening: “doctor”, “emergency”, “medical eval”, “medical
28 screen”, “medical test”, “medic”, “hospital”, “observation” and “ER”. Following that text

search, I also did a visual search for any other text related to baby supplies on the remaining rows.

53. That search did not result in any hits for medical screening.

ix. Provision of Medical Treatment

54. For all detainees held in U.S. Border Patrol custody over this time period, in one of the eight facilities in the Tucson sector described above, I identified 527 incidents of medical treatment reportedly provided to a detainee.

55. I did not observe any columns or action codes with definitions related to medical treatment. Next, I searched for any occurrence in the "DA_COMMENT_TEXT" column of terms related to medical treatment: "complained", "complaining", "EMT", "headache", "health", "injured", "medication", "medicine", "meds", "pain", "pills", "prescribed", "treated", "treatment". Following that text search, I also did a visual search for any other text related to medical treatment on the remaining rows.

B. Station-by-Station Analysis

56. I performed the following analysis of the e3DM Spreadsheet data for each of the Tucson Sector Stations.

i. Provision of Sleeping Mats

57. The following table represents the number of detainees held in one of the Tucson Sector facilities who reportedly received a sleeping mat, compared to the total number of individuals identified from the e3DM Spreadsheet detained in each of these facilities over this time period:

Table 2			
Facility	Number of Detainees Provided Mats	Number of Total Detainees	Percentage
Casa Grande	3	1,700	0.176%
Douglas	84	3,909	2.149%
Tucson Sector Tucson Coordinating Center	35	18,087	0.194%

58. To calculate this figure, I searched for any occurrence in the “DA_COMMENT_TEXT” column of terms related to sleeping mats: “bed,” “foam,” or “mat” (with an exclusion for “mat wit”). Following that text search, I also did a visual search for any other text related to sleeping mats on the remaining rows.

59. Three facilities—Douglas, Nogales and Tucson Sector Tucson Coordinating Center—yielded results from these searches.

ii. Provision of Showers

60. The following table represents the number of detainees held in one of the Tucson Sector Stations who reportedly received a shower, compared to the total number of individuals identified from the e3DM Spreadsheet detained in each of these facilities over this time period:

Table 3			
Facility	Number of Detainees Provided Shower	Number of Total Detainees	Percentage
Casa Grande	20	1,700	1.176%
Douglas	1	3,909	0.026%
Nogales	2	4,457	0.045%
Tucson Sector Tucson Coordinating Center	92	18,087	0.509%

61. To calculate this figure, I searched for any occurrence in the “DA_COMMENT_TEXT” column for the term “shower.” Following that text search, I also did a visual search for any other text related to showers on the remaining rows.

62. I also searched for any occurrence of the “SHWRP” action code (described as “Shower Provided”).

63. Four facilities—Casa Grande, Douglas, Nogales and Tucson Sector Tucson Coordinating Center—yielded results from these searches.

1 64. Of the 115 instances where subjects were provided a shower, 74 were in
2 CBP custody for at least 24 hours, 41 were in CBP custody for at least 48 hours, and 4
3 were in CBP custody for at least 72 hours. Based on a comparison with a table of
4 common Hispanic women's names, 15 were possibly females. Seven were juveniles.

5 65. To calculate the number of juveniles held in one of the Tucson Sector
6 Stations this time period, I searched for individual detainees where the difference in their
7 "BIRTH_DT" (birth date) was thirteen years or less from the timestamp of the
8 corresponding "SHWRP" action code, or timestamp of a shower-related occurrence
9 appearing in the "DA_COMMENT_TEXT" field.

10 66. My analysis of the provision of showers suggested that at least some of the
11 e3DM data produced by Defendants is unreliable. For example, I understand that, during
12 Plaintiffs' inspection of the Casa Grande station on September 9, 2015, CBP informed
13 Plaintiffs' counsel that there were no shower facilities at Casa Grande. However, the
14 e3DM spreadsheet shows that, between June 10 and September 28, 2015, 20 showers
15 were provided at that facility. Upon closer examination, it appears that 19 of those
16 20 showers were provided at midnight on August 4, 2015. The 20th shower was provided
17 at 4:15 a.m. that same day. These factors indicate that the 20 records may be incorrect.

18 67. Regarding the provision of showers, specifically to female subjects, I was
19 not able to run analysis of the data limited by gender because the e3DM Spreadsheet does
20 not have adequate data to determine the gender of any detainee.

21 **iii. Provision of Food**

22 68. The following table represents the average gap time between meals
23 reportedly offered to detainees in one of the Tucson Sector Stations over this
24 time period:
25
26
27
28

Table 4				
Facility	Meals Offered	Meals Accepted	Meals Declined	Average Meal Gap Time
Ajo	676	670	6	3.355
Brian A. Terry	1,245	1,206	39	5.127
Casa Grande	2,715	2,690	25	3.855
Douglas	5,519	5,468	51	5.886
Nogales	2,193	2,165	28	2.959
Sonoita	456	456	0	2.211
Tucson Sector Tucson Coordinating Center	39,352	39,231	121	8.239
Willcox	226	216	10	4.130

69. These figures were calculated in the same manner as described in Section viii above, but at the station-by-station level.

III. EID SPREADSHEET ANALYSIS

70. I understand that the EID Spreadsheet (USA000699) includes records of the last known holding cell at each facility in which detainees were housed during the Relevant Time Period. I also understand that records regarding any prior cells in which detainees were held has not been preserved.

71. The EID Spreadsheet produced by Defendants does not include any data regarding the specific dates during which individuals were held in the holding cells listed.

72. I was asked to calculate the number of detainees at Casa Grande Station during the Relevant Time Period who were last held in Cell 6. By filtering the “DC_Station column” for “CAG_S” and the “DCL_CELL_NM” column for any field containing the text “Cell 6,” I calculated that no fewer than 34 individuals were last held in Cell 6 during the Relevant Time Period:

Table 5		
DC_STATION	DCL_CELL_NM	Detainee Count
CAG S	Cell 6	22
CAG S	Cell 6 1507	3
CAG S	Cell 6 4778	9

IV. METHODOLOGY

A. e3DM Spreadsheet

73. Upon my initial review of the e3DM Spreadsheet, I observed that the document contained 498,387 rows of data, with an associated date range of October 6, 2014 to October 7, 2015. As explained below and based on my review, it is my understanding that each row purports to represent a discrete event logged for a detainee held in BP custody.

74. I implemented a variety of quality control measures before performing analysis on the data. I discovered that a significant number of rows in the e3DM Spreadsheet were duplicates of other rows. To remove the duplicate rows, I engaged in the following process: First, I sorted the rows into chronological order. Then, I used a text editing program to locate rows that contained identical information in the first twenty-five columns of the e3DM Spreadsheet. Once identified, I removed those duplicate rows.

75. I also observed that the e3DM Spreadsheet included rows that were outside of the Relevant Time Period. I observed that records outside the Relevant Time Period invariably pertained to individuals who were also detained at some point during the Relevant Time Period. When I searched the number of records on each day outside the Relevant Time Period, I found that these records were dramatically fewer than the records for each day inside the Relevant Time Period. I understand that Defendants were only ordered to produce e3DM data for detainees held during the Relevant Time Period. Considering all these factors, I concluded that the data from outside the Relevant Time period was not comprehensive (i.e., the majority of records from those dates had been omitted from the e3DM Spreadsheet produced by Defendants). Because the records

1 outside the Relevant Time Period appeared largely incomplete and unreliable for
 2 statistical analysis, I applied a date filter to include only rows with an associated date
 3 range of June 10, 2015 to September 28, 2015 (the Relevant Time Period). I created this
 4 filter based on the data in the “Action_DT” (action date) and “Book_Out_DT” (book out
 5 date) columns.

6 76. After deduplication and date filtering, there were 277,009 rows of data in
 7 the e3DM Spreadsheet.

8 77. Because each row purports to represent a discrete event logged for a
 9 detainee, I then searched for all unique “ALIEN_FILD-NBRs” (defined as Alien file
 10 Numbers) to attempt to determine the number of individuals captured in the e3DM and
 11 e3DM Supplemental Spreadsheets. That search resulted in 17,006 unique Alien file
 12 Numbers. This number includes the 14 anonymous individuals who were listed in the
 13 Supplemental e3DM Spreadsheet (Ex. 97) and whose records were largely withheld.

14 78. In performing my analysis on this data, I observed a common workflow for
 15 processing detainees that included rows logging the following events listed in the
 16 “Actions” column of the e3DM Spreadsheet:

- 17 • “Arrest”
- 18 • “In_BP_Station” – when detainee arrived at Border Patrol station
- 19 • “In_Transit” – if detainee was transported from one station to another
- 20 • “In_BP_Station” – following any “In_Transit” action code
- 21 • Custodial action codes while a detainee was in a facility, including:
 - 22 ○ “MLACC” – served meal, accepted
 - 23 ○ “MLREF” – served meal, accepted
 - 24 ○ “SHWRP” – shower provided

25 79. In my review of the e3DM Spreadsheet, I did not observe unique rows that
 26 contained data logging the date and time a detainee was booked out of Border Patrol
 27 custody (“Book_Out_DT”). Instead, the “Book_Out_DT” information was somehow
 28

1 entered into a field in a subsequent column of the row logging the “In_BP_Station” action
2 code.

3 **B. Supplemental e3DM Spreadsheet**

4 80. I implemented the same quality control measures for the Statistical
5 Information – Information Redacted from USA000653 Pursuant to 8 U.S.C. 1367
6 spreadsheet (“supplemental e3DM Spreadsheet”).

7 81. Upon my initial review of the supplemental spreadsheet, I observed that the
8 document contained 402 rows of data.

9 82. I deduplicated the rows by sorting them into chronological order and used a
10 text editing program to locate rows that contained identical information in the first twenty-
11 five columns of the supplemental spreadsheet.

12 83. I also applied a date filter to include only rows with an associated date range
13 of June 10, 2015 to September 28, 2015.

14 84. After deduplication and date filtering, there were 216 rows of data in the
15 supplemental spreadsheet.

16 85. I also identified 14 unique Alien file numbers, suggesting that the 216
17 records pertained to 14 different individuals.

18 **V. ADDITIONAL DOCUMENTS RELIED UPON**

19 86. Exhibit 78 is a true and correct copy of a document produced by Defendants
20 on or about August 24, 2015, Bates labeled USA000001-004, which purports to be a list
21 of all logs required to be produced under the Court’s August 14, 2004 Order. The
22 document provides a description of Defendants’ Enforcement Integrated Database (EID),
23 the e3 application through which Border Patrol records information specific to individual
24 detainees, and the e3DM Detention Module, which “maintains information related to
25 individuals who are detained in BP custody.” (Ex. 78 at USA000003.)

26 87. Exhibit 82 is a true and correct copy of a document produced by Defendants
27 on or about September 4, 2015, Bates labeled USA000119-122, which purports to be a
28 CBP Memorandum dated September 24, 2012 with the subject heading: “Use of the e3

1 Detention Module,” which requires as of October 1, 2012 that “usage of the e3 Detention
2 Module (e3DM) by all field elements will be mandatory for all transfers out of U.S.
3 Border Patrol custody and inter-sector/station transfers.” (Ex. 82 at USA000121.) The
4 memorandum also states that “Due to the importance that Congress, DHS and CBP place
5 on the integrity of data returned from all information technology systems, it is imperative
6 that all data be as complete and accurate as possible” and requires “each sector will
7 establish local protocols for using the module[.]” (*Id.*)

8 88. Exhibit 86 is a true and correct copy of a document produced by Defendants
9 on or about September 4, 2015, Bates labeled USA000321, which purports to be a CBP
10 Memorandum dated October 8, 2013 with subject heading “Use of the Updated e3
11 Detention Module,” which states that “all Chief Patrol Agents will ensure that the updated
12 e3DM is used to the fullest extent to capture the custodial actions and transportation for
13 all detainees.” (Ex. 86 at USA000321.)

14 89. Exhibit 193 is a true and correct copy of a letter dated October 16, 2015
15 from Plaintiffs’ counsel requesting that Defendants “produce the manual or instructions
16 for inputting and storing [e3DM] data through the e3 application and e3DM module so
17 that [Plaintiffs] can understand how Border Patrol creates and maintains these records,
18 and the nature of the data reflected in those records.” (Ex. 193 at 1.)

19 90. Exhibit 194 is a true and correct copy of a letter dated October 23, 2015,
20 received by Plaintiffs’ counsel, wherein Defendants “decline to produce those additional
21 materials, if any exist” in reference to the e3DM manual or instructions requested in
22 Exhibit 193. (Ex. 194 at 1.)

23 91. Exhibit 96 is a true and correct copy of a document produced by Defendants
24 on or about October 9, 2015, Bates labeled USA00652, entitled “e3 Detention Module
25 Custodial Action Codes,” which purports to explain “Action Codes” appearing in
26 Defendant’s e3DM data. (Ex. 96.)

27 92. Exhibit 97 is a true and correct copy of a document produced by Defendants
28 on or about October 12, 2015, Bates labeled USA000654-665 and entitled “Statistical

1 Information – Information Redacted From USA000653 Pursuant to 8 U.S.C. 1367,”
2 which purports to include partial detainee records that were omitted from Defendants’
3 original production of e3DM data. (Ex 97 at USA000654.)

4 93. Exhibit 119 is a true and correct copy of Bates labeled USA002184-2186
5 produced by Defendants on or about November 6, 2015 and purports to provide
6 descriptions of column headings in the e3DM data spreadsheet, USA00653. This
7 document was previously produced, Bates labeled USA00700-020.

8 94. Exhibit 192 at USA002184, on November 13, 2015, Defendants produced a
9 second document Bates labeled USA002184, which purports to explain station
10 abbreviations in the e3DM data spreadsheet (USA000653).

11 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
12 is true and correct.

13 Executed this 4th day of December, 2015.

14
15 
16 JOSEPH GASTON
17
18
19
20
21
22
23
24
25
26
27
28

1 Harold J. McElhinny*
Kevin M. Coles*
2 Elizabeth G. Balassone*
MORRISON & FOERSTER LLP
3 425 Market Street
San Francisco, CA 94105
4 Telephone: (415) 268-7000
Facsimile: (415) 268-7522
5 Email: HMcElhinny@mofo.com
Email: KColes@mofo.com
6 Email: EBalassone@mofo.com

7 Attorneys for Plaintiffs

8 * *Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

9 Additional counsel listed on next page

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA
13

14 Jane Doe # 1; Jane Doe # 2; Norlan Flores,
on behalf of themselves and all others
15 similarly situated,

16 Plaintiffs,

17 v.

18 Jeh Johnson, Secretary, United States
Department of Homeland Security, in his
official capacity; R. Gil Kerlikowske,
19 Commissioner, United States Customs &
Border Protection, in his official capacity;
20 Michael J. Fisher, Chief of the United States
Border Patrol, in his official capacity;
21 Jeffrey Self, Commander, Arizona Joint
Field Command, in his official capacity;
22 Manuel Padilla, Jr., Chief Patrol Agent-
Tucson Sector, in his official capacity,

23 Defendants.
24
25
26
27
28

Case No. 4:15-cv-00250-TUC-DCB

**DECLARATION OF KEVIN M.
COLES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

PARTIALLY REDACTED

1 Colette Reiner Mayer*
2 MORRISON & FOERSTER LLP
3 755 Page Mill Road
4 Palo Alto, CA 94304-1018
5 Telephone: (650) 813-5600
6 Facsimile: (650) 494-0792
7 Email: CRMayer@mofo.com

Travis Silva*
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS OF THE SAN FRANCISCO
BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296
Email: tsilva@lccr.com

6 Louise C. Stoupe*
7 Pieter S. de Ganon*
8 MORRISON & FOERSTER LLP
9 Shin-Marunouchi Building, 29th Floor
10 5-1, Marunouchi 1-Chome
11 Tokyo, Chiyoda-ku 100-6529, Japan
12 Telephone: +81-3-3214-6522
13 Facsimile: +81-3-3214-6512
14 Email: LStoupe@mofo.com
15 Email: PdeGanon@mofo.com

Victoria Lopez (Bar No. 330042)**
Daniel J. Pochoda (Bar No. 021979)
James Duff Lyall (Bar No. 330045)**
ACLU FOUNDATION OF ARIZONA
3707 North 7th Street, Suite 235
Phoenix, AZ 85014
Telephone: (602) 650-1854
Facsimile: (602) 650-1376
Email: vlopez@acluaz.org
Email: dpochoda@acluaz.org
Email: jlyall@acluaz.org

12 Linton Joaquin*
13 Karen C. Tumlin*
14 Nora A. Preciado*
15 NATIONAL IMMIGRATION LAW
16 CENTER
17 3435 Wilshire Boulevard, Suite 2850
18 Los Angeles, CA 90010
19 Telephone: (213) 639-3900
20 Facsimile: (213) 639-3911
21 Email: joaquin@nilc.org
22 Email: tumlin@nilc.org
23 Email: preciado@nilc.org

18 Mary Kenney*
19 Emily Creighton*
20 Melissa Crow*
21 AMERICAN IMMIGRATION COUNCIL
22 1331 G Street NW, Suite 200
23 Washington, D.C. 20005
24 Telephone: (202) 507-7512
25 Facsimile: (202) 742-5619
26 Email: mkenney@immcouncil.org
27 Email: ecreighton@immcouncil.org
28 Email: mcrow@immcouncil.org

Attorneys for Plaintiffs

* Admitted pursuant to Ariz. Sup. Ct. R. 38(a)
** Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

1 I, KEVIN M. COLES, hereby declare:

2 1. I am a member of the bar of the State of California, an associate in the law
3 firm of Morrison & Foerster LLP and counsel of record for Plaintiffs in this litigation. I
4 have personal knowledge of the facts stated herein and, if called as a witness, could and
5 would competently testify thereto.

6 2. I am managing the review of the video surveillance footage and documents
7 produced by Defendants in this litigation and have participated in most or all of the
8 corresponding meet and confer discussions with Defendants' counsel.

9 **I. SURVEILLANCE VIDEO PRODUCTIONS**

10 3. On September 28, 2015, the Court ordered Defendants to produce "all
11 existing video recordings, dating from June 10, 2015 through current, for each Border
12 Patrol station in the Tucson sector" within 15 days of the order being filed. (ECF No. 64.)

13 4. Due to Defendants' representations regarding the technical impossibility of
14 producing all video by the Court's deadline, the parties stipulated to a revised timeline
15 allowing for rolling productions of video from Willcox, Naco and Nogales stations. (See
16 generally, ECF No. 66-2.) Defendants' counsel also represented to Plaintiffs' counsel that
17 no surveillance video from Ajo station existed because the system was entirely offline.

18 5. On or about October 14, 2015, Plaintiffs received Defendants' first video
19 surveillance production (produced via UPS on October 13). Included in the productions
20 were a total of 24 external hard drives (4 from Tucson, 4 from Casa Grande, 4 from
21 Douglas, 11 from Nogales, and 1 from Sonoita). I understand this production included
22 more than 42 terabytes of data. This production also included video playback software
23 licenses for viewing some of the video produced from Tucson station.

24 6. On or about October 19, 2015, Plaintiffs received a second production of 9
25 external hard drives, including 8 from Brian A. Terry and 1 from Willcox (produced via
26 UPS on October 15). I understand that this production included more than 19 terabytes of
27 data.
28

1 7. On or about October 30, 2015, Plaintiffs received a third production of 12
2 external hard drives (4 from Nogales, 7 from Brian A. Terry, and 1 from Willcox)
3 (produced via UPS on October 29). I understand that this production included more than
4 27 terabytes of data.

5 8. On or about November 13, 2015, Plaintiffs received a fourth production of
6 13 external hard drives from Brian A. Terry (produced via UPS on November 12), again
7 with more than 27 terabytes of data.

8 9. On or about November 19, 2015, Plaintiffs received a fifth and final
9 production of 5 external hard drives (4 from Brian A. Terry and 1 from Willcox)
10 (produced via UPS on November 18). I understand that this production included more
11 than 27 terabytes of data.

12 10. In total, Defendants produced 63 hard drives from 7 Border Patrol stations
13 in the Tucson Sector between October 13 and November 18, 2015. I understand that these
14 productions included 94.57 terabytes of data

15 11. In order to determine what video footage was produced by Defendants, I
16 reviewed the materials this Court ordered Defendants to provide.

17 12. On August 14, 2015, the Court ordered Defendants to “produce a list of
18 video surveillance being conducted and maintained in holding cells and all fixtures
19 contained therein, including the bathroom, and any other areas in the CBP facility used for
20 or accessed by detainees.” Defendants produced three such lists.

21 13. Attached as Exhibit 79 is a true and correct copy of a document Bates
22 labeled USA000005-006, produced on or about August 24, 2015.¹ Attached as Exhibit 80
23 is a true and correct copy of a document Bates labeled USA000007-009, dated and
24 produced by Defendants on or about August 27, 2015. Attached as Exhibit 88 is a true
25 and correct copy of a document Bates labeled USA000356-358, dated September 3, 2015,
26

27 ¹ All exhibits cited in this declaration are attached to the Appendix of Exhibits in
28 Support of Plaintiffs’ Motion for Preliminary Injunction.

1 and produced by Defendants on or about September 4, 2015, which purports to be an
2 updated version of Exhibit 80.

3 14. None of the lists produced by Defendants accurately describes the video
4 surveillance footage maintained and produced by Defendants.

5 15. For example, with respect to Tucson station video surveillance, Exhibit 88
6 states that there were [REDACTED] total cameras, yet Defendants' video production on October 13,
7 2015 included video from no fewer than [REDACTED] different cameras.

8 16. While Exhibit 88 states that the earliest footage of holding rooms available
9 was from August 17, 2015, Plaintiffs' review uncovered several hours of footage
10 timestamped August 9, then nothing until August 19.

11 17. Defendants' documents also appear to identify by number the specific
12 Digital Video Recorders ("DVRs") where video from various locations was recorded and
13 preserved. However, the DVR numbers described in Exhibit 88 did not fully align with
14 the DVR files produced.

15 18. Additionally, more than 17 days of holding room video was produced,
16 despite Exhibit 88 stating that footage from the holding rooms was not being archived and
17 the normal duration of retention for that footage was only 17 days.

18 **II. DIFFICULTY ASSOCIATED WITH VIDEO PRODUCTIONS**

19 19. We faced several technical hurdles preparing to review of the produced hard
20 drives of surveillance video.

21 20. Data from 12 of the 63 hard drives could not be accessed without loading
22 into Network Attached Storage ("NAS") boxes. Each NAS box can only house up to 4
23 hard drives at a time, and must be reconfigured each time new hard drives are loaded.

24 21. Defendants initially informed us that these Network boxes would work for
25 Brian A. Terry station. However, this was not the case. After consulting with Defendants
26 several times, we were finally able to access the hard drives by using different equipment.
27
28

1 22. Five different video playback software programs were required to view
2 video from the various stations. Each program had its own unique user interface and
3 functionality, including playback speeds and maneuverability.

4 23. Videos from several stations, (specifically, Tucson, Douglas and Brian A.
5 Terry stations), were produced in disordered, highly fragmented form, impeding our
6 ability to assess what video was produced from which areas at each station, and how much
7 video was reviewable.

8 24. Video from Tucson, for instance, was produced in hundreds of different
9 files from 4 DVRs purportedly recording and preserving video from that station. Each file
10 contained roughly two hours of video from up to [REDACTED] different cameras. The file dates
11 from one DVR did not always align with the file dates from other DVRs, so that in many
12 cases, video of all areas accessible by detainees for a given date was never produced.

13 25. The same alignment issues were present to a greater degree with the Brian
14 A. Terry video productions. Defendants produced a total of 32 external hard drives of
15 video from this station over the course of several weeks. The most recent production of 4
16 hard drives was received on or about November 19, 2015. Each of the 32 total drives
17 produced contains a vast array of fragmented files from various cameras covering a broad
18 spectrum of dates. The 32 drives were produced in two “suites” associated with different
19 DVRs and labeled 1.1 through 1.16 and 2.1 through 2.16. The first suite contained data
20 prior to July, 2015 and September 28 through 30, 2015. The second suite contained data
21 for August 20 through 31, 2015 and September 1 through 29, 2015. Upon review, we
22 observed that video from each DVR indicated the camera numbers associated with each
23 feed. However, we also observed that these camera numbers universally shifted to
24 different camera numbers between the two hard drive suites. This shift appears to have
25 taken place on or around August 20, 2015. At my direction, reviewers attempted to align
26 camera numbers between suites through visual observation and comparison of videos.
27 The resulting alignment is reflected in the column headings of Table 3, appended hereto in
28 Attachment A. The reviewers ultimately found that hold room surveillance video was

1 produced from as early as February, 2015, yet only one day of video (from only some of
2 the hold rooms on June 23, 2015) was produced for the entire period between June 9,
3 2015 and August 19, 2015.

4 26. Exhibit 98 is a true and correct copy of a document produced by Defendants
5 on or about October 19, 2015, which purports to provide set up instructions for playback
6 of surveillance video from Nogales station. The document also purports to include a map
7 of surveillance camera locations and viewing areas at USA000672. To my knowledge,
8 Defendants did not produce any such maps for any other station.

9 27. While video from several stations purports to indicate the specific location
10 or cell number being recorded, video from other stations did not. For example, much of
11 the Tucson surveillance video merely indicated camera numbers. Counsel for Defendants
12 refused my oral request for information aligning camera numbers with specific cell
13 numbers. Plaintiffs were consequently forced to compare much of the holding room
14 videos to other surveillance videos, photographs from their inspections, and even floor
15 plans produced by Defendants in order to determine which cells we were looking.

16 **III. OVERVIEW OF SURVEILLANCE VIDEO PRODUCED FROM HOLD** 17 **ROOMS**

18 28. I understand there are eight Border Patrol Stations in the Tucson area.
19 Surveillance video was produced from seven of these stations. Video produced by
20 Defendants included hold rooms, processing areas, sally ports, interview rooms, and other
21 areas accessible by detainees.

22 29. Specifically with respect to the hold room videos, I believe Defendants
23 produced video from [REDACTED] different hold rooms across seven of the eight Tucson Sector
24 stations. I have personally reviewed some hold room video from all of the seven stations.

25 30. At my direction, reviewers observed filenames and surveillance video to
26 determine dates of video produced for each of the 88 hold rooms. Appended hereto in
27 Attachment A are Tables 1 through 6 indicating the amount of hold room surveillance
28

1 video which Plaintiffs have been able to locate in Defendants' productions from Tucson,
2 Douglas, Brian A. Terry, Sonoita, Casa Grande, and Willcox stations.

3 31. In addition to the video represented in the these six tables, we found video
4 from all hold rooms at Nogales station, covering most or all of the entire period from
5 June 1, 2015 to September 30, 2015.

6 32. No footage whatsoever was produced from Ajo station.

7 33. As can be ascertained from the appended station-by-station tables and
8 summaries above, CBP appears to have destroyed and/or failed to produce significant
9 volumes of hold room surveillance video.

10 34. Furthermore, according to a letter I received from Defendants' counsel,
11 Sarah Fabian, on October 23, 2015, a true and correct copy of which is attached as
12 Exhibit 194, CBP does not appear to have preserved most of the tracking records showing
13 hold rooms where detainees were housed during their detentions.

14 **IV. GENERAL OBSERVATIONS FROM REVIEW OF VIDEO** 15 **PRODUCTIONS**

16 35. During my review of Tucson surveillance video, I observed that people are
17 often detained in crowded conditions overnight.

18 36. I have observed surveillance video from all seven stations of detainees lying
19 down on concrete floors inside the hold rooms. These detainees commonly have only a
20 Mylar sheet separating themselves from the ground.

21 37. From my review of surveillance video from all seven stations, I believe that
22 mats are not provided for most detainees. I have also observed numerous instances where
23 too few mats were provided to accommodate all family members or children held in a
24 given cell at one time. (*See, e.g.*, Exs. 146, 147.) I have been informed by reviewers
25 under my direction that Casa Grande, Willcox, Sonoita, and Brian A. Terry stations do not
26 appear ever to provide mats. Records produced by Defendants appear to confirm that
27 mats were never provided to detainees at Willcox, Sonoita or Brian A. Terry stations
28 between June 10, 2015 and September 28, and only 3 times at Casa Grande. I have

1 observed numerous instances, from all seven stations, of detainees lying on the concrete
2 floors (*see, e.g.*, Exs. 155, 157; Ex. 168; Ex. 191; Ex. 178; Ex. 158; Ex. 150; Ex. 130),
3 often while mats go unused in other cells (*see, e.g.*, Exs. 170, 147).

4 38. I have observed hold room lights kept on at all hours of the day and night.
5 (*See, e.g.*, Ex. 167; Exs. 186, 187.) I have also observed that, even when hold room lights
6 are turned off, light still floods in through interior windows facing the processing areas.
7 (*See, e.g.*, Ex. 182.)

8 39. I am informed by reviewers under my direction that water jugs are rarely if
9 ever used at Douglas station. I have observed instances of detainees sharing the same few
10 paper cups at Tucson station and drinking straight from water jugs at Tucson and Casa
11 Grande stations. (*See, e.g.*, Exs. 130, 125, 129, 133, 141.)

12 40. I have observed numerous instances of detainees forced to file out and back
13 in to their holding cells at various hours throughout the day and night.

14 41. I am informed by reviewers under my direction that cleaning crews appear
15 sporadically in the hold rooms, and that, at Casa Grande station, hold rooms are only
16 cleaned once every 48 hours.

17 42. To my knowledge, Defendants produced no policies or procedures regarding
18 the required frequency of cleaning hold rooms.

19 43. I have observed numerous instances of trash accumulating in the cells where
20 no waste bins are visibly provided. (*See, e.g.*, Ex. 189; Ex. 153; Ex. 156.)

21 44. I am informed by reviewers under my direction that detainees are rarely, if
22 ever, seen brushing their teeth or showering.

23 45. I have not observed any instances from any of the seven stations where a
24 detainee was provided a bed or mattress, regardless the duration of their detention.

25 46. I am informed by reviewers under my direction that surveillance video
26 shows one water jug in Hold Room 5 at Casa Grande station that was never replaced or
27 cleaned for five days, despite the cell being swept by maintenance crews on several
28 occasions. No fewer than a dozen different detainees drank directly from the water jug

1 during that time. No paper cups were placed in Hold Room 5 or provided to detainees
2 occupying that room during the five days.

3 **V. VIDEO SURVEILLANCE SCREENSHOT AUTHENTICATION**

4 47. Exhibit 120 is a true and correct copy of a screenshot captured at my
5 direction from Casa Grande station surveillance video produced by Defendants on
6 October 13, 2015, which was stamped with time “2015-Jul-22 09:02:30.313 AM (MST)”
7 and location “Cell 5.”

8 48. Exhibit 121 is a true and correct copy of a screenshot captured at my
9 direction from Casa Grande station surveillance video produced by Defendants on
10 October 13, 2015, which was stamped with time “2015-Jul-24 04:13:47.983 PM (MST)”
11 and location “Cell 5.”

12 49. Exhibit 122 is a true and correct copy of a screenshot captured at my
13 direction from Casa Grande station surveillance video produced by Defendants on
14 October 13, 2015, which was stamped with time “2015-Jul-24 04:17:09.001 PM (MST)”
15 and location “Cell 5.”

16 50. Exhibit 123 is a true and correct copy of a screenshot captured at my
17 direction from Casa Grande station surveillance video produced by Defendants on
18 October 13, 2015, which was stamped with time “2015-Jul-25 06:43:41.911 PM (MST)”
19 and location “Cell 5.” The image is redacted to protect the identity of the individual(s)
20 appearing therein.

21 51. Exhibit 124 is a true and correct copy of a screenshot captured at my
22 direction from Casa Grande station surveillance video produced by Defendants on
23 October 13, 2015, which was stamped with time “2015-Jul-24 06:44:53.916 PM (MST)”
24 and location “Cell 5.” The image is redacted to protect the identity of the individual(s)
25 appearing therein.

26 52. Exhibit 125 is a true and correct copy of a screenshot captured at my
27 direction from Casa Grande station surveillance video produced by Defendants on
28 October 13, 2015, stamped with time “2015-Jul-20 05:18:07.615 PM (MST)” and location

1 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing
2 therein.

3 53. Exhibit 126 is a true and correct copy of a screenshot captured at my
4 direction therein from Casa Grande station surveillance video produced by Defendants on
5 October 13, 2015, stamped with time “2015-Jul-20 06:47:02.415 PM (MST)” and location
6 “Cell 5.”

7 54. Exhibit 127 is a true and correct copy of a screenshot captured at my
8 direction from Casa Grande station surveillance video produced by Defendants on
9 October 13, 2015, stamped with time “2015-Jul-21 06:56:57.518 AM (MST)” and
10 location “Cell 5.”

11 55. Exhibit 128 is a true and correct copy of a screenshot captured at my
12 direction from Casa Grande station surveillance video produced by Defendants on
13 October 13, 2015, stamped with time “2015-Jul-20 08:25:29.956 PM (MST)” and
14 location “Cell 5.” The image is redacted to protect the identity of the individual(s)
15 appearing therein.

16 56. Exhibit 129 is a true and correct copy of a screenshot captured at my
17 direction from Casa Grande station surveillance video produced by Defendants on
18 October 13, 2015, stamped with time “2015-Jul-20 08:48:45.093 PM (MST)” and location
19 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing in
20 the image.

21 57. Exhibit 130 is a true and correct copy of a screenshot captured at my
22 direction from Casa Grande station surveillance video produced by Defendants on
23 October 13, 2015, stamped with time “2015-Jul-20 09:54:00.459 PM (MST)” and location
24 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing
25 therein.

26 58. Exhibit 131 is a true and correct copy of a screenshot captured at my
27 direction from Casa Grande station surveillance video produced by Defendants on
28

1 October 13, 2015, stamped with time “2015-Jul-20 11:43:42.031 AM (MST)” and
2 location “Cell 5.”

3 59. Exhibit 132 is a true and correct copy of a screenshot captured at my
4 direction from Casa Grande station surveillance video produced by Defendants on
5 October 13, 2015, stamped with time “2015-Jul-20 12:54:12.328 PM (MST)” and location
6 “Cell 5.”

7 60. Exhibit 133 is a true and correct copy of a screenshot captured at my
8 direction from Casa Grande station surveillance video produced by Defendants on
9 October 13, 2015, stamped with time “2015-Jul-20 06:54:36.499 AM (MST)” and
10 location “Cell 5.” The image is redacted to protect the identity of the individual(s)
11 appearing therein.

12 61. Exhibit 134 is a true and correct copy of a screenshot captured at my
13 direction from Casa Grande station surveillance video produced by Defendants on
14 October 13, 2015, stamped with time “2015-Jul-21 09:26:28.354 AM (MST)” and location
15 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing
16 therein.

17 62. Exhibit 135 is a true and correct copy of a screenshot captured at my
18 direction from Casa Grande station surveillance video produced by Defendants on
19 October 13, 2015, stamped with time “2015-Jul-22 09:07:39.338 AM (MST)” and
20 location “Cell 5.”

21 63. Exhibit 136 is a true and correct copy of a screenshot captured at my
22 direction from Casa Grande station surveillance video produced by Defendants on
23 October 13, 2015, stamped with time “2015-Jul-22 09:51:03.583 PM (MST)” and location
24 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing
25 therein.

26 64. Exhibit 137 is a true and correct copy of a screenshot captured at my
27 direction from Casa Grande station surveillance video produced by Defendants on
28

1 October 13, 2015, stamped with time “2015-Jul-23 05:55:49.343 AM (MST)” and
2 location “Cell 5.”

3 65. Exhibit 138 is a true and correct copy of a screenshot captured at my
4 direction from Casa Grande station surveillance video produced by Defendants on
5 October 13, 2015, stamped with time “2015-Jul-24 05:30:39.414 PM (MST)” and location
6 “Cell 5.”

7 66. Exhibit 139 is a true and correct copy of a screenshot captured at my
8 direction from Casa Grande station surveillance video produced by Defendants on
9 October 13, 2015, stamped with time “2015-Jul-24 09:04:15.572 AM (MST)” and location
10 “Cell 5.” The image is redacted to protect the identity of the individual(s) appearing
11 therein.

12 67. Exhibit 140 is a true and correct copy of a screenshot captured at my
13 direction from Casa Grande station surveillance video produced by Defendants on
14 October 13, 2015, stamped with time “2015-Jul-24 09:06:30.584 AM (MST)” and
15 location “Cell 5.”

16 68. Exhibit 141 is a true and correct copy of a screenshot captured at my
17 direction from Casa Grande station surveillance video produced by Defendants on
18 October 13, 2015, stamped with time “2015-Jul-25 09:51:47.932 AM (MST)” and
19 location “Cell 5.”

20 69. Exhibit 142 is a true and correct copy of a screenshot captured at my
21 direction from Casa Grande station surveillance video produced by Defendants on
22 October 13, 2015, stamped with time “2015-Jul-25 12:09:59.662 AM (MST)” and
23 location “Cell 5.”

24 70. Exhibit 143 is a true and correct copy of a screenshot captured at my
25 direction from Casa Grande station surveillance video produced by Defendants on
26 October 13, 2015, stamped with time “2015-Jul-26 02:18:54.729 PM (MST)” and location
27 “Cell 9.” The image is redacted to protect the identity of the individual(s) appearing
28 therein.

1 71. Exhibit 144 is a true and correct copy of a screenshot captured at my
2 direction from Casa Grande station surveillance video produced by Defendants on
3 October 13, 2015, stamped with time "2015-Jul-26 02:18:36.729 PM (MST)" and location
4 "Cell 9." The image is redacted to protect the identity of the individual(s) appearing
5 therein.

6 72. Exhibit 145 is a true and correct copy of a screenshot captured at my
7 direction from Douglas station surveillance video produced by Defendants on October 13,
8 2015, stamped with time "09-07-2015 08:49:50:000" and camera number "C20."

9 73. Exhibit 146 is a true and correct copy of a screenshot captured at my
10 direction from Douglas station surveillance video produced by Defendants on October 13,
11 2015, stamped with time "09-07-2015 11:13:59:828" and camera number "C20."

12 74. Exhibit 147 is a true and correct copy of a screenshot captured at my
13 direction from Douglas station surveillance video produced by Defendants on October 13,
14 2015. The image shows 10 feeds stamped with camera numbers "C19," "C20," "C21,"
15 C22," "C23," "C24," "C25," "C8," "C14," and "C16" times between 09-07-2015
16 12:18:15:765 and 12:18:16:765. The image is redacted to protect the identity of the
17 individual(s) appearing therein.

18 75. Exhibit 148 is a true and correct copy of a screenshot captured at my
19 direction from Douglas station surveillance video produced by Defendants on October 13,
20 2015, stamped with time "09-07-2015 06:18:20:093" and camera number "C21."

21 76. Exhibit 149 is a true and correct copy of a screenshot captured at my
22 direction from Douglas station surveillance video produced by Defendants on October 13,
23 2015, stamped with time "09-07-2015 06:32:56:125" and camera number "C21." The
24 image is redacted to protect the identity of the individual(s) appearing therein.

25 77. Exhibit 150 is a true and correct copy of a screenshot captured at my
26 direction from Douglas station surveillance video produced by Defendants on October 13,
27 2015, stamped with time "09-09-2015 04:34:06:718" and camera number "C8."

1 78. Exhibit 151 is a true and correct copy of a screenshot captured at my
2 direction from Douglas station surveillance video produced by Defendants on October 13,
3 2015, stamped with time "09-11-2015 00:01:04:453" and camera number "C8." The
4 image is redacted to protect the identity of the individual(s) appearing therein.

5 79. Exhibit 152 is a true and correct copy of a screenshot captured at my
6 direction from Douglas station surveillance video produced by Defendants on October 13,
7 2015, stamped with time "09-11-2015 22:45:05:265" and camera number "C8." The
8 image is redacted to protect the identity of the individual(s) appearing therein.

9 80. Exhibit 153 is a true and correct copy of a screenshot captured at my
10 direction from Douglas station surveillance video produced by Defendants on October 13,
11 2015, stamped with time "09-11-2015 17:38:45:546" and camera number "C8."

12 81. Exhibit 158 is a true and correct copy of a screenshot captured at my
13 direction from Nogales station surveillance video produced by Defendants on October 13,
14 2015, stamped with time "2015/06/14 AM02:03:18," camera number "CAM17 Camera
15 17" and location "Cell #3."

16 82. Exhibit 159 is a true and correct copy of a screenshot captured at my
17 direction from Nogales station surveillance video produced by Defendants on October 13,
18 2015, stamped with time "2015/06/14 AM02:21:16," camera number "CAM17 Camera
19 17" and location "Cell #3." The image is redacted to protect the identity of the
20 individual(s) appearing therein.

21 83. Exhibit 160 is a true and correct copy of a screenshot captured at my
22 direction from Nogales station surveillance video produced by Defendants on October 13,
23 2015, stamped with time "2015/06/14 AM02:21:53," camera number "CAM17 Camera
24 17" and location "Cell #3." The image is redacted to protect the identity of the
25 individual(s) appearing therein.

26 84. Exhibit 161 is a true and correct copy of a screenshot captured at my
27 direction from Nogales station surveillance video produced by Defendants on October 13,
28 2015, stamped with time "2015/06/14 AM12:02:30," camera number "CAM17 Camera

1 17” and location “Cell #3.” The image is redacted to protect the identity of the
2 individual(s) appearing therein.

3 85. Exhibit 162 is a true and correct copy of a screenshot captured at my
4 direction from Nogales station surveillance video produced by Defendants on October 13,
5 2015, stamped with time “2015/06/14 PM10:52:39,” camera number “CAM1 Cell 1” and
6 location “Cell 6.” The image is redacted to protect the identity of the individual(s)
7 appearing therein.

8 86. Exhibit 163 is a true and correct copy of a screenshot captured at my
9 direction from Nogales station surveillance video produced by Defendants on October 13,
10 2015, stamped with time “2015/06/14 PM10:52:58,” camera number “CAM1 Cell 1” and
11 location “Cell 6.”

12 87. Exhibit 164 is a true and correct copy of a screenshot captured at my
13 direction from Nogales station surveillance video produced by Defendants on October 13,
14 2015, stamped with time “2015/06/13 PM04:15:45,” camera number “CAM11 [REDACTED]
15 [REDACTED]” and location “Cell #7.” The image is redacted to protect the identity of the
16 individual(s) appearing therein.

17 88. Exhibit 165 is a true and correct copy of a screenshot captured at my
18 direction from Nogales station surveillance video produced by Defendants on October 13,
19 2015, stamped with time “2015/06/13 PM07:20:05,” camera number “CAM11 [REDACTED]
20 [REDACTED]” and location “Cell #7.” The image is redacted to protect the identity of the
21 individual(s) appearing therein.

22 89. Exhibit 166 is a true and correct copy of a screenshot captured at my
23 direction from Nogales station surveillance video produced by Defendants on October 13,
24 2015, stamped with time “2015/06/13 AM09:46:49,” camera number “CAM11 [REDACTED]
25 [REDACTED]” and location “Cell #7.” The image is redacted to protect the identity of
26 the individual(s) appearing therein.

27 90. Exhibit 167 is a true and correct copy of a screenshot captured at my
28 direction from Nogales station surveillance video produced by Defendants on October 13,

2015. The image shows 16 feeds, all stamped with time “2015/06/14 AM02:03:18,” camera numbers “CAM2 Cell 2,” “CAM3 Cell 3,” “CAM4 Cell 4,” “CAM5 Cell 5,” “CAM6 Cell 6,” “CAM7 Cell 7,” “CAM8 Cell 8,” “CAM9, Cell 9,” “CAM10 [REDACTED] Cells 2 & 3,” “CAM11 [REDACTED]” “CAM12 [REDACTED]” “CAM3 [REDACTED]” “CAM14 [REDACTED]” “CAM15 [REDACTED]” “CAM16 [REDACTED]” and “CAM17 Camera 17.” The image is redacted to protect the identity of the individual(s) appearing therein.

91. Exhibit 170 is a true and correct copy of a screenshot that I captured from Tucson station surveillance video produced by Defendants on October 13, 2015. The image shows [REDACTED] feeds stamped with camera numbers “C1” through “C16” and times between “08-09-2015 18:03:10:916” and “18:03:11:103.” The image is redacted to protect the identity of the individual(s) appearing therein.

92. Exhibit 171 is a true and correct copy of a screenshot that I captured from Tucson station surveillance video produced by Defendants on October 13, 2015. The image shows [REDACTED] feeds stamped with camera numbers “C1” through “C16” and times between “08-09-2015 00:42:59:183” and “00:42:59:386.” The image is redacted to protect the identity of the individual(s) appearing therein.

93. Exhibit 172 is a true and correct copy of a screenshot that I captured from Tucson station surveillance video produced by Defendants on October 13, 2015. The image shows [REDACTED] feeds stamped with camera numbers “C1” through “C16,” time “9/3/2015 1:35:12 PM,” and locations “Cell 4,” [REDACTED], [REDACTED]” “Cell 5,” “Cell 5” (2), “Cell 6,” “Cell 7,” “Cell 8,” [REDACTED]” “[REDACTED]” [REDACTED]” “Cell 21,” “Cell 20,” “Cell 19,” “Cell 19” (2), and “[REDACTED]” [REDACTED]” The image is redacted to protect the identity of the individual(s) appearing therein.

94. Exhibit 173 is a true and correct copy of a screenshot that I captured from Tucson station surveillance video produced by Defendants on October 13, 2015. Video playback software indicates that this image is from Cell 4 (Camera 1) on 9/22/2015 at

1 6:28:41 AM. The image is redacted to protect the identity of the individual(s) appearing
2 therein.

3 95. Exhibit 174 is a true and correct copy of a screenshot that I captured from
4 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
5 playback software indicates that this image is from Cell 5 on 9/25/2015 at 9:40:47 PM.

6 96. Exhibit 175 is a true and correct copy of a screenshot that I captured from
7 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
8 playback software indicates that this image is from Cell 6 on 9/20/2015 at 2:56:58 AM.
9 The image is redacted to protect the identity of the individual(s) appearing therein.

10 97. Exhibit 176 is a true and correct copy of a screenshot that I captured from
11 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
12 playback software indicates that this image is from Cell 6 on 9/27/2015 at 9:14:40 PM.
13 The image is redacted to protect the identity of the individual(s) appearing therein.

14 98. Exhibit 177 is a true and correct copy of a screenshot that I captured from
15 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
16 playback software indicates that this image is from Cell 7 on 9/22/2015 at 6:28:41 AM.
17 The image is redacted to protect the identity of the individual(s) appearing therein.

18 99. Exhibit 178 is a true and correct copy of a screenshot that I captured from
19 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
20 playback software indicates that this image is from Cell 19 on 9/08/2015 at 1:35:53 AM.
21 The image is redacted to protect the identity of the individual(s) appearing therein.

22 100. Exhibit 179 is a true and correct copy of a screenshot that I captured from
23 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
24 playback software indicates that this image is from Cell 19 on 9/15/2015 at 5:01:44 AM.
25 The image is redacted to protect the identity of the individual(s) appearing therein.

26 101. Exhibit 180 is a true and correct copy of a screenshot that I captured from
27 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
28

1 playback software indicates that this image is from Cell 19 on 9/21/2015 at 8:34:07 PM.
 2 The image is redacted to protect the identity of the individual(s) appearing therein.

3 102. Exhibit 181 is a true and correct copy of a screenshot that I captured from
 4 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
 5 playback software indicates that this image is from Cell 19 on 9/8/2015 at 1:35:53 AM.
 6 The image is redacted to protect the identity of the individual(s) appearing therein.

7 103. Exhibit 182 is a true and correct copy of a screenshot that I captured from
 8 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
 9 with time "08-09-2015 00:42:59:511" and camera number "CH 2." The image is redacted
 10 to protect the identity of the individual(s) appearing therein.

11 104. Exhibit 183 is a true and correct copy of a screenshot that I captured from
 12 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
 13 with time "08-09-2015 18:03:10:978" and camera number "CH 2." The image is redacted
 14 to protect the identity of the individual(s) appearing therein.

15 105. Exhibit 184 is a true and correct copy of a screenshot that I captured from
 16 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
 17 with time "08-09-2015 00:42:59:417" and camera number "CH 3." The image is redacted
 18 to protect the identity of the individual(s) appearing therein.

19 106. Exhibit 185 is a true and correct copy of a screenshot that I captured from
 20 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
 21 with time "08-09-2015 18:03:10:947" and camera number "CH 3." The image is redacted
 22 to protect the identity of the individual(s) appearing therein.

23 107. Exhibit 186 is a true and correct copy of a screenshot that I captured from
 24 Tucson station surveillance video produced by Defendants on October 13, 2015. The
 25 image shows [REDACTED] feeds stamped with camera numbers "C1" through "C16," time
 26 "9/28/2015 11:59:58 PM," and locations "Cell 4," [REDACTED] [REDACTED]
 27 [REDACTED] "Cell 5," "Cell 5" (2), "Cell 6," "Cell 7," "Cell 8," [REDACTED] [REDACTED]
 28 [REDACTED] "Cell 21," "Cell 20," "Cell 19," "Cell 19" (2), and

1 [REDACTED].” The image is redacted to protect the identity of the
2 individual(s) appearing therein.

3 108. Exhibit 187 is a true and correct copy of a screenshot that I captured from
4 Tucson station surveillance video produced by Defendants on October 13, 2015. The
5 image shows four feeds stamped with time “9/28/2015 3:42:34 AM,” camera numbers
6 “C6,” “C9,” “C8,” and “C4,” and locations “[REDACTED]” “Cell 18
7 (Camera 2),” “Cell 1,” and “[REDACTED].”

8 109. Exhibit 188 is a true and correct copy of a screenshot that I captured from
9 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
10 with time “08-19-2015 05:16:42:107” and camera number “CH 1.”

11 110. Exhibit 189 is a true and correct copy of a screenshot that I captured from
12 Tucson station surveillance video produced by Defendants on October 13, 2015, stamped
13 with time “08-09-2015 08:23:03:133” and camera number “CH 3.”

14 111. Exhibit 203 is a true and correct copy of a screenshot that I captured from
15 Tucson station surveillance video produced by Defendants on October 13, 2015. Video
16 playback software indicates that this image is from Cell 6 on 9/08/2015 at 9:34:02 AM.
17 The image is redacted to protect the identity of the individual(s) appearing therein.

18 112. Exhibit 154 is a true and correct copy of a screenshot captured at my
19 direction from Brian A. Terry station surveillance video produced by Defendants on
20 October 15, 2015. Video playback software indicates that this image is from Camera 61
21 on 6/6/2015 at 11:10:30 AM. The image is redacted to protect the identity of the
22 individual(s) appearing therein.

23 113. Exhibit 155 is a true and correct copy of a screenshot captured at my
24 direction from Brian A. Terry station surveillance video produced by Defendants on
25 October 15, 2015. Video playback software indicates that this image is from Camera 56
26 on 8/31/2015 at 6:55:41 AM. The image is redacted to protect the identity of the
27 individual(s) appearing therein.
28

1 114. Exhibit 156 is a true and correct copy of a screenshot captured at my
2 direction from Brian A. Terry station surveillance video produced by Defendants on
3 October 15, 2015. Video playback software indicates that this image is from Camera 87
4 on 9/5/2015 at 7:54:28 PM. The image is redacted to protect the identity of the
5 individual(s) appearing therein.

6 115. Exhibit 157 is a true and correct copy of a screenshot captured at my
7 direction from Brian A. Terry station surveillance video produced by Defendants on
8 October 15, 2015. Video playback software indicates that this image is from Camera 93
9 on 9/11/2015 at 9:07:23 PM. The image is redacted to protect the identity of the
10 individual(s) appearing therein.

11 116. Exhibit 168 is a true and correct copy of a screenshot captured at my
12 direction from Sonoita station surveillance video produced by Defendants on October 13,
13 2015, stamped with time "2015/09/15 00:57:39" and camera number "[Site1]Ch1." The
14 image is redacted to protect the identity of the individual(s) appearing therein.

15 117. Exhibit 169 is a true and correct copy of a screenshot captured at my
16 direction from Sonoita station surveillance video produced by Defendants on October 13,
17 2015, stamped with time "2015/09/15 01:12:11" and camera number "[Site1]Ch2." The
18 image is redacted to protect the identity of the individual(s) appearing therein.

19 118. Exhibit 190 is a true and correct copy of a screenshot captured at my
20 direction from Willcox station surveillance video produced by Defendants on October 15,
21 2015, stamped with time "LTZ 6/13/2015 10:00:03 AM" and location "Cell D107."

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

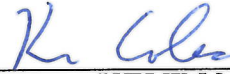
28 ///

1 119. Exhibit 191 is a true and correct copy of a screenshot captured at my
2 direction from Willcox station surveillance video produced by Defendants on October 29,
3 2015, stamped with time "LTZ 6/19/2015 5:00:26 PM" and location "Cell D119."

4 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
5 is true and correct.

6 Executed this 4th day of December, 2015.

7
8 By: _____



KEVIN M. COLES

Attachment A

Table 1: * Hold Room Surveillance Video Produced from Tucson Station

Dates:**	Cells													
	1	2	3	4	5	6	7	8	16	17	18	19	20	21
Before June 10, 2015	None	None	None	None	None	None	None	None	None	None	None	None	None	None
June 10-30	None	None	None	None	None	None	None	None	None	None	None	None	None	None
July 1-31	None	None	None	None	None	None	None	None	None	None	None	None	None	None
Aug. 1-31	5 hours	5 hours	5 hours	23 hours	18 hours	18 hours	18 hours	18 hours	5 hours	5 hours	5 hours	18 hours	18 hours	18 hours
Sept. 1-28	4 days	None	None	26 days	26 days	26 days	26 days	26 days	None	None	4 days	26 days	26 days	26 days
After Sept. 28, 2015	None	None	None	None	None	None	None	None	None	None	None	None	None	None

* The number of days appearing in Tables 1 through 6 reflects days for which at least some hold room surveillance video was produced. For example, if hold room surveillance video was produced from noon on August 1 until noon on August 2, the table would reflect that two days of video were produced. In the event that less than one full day of hold room surveillance video was produced for a given date range, the table reflects the approximate number of hours produced for that date range.

** All dates in Tables 1 through 6 are from the year 2015.

Table 2: Hold Room Surveillance Video Produced from Douglas Station

Dates:	Cells																			
	1	2	3	4	5	6	7	8 to 13***	14	15	16	17	18	19	20					
Before June 10, 2015	109 days	22 days	22 days	22 days	None	109 days	22 days	None	None	None	None	None	None	None	None					
June 10-30	3 days	None	None	None	None	3 days	None	None	None	None	None	None	None	None	None					
July 1-31	None	26 days	26 days	26 days	4 days	None	26 days	None	None	None	None	None	None	None	None					
Aug. 1-31	13 days	24 days	24 days	24 days	29 days	13 days	24 days	8 days each	8 days	8 days	8 days	8 days	8 days	8 days	8 days					
Sept. 1-28	28 days	28 days	28 days	28 days	27 days	28 days	28 days	27 days each	27 days	27 days	27 days	27 days	27 days	27 days	27 days					
After Sept. 28, 2015	2 days	2 days	2 days	2 days	None	2 days	2 days	None	None	None	None	None	None	None	None					

*** Cells 8 through 13 are six separate isolation cells that have all been represented in one column for economy of space.

Table 3: Hold Room Surveillance Video Produced from Brian A. Terry Station

Camera numbers**** (By Camera Nos. for DVRs 1.1-1.16 and/or 2.1-2.16):																			
	58 /87	59 /77	60 /95	61 /79	62 /94	63 /93	64 /92	115 /50	116/ 51	117/ 52	118/ 53	119/ 54	120/ 55	121/ 56	122/ 57	123/ 58	124/ 59	/61	/62
Dates																			
Before June 10, 2015	99 days	99 days	99 days	99 days	99 days	99 days	99 days	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	None	None
June 10- 30	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	None	None	None	None	None	None	None	None	None	None	None	None
July 1-31	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None
Aug. 1-31	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days
Sept. 1- 28	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days
After Sept. 28, 2015	2 day	2 day	2 day	2 day	2 day	2 day	2 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day	≤ 1 day

**** As explained more fully in paragraph 25 of this Declaration, Plaintiffs' review of surveillance video revealed that all camera numbers from Brian A. Terry Station changed on or around August 20, 2015. The two camera numbers identified in each column heading of Table 3 reflect what is believed to be the alignment of hold room surveillance video locations from before and after the number shift.

Table 4: Hold Room Surveillance Video Produced from Sonoita Station

Dates	Cells (By Channel Numbers)					
	1	2	3	4	5	6
Before June 10, 2015	None	None	None	None	None	None
Jun. 10- 30	None	None	None	None	None	None
Jul. 1 - 31	None	None	None	None	None	None
Aug. 1-31	None	None	None	None	None	None
Sept. 1-28, 2015	6 days	6 days	6 days	6 days	6 days	6 days
After Sept. 28, 2015	None	None	None	None	None	None

Table 5: Hold Room Surveillance Video Produced from Casa Grande Station

Dates	Cells									
	1	2	3	4	5	6	7	8	9	10
Before June 10, 2015	None	None	None	None	None	None	None	None	None	None
Jun. 10-30	None	None	None	None	None	None	None	None	None	None
Jul. 1 - 31	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days	12 days
Aug. 1-31	19 days	19 days	19 days	19 days	19 days	19 days	19 days	19 days	19 days	19 days
Sept. 1-28	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days	28 days
After Sept. 28, 2015	12 hours	12 hours	12 hours	12 hours	12 hours	12 hours	12 hours	12 hours	12 hours	12 hours

Table 6: Hold Room Surveillance Video Produced from Willcox Station

DATES	Cells									
	D107	D108	D109	Kennel Fuel PTZ	D114	D115	D116	D117	D118	D119
Before June 10, 2015	None	None	None	None	None	None	None	None	None	None
June 10- 30	15 days	15 days	15 days	19 days	19 days	19 days	19 days	15 days	None	15 days
July 1 - 31	None	None	None	1 day	1 day	1 day	1 day	None	None	None
Aug. 1-31	None	None	None	None	None	None	None	None	None	None
Sept. 1-28, 2015	None	None	None	None	None	None	None	None	None	None
After Sept. 28, 2015	None	None	None	None	None	None	None	None	None	None