

FEDERAL DEFENDERS OF SAN DIEGO, INC.

THE COMMUNITY DEFENDER ORGANIZATION FOR THE SOUTHERN DISTRICT OF CALIFORNIA

June 4, 2018

Honorable Barry Ted Moskowitz
Chief Judge, United States District Court
Southern District of California
333 West Broadway
San Diego, CA 92101

Dear Chief Judge Moskowitz:

I regret that I am unable to attend the next meeting of the Criminal Case Management Committee. Unfortunately, the Defender Services Committee meeting was scheduled long ago, and I am committed to representing defenders at that meeting. Therefore, I write this letter to you and to the Court as a whole to make certain that my personal and professional views are known.

I consider this a critical moment for the Court, the defense community, and our shared commitment to the ideals of due process and meaningful representation of the accused. Both principals are now at risk. In the attachment to this letter, I outline some of the practical problems arising from the Attorney General's decision during this election year to order the prosecution of every potential entry or re-entry offense without regard to other considerations. These practical problems are severe:

- Arrestees are held in Border Patrol outstations for days without adequate clothing, blankets, food, hygiene, or medical care;
- Pretrial detainees are not brought timely to magistrate court, and court days stretch into the evening;
- Attorneys have no meaningful opportunity to consult with detainees before their initial appearance and bond hearing; nevertheless, these hearings proceed depriving defendants of meaningful representation;

- Misdemeanor defendants facing time served sentences cannot obtain a trial setting sooner than 30 days while change of plea hearings can be set within 7 days, so defendants must sit in jail longer if they wish to contest charges against them. The effect is coercive.
- Attorneys cannot communicate with their clients held at remote detention facilities and so cannot develop the trust and confidence necessary to an attorney/client relationship. These clients will not contest charges because they have no confidence in their counsel.

These practical problems demonstrate two things: First, that this District lacks infrastructure sufficient to handle this number of cases while simultaneously ensuring that those prosecuted are accorded both due process and meaningful legal representation; Second, that the Court has already begun to reshape itself to accommodate the increase in prosecutions, and these accommodations serve to diminish both the Court and the constitutional protections accorded the accused.

Neither the Court nor the defense community has any proper say in the number or type of prosecutions the Executive chooses to bring. But the Court is responsible for its own procedures and must now decide whether it will reshape these to accommodate the Executive's aims. For years, we in this District have looked with concern to our neighbors to the east, Arizona, New Mexico, and Texas. We have viewed the mass proceedings, the summary procedures, the inadequate opportunity for consultation with counsel, and the resultant unvarying failure of accused individuals trapped in those coercive systems to challenge the government's charges with dismay.¹ Many times, this office has investigated and established the citizenship of individuals prosecuted and convicted after plea in those districts' summary proceedings and have been grateful that this Court is different.

¹ In at least one district, the Court has refused to accommodate the Executive's political prosecution goals.

Conversations with Arizona attorneys experienced with Operation Streamline prosecutions confirm that when courts adopt these summary procedures, providing meaningful representation becomes all but impossible:

- Attorneys lack adequate time to meet with clients and explain the nature of proceedings.
- Without this, clients mistake criminal prosecution for civil immigration proceedings, and plead guilty to offenses without a full realization of the import of this action.
- Attorney/client conferences take place in the presence of Marshals and other defendants, so there is no confidentiality.
- In these circumstances, attorneys find it impossible to consider the competency of their clients.
- Attorneys have no time to screen for citizenship or LPR or other legal status.

Equally important, judges remark upon the diminution of the court's dignity that results from these "streamlined" procedures. Left without the time or input from counsel necessary to treat defendants as individuals, courts process cases rather than dispense justice. Eventually, this erodes the respect which is the foundation of courts' legitimacy. As the Supreme Court, in another context, put the matter:

The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve.

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Deck v. Missouri, 544 U.S. 622, 631 (2005). A court intent on processing cases, not judging individuals, sacrifices its dignity and cannot command the respect essential to legitimacy. This Court has never taken this route.

We, and all who work in this District, have been justly proud that we have not allowed our location on the border or the foreign origin of so many of those prosecuted to signify a lesser standard of justice. Mindful of this proud history, I ask that this Court reject pleas to “streamline” its procedures and maintain its commitments to the rights of individuals and the ideal of due process.

Sincerely,

A handwritten signature in black ink, appearing to read "Reuben Camper Cahn". The signature is fluid and cursive, with a large initial "R" and "C".

REUBEN CAMPER CAHN
Executive Director

RCC:evp

cc: United States District Judges, Southern District of California
United States Magistrate Judges, Southern District of California
Adam L. Braverman, United States Attorney
Jami L. Ferrara, Criminal Justice Act Representative

Attachment

ATTACHMENT

I. Pretrial detainees are not being brought timely by the Department of Homeland Security to the MCC for intake and thus every part of the successive process is delayed: release from MCC to USMS, access to FSDSI for pre-initial appearance interviews, and presentation to the criminal duty magistrate judge for initial appearances.

Each day, there are a large number of new arrestees who are transferred from the MCC to court for initial appearances *after* 3 p.m. These late arrivals are what has been causing: the criminal duty calendar to regularly run past 5 p.m., initial appearances and bail determinations to occur without the defense having an opportunity to—as required by Fed. R. Crim. P. 5(d)(2) & 44¹—consult with their clients, and FSDSI to staff a third duty shift of investigators and attorneys in the tank.²

¹ Fed. R. Crim. P. 5(d)(2) provides: “Consulting with Counsel. The judge must allow the defendant reasonable opportunity to consult with counsel.” This week, the Court has raised the idea that the right to counsel at the initial appearance does not attach for those charged with misdemeanor offenses, possibly because Rule 5 addresses proceedings in a “felony case.” But, Fed. R. Crim. P. 44(a) similarly provides: “Right to Appointed Counsel. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.” And the commentary to Rule 44 explains, “[44(a)] expresses the right of the defendant unable to obtain counsel to have such counsel assigned at any stage of the proceedings from his initial appearance before the commissioner or court through the appeal.”

² Federal Defenders is running into the same problem that the Court is with nontraditional working hours for non-exempt staff. We assign attorneys to the cases we are appointed to after the criminal duty calendar is over and immediately disseminate the cases to allow attorneys to conduct client visits within 24 hours of appointment, this means that after criminal duty is over, we are having non-exempt staff (who also have families like the court staff) stay after their normal working hours—for example, until past 7:30 p.m. last week—to disseminate assigned cases to FSDSI attorneys.

If these were same-day arrestees who were being presented in court for their initial appearances, the delay would be understandable. But that is not what is happening. For example, on Wednesday, May 23, 2018, Jose Maria Palestino-Rosas, Case No. 18mj2721-JLB, was presented in court shortly after 5 p.m. He had been arrested *the previous day before noon*: at 11 a.m. on Tuesday, May 22. The same was true of Alexis Ramirez-Cruz, Case No. 18mj2719-MDD (previous day arrest before noon but presented the following day after 5 p.m.) and Alvis Morales-Onofre, Case No. 18mj2717-MDD (previous day arrest before noon but presented the following day after 5 p.m.). Maria Del Rosarios Arias-Pedroza, Case No. 18mj2720-MDD, was also presented late in the afternoon on Wednesday, May 23rd but arrested *before 7 a.m.* the previous day, Tuesday, May 22nd.

On Monday last week, it was even worse. For Luis Enrique Ayala-Figueroa, Case No. 18mj2667-MDD, even though he was arrested on Friday, May 18th, he wasn't presented to the court for his initial appearance until after 5:30 p.m. on Monday, May 21st. Jose Luis Aguilar-Ledesma, Case No. 18mj2666-MDD, was arrested before noon on Saturday, May 19th, but he also wasn't presented to the court for his initial appearance until after 5:30 p.m. on Monday, May 21st. The same is true for Rafael Flores-Ramos, Case No. 18mj2665-MDD, he was arrested *before* 10 a.m. on Saturday, May 19th but wasn't brought for his initial appearance until almost 6 p.m. on Monday, May 21st. If these individuals had been brought to the MCC without unnecessary delay on the day of their arrest—they would have had their initial appearances in the normal course of a 10:30 a.m. and 2 p.m. criminal duty calendar and not after 5 p.m.

II. Multi-day stays at Border Patrol stations, Ports of Entry, and immigration holding facilities *prior* to being booked into the MCC and presented for initial appearances—just as happened in 2011-12—is occurring again in the Southern District.

The Court will likely recall that this is an issue that arose previously in the course of the Fed. R. Crim. P. 5 litigation in 2011-12. In 2012, the USAO represented that “[t]he need to regularly detain newly-arrested defendants for multiple nights at temporary detention facilities at ports of entry or Border Patrol stations no longer exists, and **this is no longer happening.**” *United States’ Status Report*, at 2:6-8, Clerk’s entry No. 90, *United States v. Minero-Rojas*, Case No. 11cr3253-BTM (S.D. Cal. filed May 3, 2012). Unfortunately, this is no longer true.

It appears that the pretrial detainees listed above (arrested on Friday/Saturday and presented in court early evening on Monday) spent multiple nights at either a

BP station and/or some other holding facility where they were sleeping on the floor with a mat and mylar blanket. We are again seeing diabetic clients not getting access to needed medication.³ We are also hearing clients report being housed in cold rooms where the lights are on all hours of the day and night. At least one FSDSI client arrested before 10 a.m. on Saturday, May 19, 2018 was not booked into the MCC until midday on Monday, May 21st and then cleared for court at 3:45 p.m. He spent two nights in other locations. These delays in booking into the MCC are what is causing the criminal duty calendar to stretch into the early evening.⁴

The USAO needs to impress upon DHS the seriousness of this problem and end it immediately. Not only will the failure of DHS to bring people timely to the

³ We have one client, a diabetic, who was arrested before 10 a.m. on Saturday, May 19th. He takes daily medication to manage his diabetes. He started having chest pains after his arrest and was taken to the hospital. In the hospital, he was given medication for his diabetes. After his release from the hospital, he was not taken to be booked at MCC but was instead returned to the BP station/immigration holding facility where he slept on a bench with the lights on all night. The following day, Sunday, he was moved to yet another immigration facility. He was not given access to his medication on Sunday and slept in a holding cell with more than a dozen other people that was cold and where the lights were again on all day. It wasn't until Monday that he was booked into the MCC (from Saturday to Monday he was kept in the same clothes and not given access to basic hygiene opportunities like brushing his teeth). He wasn't presented for his initial appearance until almost 6 p.m. on Monday, May 21st. See attached Declaration of Rafael Ramos-Flores, attached as Exhibit A.

⁴ It is possible that the USAO will assert that these delays in booking are occurring because of lack of available booking windows at MCC. But this too was dealt with years ago. As the Court has pointed out in 2011, "There is no requirement . . . that the MCC be the only point to which officers can bring arrested persons. . . .The consequence of relying solely on the MCC has been a substantial failure to comply with Rule 5(a)(1)(A) in the San Diego Division. . . . If the MCC cannot accommodate them, alternatives must be obtained that will result in compliance with Rule 5 and constitutional conditions of confinement. The Government can no longer seek to utilize a system devised decades ago to accommodate only a fraction of the number of persons now arrested." *Order Denying Defendant's Motion to Dismiss the Indictment and to Issue a Writ of Prohibition*, Clerk's entry No. 42, *United States v. Minero-Rojas*, Case No. 11cr3253-BTM (S.D. Cal. filed November 3, 2011).

MCC following their arrest result in continued court administration problems (e.g., detainees not being made available until late in the day for their initial appearances) but the significant due process problems that we fixed years ago will reoccur, if they are not already are reoccurring.

III. CBP “constantly falsifies their documents saying they feed and clothe prisoners.”

The **complainant [redacted] is currently a CBP Officer** for the Calexico Border Patrol station. He says that currently (2/28/12) there are exactly 15 Romanian prisoners being locked up since Saturday (2/25/12). They have little food or clothing and the living conditions are very poor. Half of the prisoners are children who have been crying since they arrived. [Redacted] states that **this facility has been in poor condition since the beginning and constantly falsifies their documents saying they feed and clothe prisoners.** There are no policies or standards at Calexico. Code [redacted].

FOIA Request No. 2016-025 received March 26, 2018 by FDSDI from Office of Inspector General, Department of Homeland Security (emphasis added).

Even though the USAO and FDSDI were litigating Fed. R. Crim. P. 5 issues in front of this Court during the time period of this whistleblowing report, from 2011-13, Federal Defenders was never made aware of the CBP whistleblower’s allegations that the U.S. government was falsifying records regarding detainee conditions of confinement. This issue was litigated before and after the date of the CBP whistleblower’s report to the Office of the Inspector General and Federal Defenders counsel was never alerted. *See United States v. Minero-Rojas*, Case No. 11cr3253 (filed July 2011, litigation ceased on R. 5 issue in early 2013); *United States v. Alcazar*, Case No. 11cr0045-DMS; *United States v. Chavez-Tello*, Case No. 11cr3249-WQH; *United States v. San Miguel*, Case No. 11cr3325-H; *United States v. Rodriguez-Cifuentes*, Case No. 11cr3121-AJB; and *United States v. Solis-Sanchez*, Case No. 11cr3122-DMS. The fact that this allegation by—falsification of detainee conditions of confinement records—specific to our District and our detention centers was never disclosed to our office or the Court despite active litigation during the period of the report is very troubling.

Federal Defenders is concerned about the health and well-being of pretrial detainees being kept at these Border Patrol Stations, Ports of Entry, and other holding centers today. From our previous litigation, we know these pretrial detainees suffer from mental health issues that need attention, some are pregnant

without sufficient access to medical care or nutritious food, and have health issues like diabetes and are not provided access to medication. *See* Declaration of Juan Antonio Rodriguez-Cifuentes previously filed as *Appendix A of Motion to Dismiss the Indictment for a Violation of the Federal Rules of Criminal Procedure and the Due Process Clause of the Fifth Amendment in United States v. Rodriguez-Cifuentes*, Case No. 11cr3121-AJB, Clerk’s entry 17 (S.D. Cal. filed September 30, 2011) and Declarations of Jaime Garcia Valdivia, Miguel Toscano Alaniz, and Norma Macias previously filed as *Appendix F-K of Motions to Dismiss the Indictment for a Violation of the Federal Rules of Criminal Procedure and the Due Process Clause of the Fifth Amendment in United States v. Minero-Rojas*, Case No. 11cr3253-BTM, Clerk’s entry 24 (S.D. Cal. filed September 6, 2011), attached as Exhibit B. Instead of seeking to place ever more individuals into custody without the ability to safely and humanely care for them, the USAO should focus its time and energy on fixing the current problems.

IV. “Every jurisdiction should guarantee by statute or rule the right of a criminally-detained or confined person to prompt, confidential, affordable and effective communication with a defense lawyer” ABA Criminal Justice Standard 4-2.2(a). Defense counsel have “a duty to communicate and keep the client informed and advised of significant developments and potential options and outcomes.” ABA Criminal Justice Standard 4-1.3(d).

Because S.D. California pretrial detainees are being held out of state (in San Luis, Arizona) and out of district (in Orange County, Santa Ana, and San Bernardino jails in the C.D. California), FDSOI and CJA attorneys are struggling to develop effective attorney-client relationships, are repeatedly frustrated in their attempts to meet—even remotely—because of non-functioning equipment, and failing to receive timely responses to requests for client contact resulting in real effects in criminal cases. While Federal Defenders and the CJA Panel were told that there would be videoconference access to clients at Santa Ana and San Luis, that access has sadly been a farce.

Attorneys must call or email USMS to get a slot in the videoconference system. *See* Exhibit C showing limits of videoconference availability. Appointments are not same-day, but must be made in advance. So even if you have a pressing issue to discuss with a client, you must wait. This is true even if you were to attempt to see the client in person; the San Luis detention facility has a 24-hour advance notice rule. Attorney-client communication via USMS videoconference (which happens via laptop, with the resulting poor quality of sound and picture for reviewing

important discovery and documents) is wholly ineffectual.

Here are some of the issues my staff and local CJA attorneys have reported:

- An FDSDI attorney hires a Mixteco interpreter to accompany the attorney to the preassigned videoconference to meet clients being held in Santa Ana. They arrive for the scheduled videoconference and it has been cancelled. Without telling the attorney, the client was moved from Santa Ana to Orange County jail. Attorney asks to use the prearranged appointment slot to do the videoconference with the client now in Orange County, but is told no, you can't do that, they need 24-hours notice. The attorney asks to do videoconference on the weekend, but no they can't do that, no weekend videoconference. Needless to say, this was a waste of the attorney's time and a waste of CJA money on the Mixteco interpreter. After much back and forth, USMS agrees to bring clients to SD to meet with attorney. First meeting between attorney and client happens 6 days after arrest. Government still has not sent discovery so nothing can be reviewed during that meeting. After discovery is received, attorney sets up videoconference for later that week to review. Remote jail is running behind and client is not produced until 40 minutes into scheduled meeting time. This late arrival runs into the attorney's second client videoconference appointment time and that appointment has to be canceled because there is not enough time to have a meaningful conversation with the client.
- Both FDSDI and CJA attorneys have been told by the USMS that if they want an in-person meeting with their clients housed at remote jails, the USAO has to request the meeting. Both are given a form to have the assigned AUSA fill out for this purpose. These are—to be clear—meetings between the defense attorney and the client, not involving the USAO. Does not matter, they are told, have USAO make the request if you want it to happen.
- A CJA attorney sets up videoconference interviews with a client for May 15. The client can hear the attorney but the attorney can't hear the client. Multiple calls to the jail do not fix the problem—total failure. Same CJA attorney sets up a videoconference a week later to meet 3 new clients housed at ICJ. Same issue—no sound on attorney side.

- A FDSDI attorney arrives 10 minutes early for appointed videoconference time with two clients but the conference does not begin until 35 minutes after the appointed time because the Santa Ana jail didn't know the appointments had been scheduled. When first client arrives, equipment is not working. Second scheduled client visit can't occur at all because next scheduled attorney appointment for videoconference has to begin. Attorney asks USMS to see client in person because court is coming up and they have not been able to have substantive meetings but receives no response.
- Another CJA attorney reports a couple of scheduled videoconferences with San Luis not able to proceed because of "malfunctioning equipment." A scheduled phone call doesn't happen either.
- A CJA attorney has mentally-ill client housed locally for whom he/she is able to get a successful medication protocol in place, after several weeks. Client is then moved to San Luis and then to Santa Ana. Attorney spending time trying to get client moved back to local facility so client can have continuity of medical treatment.
- A CJA attorney requests to do in-person safety valve for multi-defendant case (clients housed in Santa Ana and San Luis). USAO refuses. District court judge at sentencing notes lack of in-person safety valve means that the AUSA would not have been able to determine credibility of each defendant. Clients' resulting sentences—significantly above the government's recommendation—seem to have been affected by their remote detention.
- A different CJA attorney reports two attempted PSIs that should have occurred via videoconference with San Bernardino could not happen because of equipment failures. USPO needs continuance to do the report because of this and USAO does not want to continue case because it's "old." Same CJA attorney reports repeated attempts for his/her investigator to get background information for a sentencings without a PSR via videoconference fail.

- Yet another CJA attorney reports that the logistics of seeing clients out of district and of scheduling client videoconferences is turning his/her CJA practice into a full-time job though it is not full-time pay. He/she is struggling to maintain the rest of his/her practice so he/she can continue to serve the Court in this way but also make a living.
- CJA attorney attempts to schedule videoconference with clients at San Luis and ICJ but told nothing available until June. Seeks help from USAO and USMS to see clients in person, but no luck. Attorney has to leave town for family funeral so has to ask court to reassign cases because not able to see them despite repeated attempts.

There are more stories from the CJA panel and FDSDI attorneys of the challenges of effective representation in the current circumstances, but the above examples give a good idea of the significant hardships being experienced by all. This Court has always prided itself on process—even for the poor and detained—and access to justice. This current environment of diminished access to counsel and recurring days at Ports of Entry and Border Patrol stations threatens the integrity of what we do each and every day. If this Court would like us to work with the Criminal Case Management Committee to find solutions to these significant issues, Federal Defenders remains interested in working together. We believe that through active coordination we could avoid some of the significant constitutional issues we are already seeing.

EXHIBIT A

1 **DECLARATION OF RAFAEL RAMOS-FLORES**

2 1. I am the defendant in the above captioned case.

3 2. I was arrested on May 19, 2018.

4 3. After my arrest, I was taken to a Border Patrol Station. I am not sure
5 where.

6 4. On Saturday, I was placed in a room with another man and I slept on
7 a bench.

8 5. The lights were on the entire time.

9 6. It was cold.

10 7. I was given a blanket.

11 8. I was given juice, cookies, and a burrito for lunch and dinner.

12 9. The agents did not ask me if I had any medical conditions or needed
13 medication.

14 10. Prior to my arrest, I was taking medication daily for diabetes.

15 11. In addition, I had a heart attack about 6 months before my arrest.

16 12. Saturday night I started having chest pain and I requested medical
17 attention. The agents took me to the hospital.

18 13. The doctor at the hospital proscribed medicine for my diabetes and
19 gave me some of the medicine while I was the hospital.

20 14. The agents took me back to another immigration holding area on
21 Sunday.

22 15. I was not given the medicine that the doctor had proscribed me the
23 night before.

24 16. On Sunday at the immigration holding area, I was placed in a holding
25 room with about 18 other people.

26 17. The room was cold, the lights were on the entire time, and I was given
27 juice, crackers and a burrito three times during the day.

28 18. I received a blanket and a place to sleep on Sunday night.

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19. I was still wearing the clothes that I was arrested in and no clean clothes were provided.

20. Further, I was not given a tooth brush.

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

Executed on: May 25, 2018

By: Rafael Flores

Rafael Ramos-Flores

EXHIBIT B

DECLARATION OF JUAN ANTONIO RODRIGUEZ-CIFUENTES

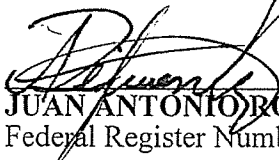
I, Juan Antonio Rodriguez-Cifuentes, do hereby swear and affirm the following under penalty of perjury:

1. I was arrested in the early morning hours of Thursday, June 23, 2011.
2. After I was arrested, I was taken to the Imperial Beach Border Patrol Station.
3. I spent Thursday, Friday, Saturday nights at the Imperial Beach Border Patrol Station.
4. On Sunday, June 26, 2011, I was taken to the Metropolitan Correctional Center to be booked.
5. After some initial screening at the Metropolitan Correctional Center, I was told I was to be taken to the hospital for treatment.
6. Instead, on Sunday, June 26, 2011, I was taken from the Metropolitan Correctional Center back to the Imperial Beach Border Patrol Station where I spent another night.
7. I have been diagnosed with schizophrenia and was using heroin daily before my arrest.
8. While at the Border Patrol Station, I told the Officers that I was hearing voices and needed psych medication.
9. The officers mocked me.
10. I asked to speak to a supervising officer about my need for medication.
11. I spoke with a woman I believe was a supervising officer named "Aguirre" at the Imperial Beach Border Patrol Station.
12. She told me that the Station was not a hospital, that they do not have nurses or doctors there, that I would have to wait for treatment, and that she did not ask me to come to her country.
13. While at the Imperial Beach Border Patrol Station from Thursday, June 23rd through Monday, June 27th, I also started to go into heroin withdrawal.
14. I was in pain, had the chills, and diarrhea.
15. While at the Station, I slept on the floor the entire time without a blanket or pillow.
16. It was cold.
17. I was given dehydrated food to eat (it came in a box with a packet of water to rehydrate it).
18. After the first time I ate the food on Thursday, June 23rd, I vomited.
19. I did not eat the food again.

- 1 20. I asked for any other type of food.
- 2 21. No other food was provided.
- 3 22. On Monday, June 27, 2011, I was finally admitted to Alvarado Parkway Institute where I was treated
4 for withdrawal and depression.
- 5 23. I was discharged from Alvarado Parkway Institute on Tuesday, July 5, 2011.
- 6 24. During my discharge from Alvarado Parkway Institute, I was told I would continue to take daily
7 medications.
- 8 25. After my discharge from Alvarado Parkway Institute, I was taken once again to the Imperial Beach
9 Border Patrol Station.
- 10 26. After my discharge, I was placed back into the clothes I was arrested in.
- 11 27. During my second stay at the Imperial Beach Border Patrol Station, I received my medications for
12 only two days before I was told they ran out and I would have to wait until I got to the MCC for
13 more.
- 14 28. During my second stay at the Station, I again slept on the floor without a blanket or pillow each
15 night, until my final night there when I was provided a mattress to use on the floor.
- 16 29. During my second stay at the Station, I was given two burritos a day to eat instead of the dehydrated
17 food packets.
- 18 30. During the entire time I was at the Imperial Beach Border Patrol Station (both before and after my
19 time at Alvarado Parkway Institute), I was never given a toothbrush or toothpaste or soap or any
20 other personal hygiene items.
- 21 31. I was never allowed to bathe while at the Imperial Beach Border Patrol Station.
- 22 32. I was never given any clean clothing at the Imperial Beach Border Patrol Station.
- 23 33. I believe I was finally taken to the Metropolitan Correctional Center on Saturday, July 9, 2011.
- 24 34. On Monday, July 11, 2011, I was taken to magistrate court for the first time since my arrest.
- 25 35. I am currently in custody in the Southern District of California.
- 26 36. I am being medicated with an anti-psychotic that I believe is called "seroquel."
- 27 37. I am also being medicated with an anti-depressant that I believe is called "wellbutrin."
- 28

1 I HEREBY AFFIRM THAT TO THE BEST OF MY KNOWLEDGE AND MEMORY THE
2 FOREGOING IS TRUE AND CORRECT:

3 DATED: 8-23-2011



JUAN ANTONIO RODRIGUEZ-CIFUENTES
Federal Register Number 58360-097

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DECLARATION OF MIGUEL TOSCANO-ALANIZ

I, Miguel Toscano-Alaniz, do hereby swear and affirm the following:

1. I was arrested around 5 a.m. on Friday, June 24, 2011.
2. After my arrest, I was taken to the Imperial Beach Border Patrol Station.
3. When questioned by Customs and Border Protection on Friday, June 24, 2011, at the Imperial Beach Border Patrol Station, I told the officers that I had used heroin before my arrest.
4. I stayed at the Imperial Beach Border Patrol Station all day Friday, Saturday, and Sunday.
5. During that time, I started to go into withdrawal.
6. I felt weak, my body ached, and I started vomiting.
7. On Monday, June 27, 2011, I was taken to Alvarado Parkway Institute, to be treated for withdrawal and depression.
8. I was discharged from Alvarado Parkway Institute on Tuesday, July 5, 2011.
9. During my discharge at Alvarado, I was told I would continue to take daily medication.
10. After my discharge, I was taken back to the Imperial Beach Border Patrol Station.
11. I stayed at the Imperial Beach Border Patrol Station from Tuesday, July 5 until Friday, July 8, 2011.
12. I was not given access to any of my medications at the Imperial Beach Border Patrol Station during this time.
13. When I asked about my medications, I was told that they didn't have anything at the Border Patrol Station for me, that I shouldn't ask about it again, and that it was my problem I was there.
14. During my entire time at the Imperial Beach Border Patrol Station, I was given only two meals a day.
15. One meal was around 8-9 a.m. and one was around 5-6 p.m.
16. I was not given any other food and I was hungry.
17. I was not able to bathe.
18. I was not provided soap.
19. I was not given a toothbrush or toothpaste.
20. I was not given deodorant.
21. I was in the same clothes I was arrested in the entire time.
22. Every night, I slept either on the concrete floor or on a metal bench.

1 23. It was very cold.

2 24. On the last morning I was at the Imperial Border Patrol Station, a mattress and blanket was finally
3 placed in my cell.

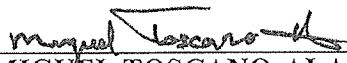
4 25. On Friday, July 8, 2011, I was taken to the Metropolitan Correctional Center in San Diego.

5 26. On Monday, July 11, 2011, I was taken to magistrate court for the first time since my arrest.

6 **I HEREBY AFFIRM THAT TO THE BEST OF MY KNOWLEDGE AND MEMORY THE**
7 **FOREGOING IS TRUE AND CORRECT:**

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9 DATED: 8-10-11



MIGUEL TOSCANO-ALANIZ
Federal Register Number 58360-198

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DECLARATION OF JAIME GARCIA VALDIVIA

I, Jaime Garcia Valdivia, do hereby swear and affirm the following:

- 1. I was arrested in the afternoon of Wednesday, June 8, 2011, at the San Ysidro Port of Entry.
- 2. When interviewed in the early morning hours of June 9, 2011, I told Customs and Border Protection that I am diabetic and that I have pancreatitis.
- 3. I told Customs and Border Protection that I take metformin and insulin for my diabetes.
- 4. I also told them I take ibuprofen for my pancreatitis.
- 5. I have been diagnosed as a type 2 diabetic since 2001.
- 6. I did not receive any medication at the San Ysidro Port of Entry from Wednesday, June 8, 2011, until Friday, June 10, 2011.
- 7. I usually take metformin for my diabetes twice a day with meals and have insulin injections twice a day.
- 8. On Friday, June 10, 2011, I was taken to the Metropolitan Correctional Facility to be booked.
- 9. After some initial screening at the Metropolitan Correctional Facility on Friday, June 10, 2011, I was taken to Alvarado Parkway Institute, to be treated for alcohol withdrawal.
- 10. I was discharged from Alvarado Parkway Institute on Monday, June 20, 2011.
- 11. After my discharge from Alvarado Parkway Institute, I was taken back to the San Ysidro Port of Entry.
- 12. I stayed at the San Ysidro Port of Entry from Monday, June 20 to Wednesday, June 22, 2011.
- 13. During my stay at the San Ysidro Port of Entry from Monday, June 20 to Wednesday, June 22, 2011, I was given only one pill of metformin for my diabetes (I believe this was on Tuesday, June 21, 2011).
- 14. During my time at the San Ysidro Port of Entry, I was given only two burritos a day to eat.
- 15. I was given one burrito at 6 a.m. and another burrito at 6 p.m.
- 16. I was not given any other food.
- 17. I was not allowed to check my blood sugar levels at any time at the San Ysidro Port of Entry.

- 1 18. I was offered insulin only one time at the San Ysidro Port of Entry (I believe it was on my last day
2 there), but was not able to take it because I could not monitor my blood sugar levels and had not
3 been eating regular meals.
- 4 19. While at the San Ysidro Port of Entry, I experienced nausea, hallucinations, shakiness, sweats, and
5 fatigue from the lack of sufficient food and medication.
- 6 20. During my time at the San Ysidro Port of Entry, I was not given a toothbrush, toothpaste, a blanket,
7 or a mattress.
- 8 21. I was not given the opportunity to bathe while at the San Ysidro Port of Entry.
- 9 22. At the San Ysidro Port of Entry, I slept on the concrete floor.
- 10 23. On Wednesday, June 22, 2011, I was taken to the Metropolitan Correctional Center in San Diego.
- 11 24. On Thursday, June 23, 2011, I was taken to magistrate court for the first time since my arrest.

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13 **I HEREBY AFFIRM THAT TO THE BEST OF MY KNOWLEDGE AND MEMORY THE**
14 **FOREGOING IS TRUE AND CORRECT:**

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16 DATED: July 25, 2011


JAIME GARCIA VALDIVIA
Federal Register Number 44909-112

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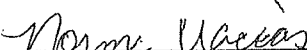
DECLARATION OF NORMA MACIAS

I, Norma Macias, do hereby swear and affirm the following:

- 1. I was arrested the morning of Monday, May 9, 2011, at the San Ysidro Port of Entry.
- 2. I have been diagnosed with epilepsy, and I have seizures when I am not given proper medication.
- 3. I take my medication daily.
- 4. I did not receive any medication at the San Ysidro Port of Entry from Monday, May 9, 2011, until Thursday, May 12, 2011.
- 5. On Thursday, May 12, 2011, I was taken to the Metropolitan Correctional Facility to be booked.
- 6. During my time at the San Ysidro Port of Entry, I was given only two burritos a day to eat, and a few crackers.
- 7. I was given one burrito at 6 a.m. and another burrito at 6 p.m.
- 8. I was given the crackers around lunchtime.
- 9. I was not given any other food or water.
- 10. During my time at the San Ysidro Port of Entry, I was not given a toothbrush, toothpaste, a blanket, or a mattress.
- 11. I was not given the opportunity to bathe while at the San Ysidro Port of Entry.
- 12. At the San Ysidro Port of Entry, I slept on the concrete floor. It was very cold and I was cold.
- 13. On Friday, May 13, 2011, I was taken to magistrate court for the first time since my arrest.

I HEREBY AFFIRM THAT TO THE BEST OF MY KNOWLEDGE AND MEMORY THE FOREGOING IS TRUE AND CORRECT:

DATED: August 5, 2011



 NORMA MACIAS
 Federal Register Number 25734298

EXHIBIT C

VIDEO CONFERENCE SCHEDULE

IMPERIAL COUNTY JAIL

DAYS: TUESDAY AND FRIDAY

HOURS: 9AM – 4 PM

LOCATION: TANK IN SCHWARTZ COURTHOUSE

SANTA ANA JAIL

DAYS: MONDAY - FRIDAY

HOURS: 8AM – 4 PM

LOCATION: TANK IN SCHWARTZ COURTHOUSE (ROOM A)

SAN LUIS REGIONAL DETENTION CENTER

DAYS: MONDAY, THURSDAY, AND FRIDAY

HOURS: 8AM – 5 PM

LOCATION: ROOM B240 IN FED/IRS BUILDING

ORANGE COUNTY SHERIFF'S DEPARTMENT JAIL

DAYS: TUESDAY, WEDNESDAY AND THURSDAY

HOURS: 8AM – 4 PM

LOCATION: TANK IN SCHWARTZ COURTHOUSE (ROOM C)

SAN BERNARDINO COUNTY JAIL

DAYS: TUESDAY, AND WEDNESDAY

HOURS: 8AM - 9:30 AM, AND 1 PM - 4 PM

LOCATION: TANK IN SCHWARTZ COURTHOUSE (ROOM B)

*Call 619-546-4702 to schedule