

DEFENDANTS' EXHIBIT 17

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Jane Doe #1, *et al.*,

Plaintiffs,

v.

Jeh Johnson, Secretary of Homeland
Security, *et al.*,

Defendants.

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

**DECLARATION OF
DIANE SKIPWORTH**

I, Diane Skipworth, hereby declare:

I. INTRODUCTION

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

2. Since 1994, I have been employed by the Dallas County Sheriff's Department ("DCSD"), Dallas, Texas.

3. Since 2004, I have been employed as the Director of Detention Support Services for DCSD. In that role, I oversee and manage the Support Services Division, which includes the Food Service and Laundry sections, with a combined annual operating budget of \$10 million dollars, 57 employees, and 225 inmate workers.

1 4. As DCSD's Director of Detention Support Services, I regularly perform
2 inspections of jail housing units, Central Cook Chill Kitchen production facility and
3 warehouse, Lew Sterrett Jail Kitchen, the laundry facility, and related areas. As part of
4 these inspections, I enforce compliance with all applicable laws, rules, and guidelines.

5 5. Since April of 2011, I have been an expert environmental health and safety
6 consultant for the U.S. Department of Homeland Security, Office for Civil Rights and
7 Civil Liberties, regarding detainee allegations of noncompliance with required health and
8 safety conditions at Immigration and Customs Enforcement ("ICE") adult immigration
9 detention facilities.

10 6. In 2010, 2011, and 2014, I was an expert consultant for the U.S.
11 Department of Justice, Civil Rights Division, Special Litigation Section in investigating
12 alleged unconstitutional conditions at adult correctional facilities.

13 7. In 2014, I served as an environmental health consultant for the National
14 Prison Project of the ACLU.

15 8. This is the first case in which I have served as a defense expert.

16 9. I am a Registered Professional Sanitarian (R.S.), Texas, #3321.

17 10. I am a registered dietitian/nutritionist, Registered Dietitian (R.D.),
18 Commission on Dietetic Registration, RD#806233.

19 11. I am a Licensed Dietitian (L.D.), Texas, DTO#4420.

20 12. I am a Certified Laundry and Linen Manager (CLLM), Association for
21 Linen Management.

22 13. In addition, I am a Certified Correctional Health Professional (CCHP),
23 National Commission on Correctional Health Care.

24 14. I have been an adjunct faculty member at Brookhaven College, Texas,
25 teaching food protection management classes since 1999.

26 15. My education includes a Bachelor of Science in Nutrition (Dietetics) and a
27 Master of Criminal Justice.

28 16. My correctional health training and experience encompasses food

1 preparation and service, sanitation (including maintenance and hygiene), shelter
2 (including space, lighting, ventilation, living conditions, and housekeeping), and safety
3 (both general and fire safety) in prisons, jails, and immigration detention institutions.

4 17. Attachment A is a true and accurate copy of my resume.

5 **II. ASSIGNMENT**

6 18. I have been asked by Defendants' counsel to offer my opinion on the
7 confinement conditions of the hold rooms in Tucson Sector Border Patrol stations.

8 **III. MATERIALS RELIED UPON**

9 19. I have reviewed Plaintiffs' Motion for Preliminary Injunction, and related
10 declarations, exhibits, and filings in this case.

11 20. I conducted environmental inspections of Tucson Border Patrol Station,
12 Douglas Border Patrol Station, Nogales Border Patrol Station, and the Casa Grande
13 Border Patrol Station from November 30, 2015 through December 3, 2015.

14 21. I was accompanied by attorneys Sarah B. Fabian, Daniel Shieh, and Dillon
15 Fishman of the U.S. Department of Justice.

16 22. I have read the declarations of Richard Bryce and Philip Harber, and
17 believe their accounts of the conditions fairly and accurately describe substantially the
18 same conditions I observed in Tucson Sector Border Patrol stations.

19 23. The equipment I used during my inspections includes a Nikon digital
20 camera; temperature meter: 0 to 100% humidity and -4° to 140° Fahrenheit; probe
21 thermometer: -58° to 572° Fahrenheit; light meter: 0 to 4,000 foot candles; tape measure;
22 and a flashlight.

23 24. The standards used for this report include U.S. Customs and Border
24 Protection ("CBP") National Standards on Transportation, Escort, Detention, and Search,
25 October 2015 ("TEDS"); Standards for Health Services in Correctional Institutions, 2003,
26 issued by the American Public Health Association ("APHA"); Performance-Based
27 Standards for Adult Local Detention Facilities, Fourth Edition, published by the
28 American Correctional Association ("ACA"); and the Food Code, Food and Drug

Administration (“FDA”), 2013.

IV. SUMMARY OF OPINIONS AND GENERAL OBSERVATIONS

25. It is my opinion that Tucson Sector hold rooms and facilities comply with CBP’s TEDS standards for hygiene, and are clean and safe for their intended use.

26. Conditions in Tucson Sector hold rooms are comparable to conditions in the intake, hold room, and booking areas of jails and detention centers across the country.

27. Border Patrol contracts with custodians to provide professional janitorial sanitation services on a daily basis in Tucson Sector hold rooms. In my opinion, the statements of work found in these contracts are sufficient to ensure adequate sanitation of the hold rooms in Tucson Sector.

28. In my opinion, Tucson Sector Border Patrol provides detainees with the necessary items for personal hygiene during their short-term detention.

29. Border Patrol maintains a supply of hand soap, toilet paper, sanitary napkins, toothbrushes, diapers, and baby wipes throughout Tucson Sector, all of which it provides to detainees.

30. Border Patrol regularly serves meals to detainees. While the food is not ideal as a staple diet for long time periods, it is nutritionally adequate for a few days, and for short-term detention in Tucson Sector.

31. Detainees are offered a minimum of three meals per day, each consisting of a heated burrito, a package of crackers, and a carton of juice. Snacks of juice and crackers are also offered between meals. These items are nutritionally adequate. *See* USA000649-650.

32. It is my opinion that safe, potable drinking water is always available to detainees in Tucson Sector.

33. Potable drinking water is provided through the sinks in the toilet/sink combination units, which are standard in detention facilities across the nation. Some hold rooms also have five-gallon water containers and cups available to detainees.

34. It is my opinion that hold room temperatures are safe and adequate, and

1 comply with TEDS and ACA standards.

2 35. Border Patrol maintains hold room temperatures between 68 and 80 degrees
3 Fahrenheit, which is within normally accepted standards in detention facilities.

4
5 **V. TUCSON SECTOR HOLD ROOMS ARE PROFESSIONALLY CLEANED
AND SANITARY**

6 36. In my opinion, hold rooms in Tucson Sector are professionally cleaned and
7 sanitized on a regular basis, and are clean and sanitary. This is true under both the TEDs
8 and ACA standards.

9 37. The TEDs standard states: "All facilities or hold rooms used to hold
10 detainees must be regularly and professionally cleaned and sanitized. Officers/Agents or
11 detainees will not be expected to perform such tasks." TEDS § 4.7 (USA000633).

12 38. The ACA Housekeeping standard specifies: "The facility is clean and in
13 good repair. A housekeeping and maintenance plan addresses all facility areas and
14 provides for daily housekeeping and regular maintenance by assigning specific duties and
15 responsibilities to staff and inmates."

16 39. Plaintiffs' expert Dr. Robert Powitz claims that ACA standards are
17 "mandatory." Powitz Decl'n at 3. This is incorrect. ACA standards were developed as a
18 tool for voluntary accreditation by the ACA, which primarily conducts paper reviews and
19 relies heavily on accreditation fees. Some experts and courts have criticized ACA
20 standards, because they may create the false impression that prisons are run properly
21 when the ACA accredits them. At most ACA standards are helpful guidance.

22 40. In my opinion the TEDs standard is well-suited to the unique needs of
23 Border Patrol facilities, because it is designed for short-term immigration processing
24 sites. For instance, it does not include provisions requiring detainees to perform cleaning.

25 41. Tucson Sector hold rooms are designed for short-term detention. They are
26 constructed of materials that are easily cleanable and inhibit the growth of
27 microorganisms that cause disease. These materials are consistent with other short-term
28 holding cells I have seen.

1 42. I have reviewed the February 16, 2012 Statement of Work (“SOW”) for the
2 Tucson Sector Facility Operations Contract Services, which includes custodial services,
3 land and grounds maintenance, trash and waste removal, and snow removal.

4 43. The SOW details the requirements, scope, and description of the contracted
5 custodial services. The tasks include sweeping and damp mopping of the holding cells;
6 cleaning, disinfection, and descaling of toilet bowls; resupplying hold cells with toilet
7 paper and hand soap; dusting; and window cleaning.

8 44. This SOW covers all Tucson Sector facilities except the Casa Grande
9 Station, which is a leased facility that falls under a different contract that I have also
10 reviewed.

11 45. The SOWs in both the 2012 Tucson Sector contract and the Casa Grande
12 contract are consistent with the current TEDs standard and other industry standards, and
13 contain cleaning provisions sufficient to ensure a hygienic and safe environment for
14 detainees.

15 46. Professional, custodial contractors perform cleaning services in the Tucson
16 Sector hold rooms daily, and ordinarily twice per day.

17 47. Hold rooms are cleaned during the morning, around 7:00-8:00 a.m. and
18 again during the evening at approximately 5:00-6:00 p.m.

19 48. Border Patrol agents I interviewed in Tucson, Douglas, and Nogales
20 Stations confirmed that hold rooms are cleaned at approximately 7:00-8:00 a.m., and
21 again at 5:00-6:00 p.m.

22 49. The SOW for Casa Grande Station is different than the other stations in
23 Tucson Sector because the Casa Grande facility is leased. The Casa Grande Station
24 SOW also requires regular professional cleaning of the Border Patrol facility, including
25 the hold rooms. The SOW requirements suffice to maintain a sanitary environment.

26 50. During my inspection, I observed some discoloration on some walls. The
27 areas behind some of the benches at Tucson Station were discolored due to transfer from
28 the metallic coating on the Mylar blankets, which I observed at approximate shoulder

1 height from detainees seated against the walls wearing Mylar blankets on their shoulders.
2 Upon closer inspection, I found that the walls are reasonably clean, and the discoloration
3 is innocuous. I mentioned this to Border Patrol, and suggested repainting.

4 51. The floors in Tucson Sector hold rooms are also cleaned regularly. I
5 carefully reviewed and inspected the areas Plaintiffs mentioned. While I did observe dust
6 and dirt accumulations in some corners and along some walls of the holding cells, these
7 are common in correctional facilities. They do not pose any serious hygiene concern or
8 risk, especially in short-term detention facilities. I did point these areas out to Border
9 Patrol supervisors, and they assured me that they would immediately pass along this
10 feedback to the cleaning contractors and inspect to ensure they pay more careful attention
11 to these areas.

12 52. I have reviewed Plaintiffs' photographic exhibits depicting soiled toilet
13 paper on the floor, and detainee declarations describing this issue.

14 53. In my experience, improper use of toilets can originate from a cultural
15 problem based on plumbing systems in some countries that cannot accommodate toilet
16 paper. This cultural practice can be remedied through educating detainees on proper
17 hygiene practices in the United States. However, regular professional cleaning of the
18 facilities with disinfectant prevents this from creating any serious health concern in
19 Tucson Sector.

20 54. I do not agree with the statement of Plaintiffs' expert Dr. Powitz, who
21 declares: "CBP's failure to implement a regular system to ensure the cleanliness of these
22 hold rooms serves no legitimate purpose and creates an unjustifiable risk to detainees."
23 Powitz Decl'n at 18. I saw no indication in Dr. Powitz's report that he had requested, or
24 reviewed, the SOWs. These contracts ensure that professional cleaning contractors
25 provide daily cleaning and sanitation of Tucson Sector hold rooms. The SOWs require
26 contractors to use cleaners to properly disinfect the facilities, so in my opinion this risk is
27 not present.

28 55. I also disagree with Dr. Powitz's characterizations of the cleaning closets:

1 “We were shown janitor supply closets at each station and found various haphazard
2 collections of brooms, dust pans, wet mops, buckets, and a variety of household chemical
3 cleaners.” Powitz Decl’n at 16-17. As illustrated in the photographs I took during site
4 inspections (true and copies of which are included as Attachment B) Tucson Station’s
5 cleaning storage closet does not appear “haphazard” and cleaning chemicals are delivered
6 through a station that dispenses them at the correct dilution. *See* Attach. B. The picture
7 also depicts color-coded bottles for the chemicals. *Id.* While some items in the photo are
8 technically improper, I have no concerns with these closets with respect to overall
9 detainee hygiene and welfare. *Id.*

10 56. The bathroom fixtures in Tucson Sector hold rooms are correctional-type
11 stainless steel toilet/sink combination units. The fixtures were reasonably clean, with
12 occasional buildup underneath toilets that is common and expected for facilities with a
13 high volume of detainees. This buildup is unsightly, but it presents no serious hygiene
14 concern. Though it is common in detention facilities, I mentioned it to Border Patrol
15 staff and they stated they would ensure that cleaning contractors properly address it.

16 57. I observed an ordinary amount of wear-and-tear on the walls, hold room
17 floors, benches, and other painted areas in Tucson Sector. The high volume of traffic and
18 frequent scrubbing during cleaning leads to wear and tear in detention facilities,
19 particularly facilities with such a transient population.

20 58. My review of hold room checklists for the four stations from June through
21 September, including the limited set provided by Plaintiffs in Exhibits 106-116,
22 Processing Inspection and Holding Cell Inspection Forms, supports the SOWs, my own
23 observations, and the statements of BP agents I interviewed, in that they reflect that hold
24 rooms cells are regularly cleaned and free of insects, pests, and vermin.

25 59. Border Patrol’s general practice of documenting regular inspections of hold
26 rooms also reinforces my observations that Tucson Sector is attentive to hold room
27 maintenance, hygiene, and overall detainee health and wellness.

28 60. Detainee declarations from Plaintiffs also confirm that hold rooms are

1 professionally cleaned on a regular basis. *See* ECF No. 2-1 at 5-6 (Decl’n of Mario Pablo
2 Lopez Ruiz); ECF No. 2-1 at 57-59 (Decl’n of Brenda Chilel Lopez); ECF No. 2-1 at 39-
3 41 (Decl’n of Domitilia Gomez Bartolom).

4 **A. Hold Room Trash Removal is Sufficient**

5 61. The APHA Standards for Health Services in Correctional Institutions
6 states: “Solid wastes must be collected, stored, and disposed of in a manner that will not
7 create unhealthful conditions, fire hazards, unnecessary odors, or offer food or harborage
8 to insects, rodents, or other vermin.”

9 62. The custodial SOWs for Tucson Sector and Casa Grande require regular
10 trash removal, which adequately addresses trash disposal.

11 63. Most hold rooms I inspected had one or more waste receptacles, such as a
12 plastic trash can lined with a plastic bag. None of the trash cans I observed were
13 overflowing. Custodians remove trash when they clean hold rooms, which occurs at least
14 daily and often twice or more per day.

15 64. Trash cans sometimes have to be removed from hold rooms for detainee
16 and officer safety, or because detainees are going through the trash. In those instances,
17 cleaning personnel collect trash during the scheduled hold room cleanings.

18 65. Tucson Sector hold rooms do not have any problems with insects, rodents,
19 or vermin, which are classic signs of trash accumulation and poor cleaning. I have seen
20 those in detention facilities with serious waste and sanitation problems. I inspected every
21 hold room and all processing areas for any indications of these, and found none in Tucson
22 Sector. Because trash is consistently removed from hold rooms, it does not accumulate
23 and create harborage conditions that could attract insects and rodents. The SOWs address
24 this properly as well.

25 66. I did observe that detainees did not use trash cans in several hold rooms in
26 which trash cans were present, but instead left garbage such as food wrappers and empty
27 juice boxes on benches and floors. That trash was later removed by cleaning crews. I
28 understand that agents regularly provide instructions to detainees to use trash cans, and

1 request that detainees place garbage in trash cans during routine hold room cleanings.
2 This is common practice, and ensures welfare and order in detention facilities.

3 67. In my experience there is an important distinction between old and new dirt
4 and trash. Old dirt is an accumulation and buildup, and has the potential to attract insects
5 and vermin. The type and quantity of trash I observed in the hold rooms during the
6 inspections was new trash. It did not rise to the level of any health concern or any safety
7 issue. Tucson Sector trash accumulates only for short time periods between hold room
8 cleanings. This is expected, especially in facilities with such high traffic and frequent
9 detainee turnover. Tucson Sector's regular professional sanitation of hold rooms does
10 protect detainees and employees from a sanitation perspective.

11 **B. Hold Room Restrooms Are Adequate**

12 68. The TEDS Hygiene standard requires, "Restroom accommodations will be
13 available to all detainees and a reasonable amount of privacy will be ensured." The
14 TEDS Hygiene standard specifies, "Detainees using the restroom will have access to
15 toiletry items, such as toilet paper and sanitary napkins. Whenever operationally feasible,
16 soap may be made available."

17 69. The ACA Plumbing Fixtures Standard (4-ALDF-4B-08) requires a
18 minimum of one toilet for every 12 inmates in male facilities and one toilet for every
19 eight females. Although it is not required to do so, Tucson Sector regularly complies
20 with this voluntary ACA standard.

21 70. I have seen no evidence to support Plaintiffs' claim of overcrowding. In
22 my opinion, Tucson Sector does not overcrowd its hold rooms, though I understand
23 detainee population numbers vary based on immigration trends. My review of the
24 evidence and site inspections did not present capacity concerns for restroom use, or any
25 sanitation concerns based on detainee numbers. Border Patrol takes reasonable
26 precautions to maintain appropriate population numbers relative to detainee health and
27 hygiene.

28 71. My review of Plaintiffs' detainee declarations supports my own

1 observations, and indicates that even specific complaints were within the ACA standard
2 for the ratio of detainees to toilets. *See* ECF No. 2-2 at 12-14 (Declaration of Victor
3 Hugo Rosas Garcia) (complaining of a wait to use toilet in cell with “about 10 other
4 people”; ECF No. 2-1 at 48-50 (Declaration of Jose Buelna Camacho) (reporting being
5 placed in a cell with four toilets and 40 other people).

6 72. Detention facilities have to ensure appropriate oversight and safety to
7 prevent assaults. In my opinion, Border Patrol respects detainee privacy by using
8 restroom dividers, blacked-out camera monitors, and blinds for showers. These practices
9 give privacy to detainees while keeping the environment safe for detainees.

10 73. The maximum capacity numbers posted in some Nogales holding cells
11 could exceed this ACA standard if the hold rooms were filled to capacity. I understand
12 that this could happen only in rare situations, based on a surge of illegal immigration in
13 Tucson Sector. Temporary capacities at those numbers in emergency situations are very
14 unlikely, so I do not view this as any significant sanitation or health risk.

15 VI. Border Patrol Properly Maintains Facilities in Tucson Sector

16 74. Each Border Patrol station has a system in place through which it can
17 request repairs and maintenance.

18 75. I checked documentation showing repairs that had been requested and
19 logged, and confirmed that Tucson Sector stations are kept in good repair, and facilities
20 are kept in working order.

21 76. Having this system in place to handle repairs indicated to me that Border
22 Patrol cares about quality facility maintenance. I also see it as an indicator of the quality
23 leadership, with concern for detainee well-being overall.

24 77. In my opinion, Border Patrol takes adequate steps to ensure detainee health,
25 well-being, and safety by taking reasonable care of detention facilities.

26 VII. PERSONAL HYGIENE ITEMS ARE SUFFICIENT FOR SHORT-TERM 27 DETENTION

28 78. The TEDS Hygiene standard requires, “Detainees must be provided with

1 basic personal hygiene items, consistent with short term detention and safety and security
2 needs. Families with small children will also have access to diapers and baby wipes.
3 Reasonable efforts will be made to provide showers, soap, and a clean towel to detainees
4 who are approaching 72 hours in detention. Detainees using the restroom will have
5 access to toiletry items, such as toilet paper and sanitary napkins. Whenever
6 operationally feasible, soap may be made available.”

7 79. Based on my inspections and review of the information in this case, it is my
8 opinion that Border Patrol provides toilet paper in hold rooms, and makes sanitary
9 napkins available to females.

10 80. Border Patrol provides various sizes of diapers, diaper cream, and baby
11 wipes within close proximity of the family hold rooms.

12 81. Each Border Patrol station has a purchase card, and can procure hygiene
13 supplies locally, if needed. This allows stations to respond to detainee needs, local usage,
14 and emergencies based on unexpected migrant surges.

15 82. Wall-mounted soap dispensers were installed in the hold rooms within the
16 last six months, and are filled by custodial contractors when hold rooms are cleaned.
17 This promotes the practice of handwashing. Soap dispensers are regularly filled and
18 used.

19 83. Border Patrol has chosen the air-drying method for handwashing. Air-
20 drying is recognized by the Centers for Disease Control and Prevention (“CDC”) as an
21 effective hand drying method. The CDC indicates that the “right way” to dry your hands
22 after washing is to “use a clean towel or air dry them.” *See*
23 <http://www.cdc.gov/features/handwashing>.

24 84. Border Patrol agents indicated that the use of paper towels was determined
25 not to be feasible because detainees regularly put the paper towels into the toilets or
26 threw them on the floor. Paper towels could lead to plumbing problems if thrown into
27 toilets, and could add to trash accumulation in hold rooms. Air drying is safe, and makes
28 sense under these circumstances.

1 85. I found during my inspections and interviews of agents that Border Patrol
2 stocks toothbrushes with toothpaste, and regularly provides them to detainees. Every
3 morning Border Patrol provides an individually wrapped toothbrush, prefilled with
4 toothpaste, to each detainee who wants one. Because tooth brushing causes some
5 detainees to experience bleeding gums, Border Patrol uses biohazard bags to dispose of
6 toothbrush waste. This is a sanitary and safe practice.

7 86. I specifically looked at how Border Patrol treats families. I found that it
8 takes special care regarding families, and provides personal hygiene supplies, including
9 diapers, diaper rash cream, baby wipes, lip balm, and sanitary napkins on an accessible
10 cart outside the family hold rooms at TCC. *See* Attach. B.

11 87. During my site inspections, I saw that children had toys and games in
12 Tucson Station. I also saw children playing with toys and watching television.

13 88. While I would expect a long-term detention facility to make additional
14 hygiene provisions, it is my opinion that the hygiene items Border Patrol provides are
15 sufficient for detainee health, safety, and welfare, based on the short-term nature of
16 detention during immigration processing of detainees in Border Patrol stations.

17 89. Based on my observations and the evidence I reviewed, Border Patrol takes
18 detainee requests and complaints seriously, and shows concern for and responsiveness to
19 detainee health and hygiene.

20 90. In my opinion, Tucson Sector Border Patrol provides detainees with access
21 to necessary personal hygiene items, and keeps adequate extra supplies of personal
22 hygiene items stocked at all stations.

23 91. It is also my opinion that Border Patrol does not withhold hygiene items as
24 a punishment, but instead takes reasonable steps for detainee health and safety.

25 **VIII. BORDER PATROL PROVIDES DETAINEES WITH ADEQUATE FOOD**
26 **AND POTABLE WATER**

27 92. The TEDS Food and Beverage standard requires: "Food and water should
28 never be used as a reward, or withheld as punishment. Food provided must be in edible

1 condition (not frozen, expired or spoiled). Adult detainees, whether in a hold room or
2 not, will be provided with food at regularly scheduled meal times. All meal service must
3 be documented in the appropriate electronic system(s) of record. Adult detainees,
4 whether in a hold room or not, will be provided with snacks between regularly scheduled
5 meal times. When an adult detainee requests a snack or food before the next food
6 service, officers/agents may grant the request on the basis of the circumstances.
7 Officers/Agents should remain cognizant of a detainee's religious or other dietary needs."

8 93. The TEDS standard also addresses the needs of juveniles, pregnant, and
9 nursing detainees: "Juvenile and pregnant detainees will be offered a snack upon arrival
10 and a meal at least every six hours thereafter, at regularly scheduled meal times. At least
11 two of those meals will be hot. Juveniles and pregnant or nursing detainees must have
12 regular access to snacks, milk, and juice. Food must be appropriate for at-risk detainees
13 age and capabilities (such as formula and baby food)."

14 94. The Food and Drug Administration ("FDA") 2013 Food Code is a
15 nationally recognized model food code that provides scientifically based guidance to the
16 food industry, including establishments at which consumers take possession of food.
17 Therefore, the FDA 2013 Model Food Code provides relevant guidelines as well.

18 95. I did not find evidence to support Plaintiffs' complaints about food and
19 water being denied. It is my opinion that Border Patrol provides food to detainees that is
20 calorically and nutritionally adequate. It is also my opinion that Border Patrol provides
21 adequate potable water and juice to detainees.

22 96. Upon arrival at Tucson Station, detainees are served juice and crackers.
23 After that, adults are provided three meals per day, consisting of burritos, crackers, and
24 juice and a snack between each meal.

25 97. At Tucson Station, juveniles are provided four meals per day, with a snack
26 between each meal.

27 98. At Nogales Station, detainees are served burritos, crackers, and juice upon
28 arrival. Detainees are then provided the same foods at 12:00, 4:00, and 8:00 around the

1 clock. Detainees may request additional servings of these items at any time.

2 99. At Casa Grande Station, detainees are served juice and crackers upon
3 arrival. Thereafter, juice, crackers, and burritos are distributed at 1:00 a.m., 7:00 a.m.,
4 1:00 p.m., and 7:00 p.m. Detainees can take several of each item.

5 100. At Douglas Station, detainees receive meals upon arrival and then three
6 times daily.

7 101. Because Border Patrol stations are designed for processing detainees, they
8 do not have full kitchens that are industry standard in long-term detention facilities.

9 102. Border Patrol serves various burritos to detainees. Burrito choices are bean
10 and cheese (vegetarian), red hot beef, and beef and bean burritos. These burritos are
11 commercially-produced and are similar to those sold in grocery and convenience stores
12 throughout the country.

13 103. Border Patrol provides cheese crackers filled with cheddar cheese; toast
14 crackers filled with peanut butter; 100% grape juice; and 100% juice fruit punch.

15 104. These crackers and juices are also commercially-produced items available
16 in stores across the country.

17 105. The 100% juice served that is purchased and served is pasteurized in
18 compliance with the FDA 2013 Food Code.

19 106. Foods also comply with the FDA 2013 Food Code specifications for
20 storage temperatures.

21 107. The burritos are delivered frozen by a local food vendor, initially placed in
22 storage freezers, and then moved to refrigerators to thaw prior to being heated. Thawing
23 of foods in a refrigerator is an approved method of thawing.

24 108. Nogales, Tucson, and Douglas heat the burritos in restaurant style food
25 warmers. Casa Grande heats burritos in microwave ovens.

26 109. Based on my inspections and the evidence I reviewed, it is my opinion that
27 Border Patrol stores and serves foods to detainees at safe and acceptable temperatures.

28 110. The Food Code requires that foods that are commercially processed and

1 packaged in a processing plant, as the burritos are, be heated to at least 135 degrees
2 Fahrenheit when reheated for hot holding. Maintaining the burritos in the warmers is
3 classified in the code as hot holding.

4 111. I randomly tested the internal temperature of a single burrito at Douglas
5 Station, and found its internal temperature to be 164 degrees Fahrenheit, exceeding the
6 minimum mandated FDA 2013 Food Code temperature of 135 degrees Fahrenheit.

7 112. I do not agree with the statement of Plaintiffs' expert Dr. Powitz, who
8 claims that "food and water [are] not handled or delivered to detainees in an appropriately
9 hygienic or sanitary way." Powitz Decl'n at 15. Border Patrol supplies only packaged
10 foods, served to detainees in their original, unopened packages to facilitate safe food
11 handling practices. The actual food is not handled or touched by Border Patrol agents.
12 This practice is no different than purchasing a package of cheese crackers at a
13 convenience store and receiving it from the clerk who rings up the purchase. While it is
14 true that Border Patrol agents should wash their hands before handling and serving even
15 packaged foods, the reality is that this presents a minimal risk of contaminating the
16 packaged foods. I understand Border Patrol agents are advised to wash and sanitize their
17 hands regularly, and see no hygiene problem with their current practice.

18 113. Border Patrol keeps foods current and fresh, and based on my site
19 inspections and interviews of agents, no foods are kept past their sell by, use by, or
20 expiration date. For example, during my visit in December 2015, boxes of juice at the
21 Nogales station were labeled "Best Before 13 Feb 16." *See* Attach. B.

22 114. I saw baby formula, baby bottles, and toddler foods at each station during
23 my inspections. *See* Attach. B.

24 115. The Tucson Station had goldfish crackers, cheese filled crackers, and 100%
25 juice boxes available in brightly colored plastic containers on a cart located outside the
26 family hold rooms. *See* Attach. B.

27 116. I observed that the Tucson family hold room doors were left partially ajar.
28 Mothers and children were free to go outside of the hold rooms to obtain additional food

1 items from the cart.

2 117. I also observed children and their mothers sitting outside of the hold rooms,
3 eating snacks and drinking from juice boxes while watching cartoons on a television.

4 118. Based on my inspections, interviews with agents, and a review of the
5 evidence, it is my opinion that food is not used as a punishment in Tucson Sector, and is
6 provided regularly and in sufficient quantities. In my opinion detainees receive adequate
7 food, in accordance with the TEDS standards.

8 119. Detainee declarations Plaintiffs filed confirm evidence I have reviewed, and
9 my own inspections and interviews, and show that Border Patrol is following the TEDS
10 standard. *See, e.g.*, ECF No. 2-1 at 48-50 (Declaration of Jose Buelna Camacho) (“We
11 were given something to eat every four hours.”); ECF No. 2-2 at 35-37 (Declaration of
12 Veronica Rodriguez Alvarado) (“We were given something to eat three times a day.”);
13 ECF No. 2-2 at 44-46 (Declaration of Jose Garcia Rodriguez) (“We were given
14 something to eat four times a day”); ECF No. 2-2 at 54-56 (Declaration of Nelvia
15 Mazariegos Morales) (“We were given food approximately four or five times over the
16 course of our time in Douglas.”)

17 120. Some detainees choose to decline meals, which in my experience occurs in
18 jails and prisons across the country. That does not reflect any problem with the
19 procedures or adequacy of the food provided. *See* ECF No. 2-2 at 12-13 (Declaration of
20 Vicor Hugo Rosas Garcia) (“Many of the guys preferred not to eat.”)

21 121. Several detainee declarations reported that detainees claimed to be hungry,
22 but chose not to eat the foods provided, or did not consider it to be a full meal. *See* ECF
23 No. 2-3 at 40-42 (Declaration of Reginalda Lopez Gomez) (“They only gave us food
24 twice in the 20 hours that we were there. The food was only a juice, crackers, and
25 burritos. Neither of us liked the food so we only drank the juice. Even if we had eaten it,
26 it would have been too little food to keep me from being hungry before the next meal.
27 When we were detained we had already not eaten for 15 hours.”); ECF No. 2-1 at 62-63
28 (Declaration of Mario Roberto Zamora Diaz) (acknowledging receiving burritos,

1 crackers, and juice boxes despite claiming to be “hungry the entire time I was detained”);
2 ECF No. 2-1 at 44-45 (Declaration of Julio Celso Chavez Ortiz) (acknowledging
3 receiving “snacks every few hours” including crackers, juice, and a small burrito, but
4 claiming he was “never fed a full meal”).

5 122. While a diet consisting of this food alone would not be ideal for weeks, or
6 for individuals with certain medical conditions, it is nutritionally safe and adequate to
7 nourish and sustain a large volume of individuals who are otherwise healthy for the short
8 time they are in short-term immigration detention. The food Border Patrol provides
9 adequately satisfies basic nutritional needs of detainees in Tucson Sector.

10 123. The TEDS policy indicates that additional portions of food are provided
11 between snacks and meals based on the circumstances surrounding the request. Based on
12 inspections of the detention sites and my interviews of agents, it is my opinion that
13 Border Patrol employees provide additional portions of food upon request.

14 124. In reviewing Plaintiffs’ complaints about food, I assessed Border Patrol’s
15 practices based on the TEDS and FDA standards. Both standards provide helpful
16 guidance in this context. In my opinion, Border Patrol complies with both standards.

17 125. It is my opinion that all detainees in Tucson Sector Border Patrol custody
18 receive adequate food, and Border Patrol does not use food as a punishment.

19 **IX. BORDER PATROL PROVIDES POTABLE DRINKING WATER**

20 126. The TEDS Drinking Water standard states: “Functioning drinking fountains
21 or clean drinking water along with clean drinking cups must always be available to
22 detainees.”

23 127. All hold rooms were equipped with stainless steel combination toilet/sink
24 units, which also serve as drinking fountains. These combination units are frequently
25 found in holding cells, jails, and prisons across the nation.

26 128. The water supplied by combination sink units is sanitary and potable.

27 129. Some hold rooms also contained five-gallon sports jugs filled with water.
28

1 Contracted custodians clean and refill the water containers twice per day, and they are
2 also refilled as needed.

3 130. In some stations, detainees are given a disposable drinking cup upon their
4 arrival and placement in a hold room. For instance, I saw stacks of Styrofoam cups in the
5 holding cells at Nogales Station. *See* Attach. B.

6 131. It is my opinion that Border Patrol ensures that detainees have access to
7 potable water, and detainees are never deprived of potable water. The combination
8 toilet/sink units are used in detention facilities throughout the country, and are sanitary.

9
10 **X. BORDER PATROL MAINTAINS HOLD ROOMS AT ACCEPTABLE TEMPERATURES**

11 132. The TEDS Temperature Controls standard requires, “When it is within
12 CBP control, officers/agents should maintain hold room temperature within a reasonable
13 and comfortable range for both detainees and officers/agents. Under no circumstances
14 will officers/agents use temperature controls in a punitive manner.”

15 133. Temperatures in detention facilities should normally be kept within a range
16 of 68.5 to 80.5 degrees Fahrenheit for comfort, depending on the season. American
17 National Standards Institute (“ANSI”) / American Society of Heating, Refrigerating, and
18 Air-Conditioning Engineers” (“ASHRAE”), Standard 55-2013: Thermal Environmental
19 Conditions for Human Occupancy.

20 134. My review of temperature logs, interviews of Border Patrol leadership, and
21 my own site inspections showed that Tucson Sector Border Patrol hold room
22 temperatures are maintained at 68 to 80 degrees Fahrenheit, which is standard in
23 detention centers. These temperatures are appropriate for maintaining order and safety in
24 detention facilities, and ensure welfare of detainees and employees.

25 135. Border Patrol agents are unable to control temperatures locally at stations,
26 except in Nogales, and must contact facilities management personnel to report
27 temperature problems. *See* Attach. C (Declaration of George Allen).

28 136. While documented temperatures show some rare deviations from this

1 range, the vast majority of the temperatures recorded are in the range and the deviation is
2 attributable to maintenance issues expected in any large detention facility. *See* Attach. D
3 (temperature logs).

4 137. The temperatures I measured at all stations were between this range, with
5 the exception of one temperature I took underneath a vent in one Douglas hold room that
6 was 67.2 degrees.

7 138. Temperatures in the Tucson Station hold rooms range from 69.9 to 75.4
8 degrees Fahrenheit.

9 139. Douglas Station temperatures range from 67.2 to 75.1 degrees Fahrenheit.
10 The ambient air temperature was 72.2 degrees Fahrenheit in the center of cell 119 C and
11 noticeably cooler at 67.2 degrees Fahrenheit under the vent.

12 140. Nogales Station ambient air temperatures ranged from 71.7 to 81 degrees
13 Fahrenheit on December 2, 2015. In Cell 2, ambient air temperature was 72.6 degrees
14 and 81 degrees Fahrenheit under a vent.

15 141. The Casa Grande Station ambient air temperatures ranged from 71.3 to 77.5
16 degrees Fahrenheit on December 3, 2015. Casa Grande station is a GSA contract facility,
17 and the building owner controls the temperature from an offsite location.

18 142. Detainees are required to remove outer layers of clothing, belts, and
19 shoelaces for safety and security of agents and detainees. Extra clothing items are placed
20 with the detainee's property. This is standard safety precaution used to protect detainees
21 and employees. In my opinion, this practice is necessary to maintain security, given the
22 high risks of contraband and weapons, and the transient population.

23 143. I have found no evidence that Border Patrol uses temperatures punitively.
24 Children are allowed to keep outerwear. ECF No. 2-1 at 21-22 (Declaration of Anselma
25 Angela Ambrosio Diaz) ("At the Border Patrol station, the officials made me and the
26 other women remove our outer layers of clothing and our shoes. The children did not
27 have to remove their jackets or shoes."). Additionally, the Douglas station provides
28 detainees with fleece sweatshirts upon request.

1 144. Although detainee declarations contend that the ambient air temperatures
2 were cold, they also revealed that on some occasions they did not report the issue. For
3 instance, the Declaration of Mario Roberto Zamora Diaz (ECF No. 2-1 at 62-63) states:
4 “It was extremely cold in the holding cell and we did not have any blankets or sufficient
5 clothes to stay warm. We only had aluminum blankets Border Patrol provides, but they
6 were not enough to keep warm. I did not ask the officials to change the temperature
7 because everyone knows that when you ask that officials will turn the temperature down
8 even more.” Similarly, the Declaration of Julio Jimenez Tucum states (ECF No. 2-1 at 9-
9 10): “The temperature in the cell was very cold. The Border Patrol agents took my
10 sweater from me before putting me in the cell, so all I was wearing was a short sleeve
11 shirt. I was not able to get warm. There were no blankets other than the thin aluminum
12 sheet given to us. Nobody asked for the temperature to be changed, they wouldn’t have
13 listened anyway.”

14 145. Despite these statements, I saw no evidence that Border Patrol uses
15 temperature punitively, nor could it because agents do not have access to the temperature
16 controls at the majority of Tucson Sector stations.

17 146. It is my opinion that these individuals were mistaken in their belief that
18 Border Patrol agents adjusted temperatures at Border Patrol stations in a punitive manner.
19 My inspections led me to conclude that Border Patrol leadership provides appropriate
20 oversight of holding cell temperatures, and supervisors regularly check holding cell
21 temperatures. In my opinion this is safe practice.

22 147. Thermal comfort is the point at which an average dressed person feels
23 neither too hot nor cold. Factors impacting individual thermal comfort include metabolic
24 heat production, the transfer of heat to the environment, and body temperature.
25 Furthermore, temperature, humidity, air movement, clothing, and activity level influence
26 the transfer of heat from the body to the environment.

27 148. Individual comfort level is subjective and varies significantly. Therefore,
28 there is no temperature set point at which all detainees will report that they are

1 comfortable. Moreover, the temperatures must also be comfortable and safe for the
2 Border Patrol agents who are working at the station. There will always be individuals
3 who are moving around and individuals who are sitting still while waiting for the next
4 stage of their processing at Border Patrol stations, which creates inherent challenges in
5 setting the perfect temperature. In my opinion, the temperature ranges that Tucson Sector
6 Border Patrol stations maintain are adequate for this purpose. Every detention facility
7 faces tension between optimal comfort and safety, and it is my opinion that Border Patrol
8 in Tucson Sector has made choices designed to fulfill its responsibilities to keep
9 detainees safe, and to preserve order.

10 149. Border Patrol also issues each detainee an individual Mylar blanket,
11 commonly known as a survival, emergency, or thermal blanket. Mylar blankets provide
12 warmth and are hygienic. The Mylar blankets measure approximately 82 inches by 52
13 inches, and are not reused. Border Patrol previously distributed cloth blankets, but the
14 laundry contractor was unable to keep up with the volume of detainees.

15 150. Mylar blankets provide warmth by reducing heat loss from evaporation and
16 when wrapped around the body reflect approximately 80% of body heat back to the body.
17 The blankets also provide a barrier between the body and air currents or drafts. In my
18 opinion, when used in the already adequate temperatures at which Border Patrol stations
19 are maintained, these blankets provide a good amount of additional warmth for detainees
20 who may find these temperatures insufficient.

21 **XI. SLEEP AND BEDDING AT BORDER PATROL SHORT-TERM** 22 **DETENTION FACILITIES**

23 151. The TEDS Duration of Detention standard requires, "Every effort must be
24 made to hold detainees for the least amount of time required for their processing, transfer,
25 release, or repatriation as appropriate and operationally feasible." It also provides
26 Detention Standard indicates, "Detainees should generally not be held for longer than 72
27 hours in CBP hold rooms or holding facilities." *See* TEDS § 4.1.

28 152. Based on my inspections, it is my opinion that Border Patrol meets this

1 standard. Agents I interviewed and the information I reviewed indicate that Border Patrol
2 tries diligently to process detainees promptly, and generally does so within 24 hours.

3 153. Stations operate 24-hours per day, processing detainees around the clock.
4 While this is not unusual for detention institutions, stopping or limiting processing at
5 night would slow down processing and extend detention times. As short-term
6 immigration processing centers, Border Patrol stations are not furnished with lodging
7 accommodations such as beds.

8 154. The TEDS Bedding standard requires, "Clean bedding must be provided to
9 juveniles. When available, clean blankets must be provided to adult detainees upon
10 request."

11 155. All Border Patrol stations I inspected had sleeping mats. The mats were in
12 good condition, with no ripped, torn, or cracked covers. Minors and families with
13 children are given priority for mattresses. As I noted above, all detainees are provided
14 with a Mylar blanket. In my opinion, the provision of these items meets the TEDS
15 standard for short-term detention during immigration processing.

16 156. When it is necessary to hold detainees overnight, for a period of time
17 beyond their processing, detainees may be transferred to other facilities when possible,
18 including the ICE ERO facility in Florence, to afford them access to a bed.

19 157. It is my opinion based on the particular requirements of immigration
20 detention that 24-hour processing is a part of operations. In the end, this ongoing
21 processing benefits detainees by ensuring they are transferred to longer-term facilities or
22 repatriated faster.

23 **XII. CONCLUSION**

24 158. It is my opinion that Tucson Sector hold rooms are clean and safe for their
25 intended use. Conditions in Tucson Sector hold rooms are comparable to conditions in
26 the intake, hold room, and booking areas of jails and detention centers across the country.

27 159. Tucson Sector Border Patrol provides detainees with the necessary items
28 for personal hygiene during their short-term detention, in my opinion.

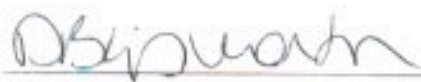
1 160. In my opinion, Border Patrol regularly serves meals to detainees, and the
2 food is nutritionally adequate for short-term detention.

3 161. Safe, potable drinking water is available to detainees in Tucson Sector.

4 162. Hold room temperatures are safe and adequate, and comply with TEDS and
5 ACA standards. Border Patrol maintains hold room temperatures between 68 and 80
6 degrees Fahrenheit, which is within normally accepted standards in detention facilities.

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

9
10 Signed this 24 day of February, 2016.

11
12 

13 DIANE SKIPWORTH
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DEFENDANTS' EXHIBIT 18

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Jane Doe #1, *et al.*,

Plaintiffs,

v.

Jeh Johnson, Secretary of Homeland
Security, *et al.*,

Defendants.

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

**DECLARATION OF
RICHARD BRYCE**

I, Richard Bryce, hereby declare:

I. INTRODUCTION

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

2. I have over 33 years of experience in the law enforcement and custodial field.

3. For the last six years of my law enforcement career, I was Undersheriff of the Ventura County Sheriff's Department in California, which employed 1,355 individuals, including four Chief Deputies who reported directly to me, and had an operational budget in excess of \$140,000,000.00.

1 4. My other law enforcement and custodial positions included Assistant
2 Sheriff, Commander, Lieutenant, Sergeant, and Deputy/Senior Deputy.

3 5. Since 1993, I have been an expert witness 34 times, for both plaintiffs and
4 defendants, in cases in California, Texas, and Louisiana, including in *Alberti v. Harris*
5 *County*, regarding crowding in detention facilities.

6 6. I have been an expert consultant in California, Oregon, Texas, and
7 Oklahoma.

8 7. I have worked in, inspected, managed, constructed, or toured over 120 jails
9 and prisons throughout the United States.

10 8. My education includes a Master of Public Administration and a Bachelor of
11 Science in Criminal Justice, as set forth on my resume, a true and accurate copy of which
12 is attached. *See* Attach. A.

13 **II. ASSIGNMENT**

14 9. I have been asked by Defendants' counsel to offer my opinion on the
15 confinement conditions of Tucson Sector Border Patrol hold rooms.

16 **III. MATERIALS RELIED UPON**

17 10. I have reviewed Plaintiffs' Motion for Preliminary Injunction, and related
18 declarations, exhibits, and filings in this case.

19 11. From January 26-28, 2016, I conducted inspections of Tucson Border
20 Patrol Station, Douglas Border Patrol Station, Nogales Border Patrol Station, and the
21 Casa Grande Border Patrol Station.

22 12. I was accompanied by attorney Dillon Fishman of the U.S. Department of
23 Justice.

24 13. I have read the declarations of Diane Skipworth and Philip Harber, and
25 believe their accounts of the conditions at Tucson Sector Border Patrol stations fairly and
26 accurately represent substantially the same conditions I observed during my inspections.

27 14. The standards used for this report include U.S. Customs and Border
28 Protection ("CBP") National Standards on Transportation, Escort, Detention, and Search,

1 October 2015 (“TEDS”) and the Performance-Based Standards for Adult Local Detention
2 Facilities, Fourth Edition, published by the American Correctional Association (“ACA”).

3 **IV. SUMMARY OF OPINIONS AND GENERAL OBSERVATIONS**

4 15. Tucson Sector detention facilities are professionally run, adequately
5 maintained, and meet their intended purpose of short-term detention during immigration
6 processing.

7 16. Tucson Sector facilities and hold rooms are safe, and have sufficient
8 safeguards and procedures in place for the well-being of both detainees and staff.

9 17. I have worked in, inspected, managed, constructed or toured over 120 jails
10 and prisons throughout the United States. I have been in facilities that were in deplorable
11 condition, some from an issue of age and lack of maintenance, and others from a lack of
12 management oversight. I have also been in and managed facilities that were as clean and
13 well-maintained as a model hospital. Based on my inspections of the Nogales Station,
14 Douglas Station, Tucson Station, and Casa Grande Station, and my review of the
15 evidence, I believe these Tucson Sector facilities are clean and well-maintained.

16 18. I prepared for my site inspections by carefully reviewing the allegations of
17 the Plaintiffs, and the reports of their experts. The facilities described in Plaintiffs’
18 filings bore no resemblance to the sites I inspected throughout the Tucson Sector. Given
19 Plaintiffs’ allegations, I was frankly surprised when I viewed the facts for myself.

20 19. I saw no facts to support the conditions described in Plaintiffs’ papers,
21 including Mr. Vail’s declaration. For example, Plaintiffs’ Complaint refers to detainees
22 being held “incommunicado” for days in terrible conditions. *See* Compl. at 2. But at the
23 Tucson Station, one of the first things I observed was a consular representative speaking
24 to a large group of detainees. I also saw signs posted throughout the facilities, informing
25 detainees in several languages about the procedures to request consular assistance in
26 person or by telephone.

27 20. During my inspections I learned that Official consular representatives visit
28 Tucson Station twice daily. Because Tucson Station is both the operational hub for

1 detainee processing, and the busiest of the stations, any significant problems from other
2 stations would come to light during these visits even if the other stations did not have the
3 routine presence of consular representatives—though they do. As an example, the
4 Mexican Consulate has a scheduled visit at the Nogales Station each day at 8:00 a.m. and
5 4:00 p.m., and someone from the Mexican Consulate is present at Tucson Station at least
6 daily. Through the regular presence of consular representatives, Tucson Sector has an
7 established process for detainees to voice concerns and complaints, and to promptly
8 resolve any issues.

9 21. I was also impressed by the way that Tucson Sector's leadership invites
10 visitors to its station to discuss issues with the Border Patrol Agents, including non-profit
11 leaders and members of the bar. For example, on January 13, 2016, several Ninth Circuit
12 chief judges, lawyers, and others with them, including Judge Collins from the District of
13 Arizona, conducted a site visit to Nogales Station.

14 22. The consistent presence of official consular representatives and the
15 solicitation of feedback from third-party visitors to Tucson Sector stations showed me
16 that Tucson Sector leadership has nothing to hide.

17 23. This detracted from the credibility of Plaintiffs' other claims, and cast
18 serious doubt upon their experts' opinions.

19 24. For instance, throughout the stations, I also saw signs informing detainees
20 to ask for assistance for food, water, or injuries. These signs, and the many facts
21 discussed further below, led me to conclude that Plaintiffs had significantly exaggerated
22 or had cherry-picked facts to support what they already wanted to say.

23 25. Along those lines, I searched intently for evidence of punitive measures that
24 Plaintiffs claim exist, and found none. As a career law enforcement officer, I carefully
25 observed the demeanor, attitude, and behavior of Border Patrol agents and employees. I
26 found them to be professional, polite, and concerned about doing the right thing.

27 26. I specifically noticed the way Border Patrol agents treated detainees with
28 care, especially women and children, and was impressed by their evident care and

1 concern. I saw agents providing toys and special food to children, and observed the
2 reaction of the children toward the agents that confirmed a genuine comfort level.

3 27. Based on my training and experience, this could not have been staged
4 because the environment in the Tucson Station was exceptionally calm and the attitude of
5 Border Patrol agents I encountered was professional. No detainees were agitated or on
6 edge, no one was being mistreated, and the rapport between agents and detainees was
7 professional and cooperative throughout the Tucson Sector stations I visited.

8 28. I also paid particular attention to the attitude of the agents in charge,
9 carefully observed the actions of subordinate employees, and randomly asked impromptu
10 questions to line agents, contract custodial workers, and civilian employees to ensure that
11 my overall impression was accurate and based on unscripted sources. Without exception,
12 everyone I encountered displayed professionalism and concern for detainee welfare and
13 safety. For instance, I observed one agent taking the time to instruct a detainee about
14 how to best use a Mylar blanket.

15 29. In addition, I witnessed agents ensuring that detainees received additional
16 food, and that water was in place throughout the facilities. Supervisors inspected to
17 ensure that standards were upheld.

18 30. Cumulatively, my observation of many such acts and review of the
19 evidence led me to conclude that Plaintiffs' claims regarding the overall conditions at
20 these Tucson Sector stations are not accurate.

21 31. In reality, the physical layout and general conditions of the Tucson Sector
22 hold rooms are adequate and sanitary, and are comparable to those found in the intake,
23 hold room, and booking areas of jails and detention centers around the nation.

24 **V. PLAINTIFFS USE THE WRONG STANDARD**

25 32. I respectfully disagree with the opinions and characterizations of Plaintiffs'
26 expert Mr. Sheldon Vail on various points, the most serious of which is his repeated
27 improper comparison between Border Patrol's short-term immigration processing
28 facilities and long-term detention facilities such as prisons and jails. This error also

1 undermines Mr. Vail's other opinions. No other law enforcement agency in the United
2 States faces the unique issue of populations subject to fluctuation based on the entry
3 patterns of aliens, which Mr. Vail does not address at all.

4 33. One example of Mr. Vail's inappropriate comparison of Tucson Sector
5 processing centers with jails and prisons, is his quote of an excerpt from the Washington
6 University Journal of Law and Policy to justify his claim that temporary overcrowding in
7 Tucson Sector holding rooms increases the safety risk for detainees: "There is widespread
8 agreement among correctional experts that *chronic idleness* in prisons produces negative
9 psychological and behavioral effects." Vail Decl'n at 9 (emphasis added). Most
10 detainees are processed and transferred within 24 hours, a time period that cannot be
11 accurately described as "chronic idleness." Also, only 9.4% of those apprehended in the
12 Tucson Sector were in Border Patrol custody for 48 hours or more and only 2.79% of
13 aliens (476 out of 17,034) were in Border Patrol custody for 72 hours or more. And even
14 72 hours can hardly be compared to the type of "chronic idleness" that could give rise to
15 real problems in jails and prisons.

16 34. This highlights the problem with Mr. Vail's approach. Tucson Sector
17 facilities should not be compared to jails and prisons made to house individuals for
18 extended time periods. Because Tucson Sector facilities are intended for detaining
19 individuals briefly for identification and processing, a better comparison is to short-term
20 holding cells. Yet Mr. Vail does not address this critical distinction. Nor does he
21 indicate that ACA standards themselves are voluntary, and have been criticized for being
22 inconsistently applied and supervised following initial certification.

23 35. When compared to short-term holding cells around the country, Tucson
24 Sector's facilities are on par, and are adequate to ensure detainee safety and welfare
25 during processing and temporary detention.

26 36. For example, the evidence also does not support Mr. Vail's generalization
27 that Tucson Sector facilities are "regularly overcrowded." Vail Decl'n at 6. Upon a
28 careful review of the evidence, it became clear to me that Mr. Vail selected photographs

1 and unsworn statements to shore up his overcrowding opinion.

2 37. As a recognized expert on the issue of jail and prison crowding, my review
3 of the data, interviews of Border Patrol leadership, and inspection of Tucson Sector
4 facilities does not show evidence to support Plaintiffs' claim of overcrowding, much less
5 that Tucson Sector facilities are "regularly overcrowded."

6 38. Rather, the evidence shows that populations in Tucson Sector facilities
7 fluctuate based on the immigration patterns of individuals who are apprehended, which
8 Border Patrol cannot control. Detainee processing times depend on many factors,
9 including criminal history, immigration claims, and the size of a group detained. But
10 even with all of these factors, Border Patrol processes nearly all detainees within 48
11 hours.

12 39. Along the same lines, two facilities I inspected, Nogales Station and
13 Douglas Station, had a significant number of empty cells. Nogales Station had no
14 detainees when I arrived. Douglas Station had two detainees. Casa Grande Station had
15 six adult male detainees in Cell #9, with a posted cell capacity of 24, and four adult male
16 detainees in Cell #8, with a posted cell capacity of 24. Tucson Sector had approximately
17 100 detainees, in facilities and cells with ample space, and was readily processing them
18 throughout the time I was visiting the station.

19 40. Even a careful review of the photographs and numbers Plaintiffs selected
20 shows the exact opposite of Mr. Vail's claim—and makes clear that the facilities are not
21 crowded, let alone "regularly overcrowded."

22 **VI. CLEANING AND MAINTENANCE OF FACILITIES**

23 41. In my opinion, Border Patrol's hold rooms, processing areas, and detention
24 facilities are professionally cleaned and sanitized on a regular basis, and are sufficiently
25 clean for purposes of short-term immigration processing detention.

26 42. Tucson Sector has procedures in place to ensure proper maintenance and
27 upkeep of the facilities through paid professional custodial contractors. I interviewed
28 several of the contractors, and confirmed that they perform regular cleaning services in

1 Tucson Sector hold rooms to ensure a safe, sanitary, and functional environment.

2 43. I also have reviewed the Tucson Sector and Casa Grande statements of
3 work for cleaning. They cover sanitation required for detention facilities, in my opinion.

4 44. During my inspections, I found the hold rooms in Tucson Sector to be clean
5 and serviceable, and consistent with the cleanliness and serviceability I have seen in
6 many similar facilities throughout the country. Based on the claims of the Plaintiffs, I
7 made sure to inspect hold room floors, bathroom areas, walls, benches, and fixtures, and
8 found all to be satisfactory.

9 45. Even the paint and general appearance of the hold rooms and facilities was
10 good, especially given the number of detainees Border Patrol processes.

11 46. I also paid particular attention to the stainless steel toilet/sink combination
12 units (or “bubblers”), which are common in detention facilities I have inspected. I found
13 no issues or concerns with these units in any facility, and I tested them to make sure they
14 were functioning properly. I also sampled the water from a bubbler in Douglas, and
15 found that it tasted the same as water from a drinking fountain.

16 47. Another item I reviewed was Border Patrol’s system of maintenance. My
17 rationale was to further inspect to ensure that Border Patrol has a process through which
18 to identify and remedy routine maintenance needs. I randomly asked a Border Patrol
19 agent at each station to explain their station’s system of reporting and tracking an item in
20 need of repair, such as a sink, toilet, or door handle. All four stations had systems in
21 place through which supervisors submit and monitor requests for maintenance and
22 repairs.

23 48. Border Patrol’s system of documenting inspections of hold rooms
24 reinforced my observations that Tucson Sector is attentive to overall hold room
25 maintenance and upkeep.

26 49. Toilet privacy walls in Tucson Sector are consistent with those in most
27 jails, and are positioned and elevated to a height that affords a reasonable level of privacy
28 for the user while still providing appropriate security visibility for custodial personnel.

1 50. I inspected camera monitors and, in every case in which the interior of the
2 toilet area was in view of the camera, Border Patrol had blacked out the monitor for
3 detainee privacy.

4 **VII. BORDER PATROL ADEQUATELY FEEDS DETAINEES**

5 51. It is my opinion that Border Patrol provides food to detainees that is
6 adequate for short-term detention, along with juice.

7 52. It is my opinion that Border Patrol never uses food or water as a
8 punishment, and that Plaintiffs' claims to the contrary are unsupported.

9 53. The primary indicator to me that Plaintiffs' claim of food deprivation were
10 false was the presence of freezers and refrigerators stocked with burritos at the stations I
11 inspected. Each station also had large supplies of crackers and juice, and a variety of
12 food items for children and babies.

13 54. The facilities I inspected in Tucson Sector have a system in place to ensure
14 detainees receive a burrito, crackers, and juice upon their arrival. Adults receive a
15 burrito, crackers, and juice every eight hours. Juveniles receive a burrito, crackers, and
16 juice every six hours. Detainees also receive snacks and juice between meals.

17 55. At the Nogales Station, for instance, I witnessed an agent provide an
18 incoming detainee a burrito, crackers, juice and a Mylar blanket. At the Douglas Station
19 I observed two detainees arrive and begin being processed. They were both given
20 burritos, crackers, juice, and blankets. I noticed that they consumed the crackers and
21 juice but not the burritos. When I asked if they were still hungry, they smiled and said
22 they had eaten just before they were brought to the facility.

23 56. Each facility also had signs posted in Spanish, clearly visible to all
24 detainees, instructing them to ask for additional food if they were hungry.

25 57. Upon arrival at Tucson Station, detainees are served juice and crackers.
26 Thereafter, adults are provided three meals per day, consisting of burritos, crackers, and
27 juice and a snack between each meal. At Tucson Station, juveniles are provided four
28 meals per day, with a snack between each meal. *See Attach. B (USA000649-650).*

1 58. At Nogales Station, detainees are served burritos, crackers, and juice upon
2 arrival. Detainees are then provided the same foods at 12:00, 4:00, and 8:00 around the
3 clock. Detainees may request additional servings of these items at any time.

4 59. At Casa Grande Station, detainees are served juice and crackers upon
5 arrival. Thereafter, juice, crackers, and burritos are distributed at 1:00 a.m., 7:00 a.m.,
6 1:00 p.m., and 7:00 p.m. Detainees can take several of each item of food. *See* Attach. B
7 (USA000649-650).

8 60. At Douglas Station, detainees are served burritos, crackers, and juice upon
9 arrival, and then again every eight hours or every six hours if they are juveniles.
10 Additionally, signs were posted in every holding cell instructing detainees to notify
11 agents if they are hungry. *See* Attach. B (USA000649-650).

12 61. I also specifically inspected the food Border Patrol serves. The burritos
13 were bean and cheese, beef, and red chili beef. The burritos range from 330 to 360
14 calories each, and are maintained and served in the original packaging.

15 62. The crackers average 190 calories per package, and are cheese crackers
16 filled with cheddar cheese or toast crackers filled with peanut butter. I sampled both a
17 burrito and crackers, and found them to be comparable to food I have purchased in retail
18 grocery stores.

19 63. Border Patrol also serves detainees grape juice and fruit punch.

20 64. I spot-checked the stored supplies of food items in each of the four
21 facilities, and found them to be well within the labeled time frame for consumption.

22 65. All of the facilities with the exception of the Casa Grande Station have
23 commercial burrito ovens. These ovens keep the burritos at about 170 degrees. Each
24 oven has a rotation schedule posted to keep the burritos fresh and ready to serve.

25 66. Nogales, Tucson Station, and Douglas heat the burritos in restaurant style
26 food warmers. Casa Grande heats burritos in microwave ovens. *See* Attach. C (photos).

27 67. I observed baby formula, baby bottles, and toddler foods at each station.

28 68. In addition, the Tucson Station had goldfish crackers, cheese filled

1 crackers, and 100% juice boxes available in plastic containers outside family hold rooms.

2 69. At the Tucson Station, mothers and children were free to go outside of the
3 hold rooms to help themselves to food items from carts. *See* Attach. C (photos).

4 70. Consistent with the signs posted throughout the Sector, Border Patrol
5 employees provide additional portions of food upon request.

6 71. A careful review of the declarations Plaintiffs submitted confirmed my own
7 inspections and review of the evidence. While some detainees did not prefer the type of
8 food they were served, it is not my opinion that they were deprived of food.

9 72. Overall, I found the food and beverage selections to be appropriate for
10 short-term detention, and see no evidence that anyone in Tucson Sector is ever deprived
11 of food, much less that it is intentionally or punitively denied.

12 **VIII. POTABLE DRINKING WATER IS AVAILABLE TO DETAINEES**

13 73. All of the holding cells in each of the four facilities I inspected had either a
14 five-gallon sport water cooler with a supply of paper cups, or water bubblers above the
15 sinks (and sometimes both). *See* Attach. C (photos).

16 74. Hold rooms are equipped with toilet and sink combination units, which also
17 serve as drinking fountains. These stainless steel units are common in holding cells, jails,
18 and prisons across the nation.

19 75. The potable water supplied by combination sink units is sanitary.

20 76. Mr. Vail states that paper cups were never given to detainees during a five
21 day period at Casa Grande captured on video, and that detainees shared a single one-
22 gallon water jug. Vail Decl'n at 17. But I specifically inspected and confirmed that all
23 multi-occupancy cells in the Casa Grande Station are equipped with water bubblers. In
24 addition, Border Patrol does not issue one-gallon water jugs to incoming detainees, but
25 allows incoming detainees to retain water jugs they have brought with them. *See*
26 Declaration of George Allen (Allen Decl'n) at 15, ¶ 45.

27 77. Border Patrol agents regularly provide water to dehydrated individuals
28 found in distress as part of its efforts to prevent injuries and deaths to individuals in the

1 desert. Border Patrol leaders explained their humanitarian efforts. I also noticed that the
2 Border Patrol stations displayed posters and videos warning detainees of the dangers of
3 crossing through the harsh Arizona desert, and not to trust alien smugglers “coyotes.”

4 78. Based on all of the evidence, it is my opinion that detainees in Tucson
5 Sector are never deprived of potable water, punitively or otherwise.

6 **IX. HOLD ROOM TEMPERATURES ARE ACCEPTABLE**

7 79. It is my opinion after a careful inspection and review of the evidence that
8 Border Patrol never uses temperatures punitively.

9 80. The TEDS Temperature Controls standard requires, “When it is within
10 CBP control, officers/agents should maintain hold room temperature within a reasonable
11 and comfortable range for both detainees and officers/agents. Under no circumstances
12 will officers/agents use temperature controls in a punitive manner.” *See* TEDS
13 (USA000633).

14 81. Border Patrol agents do not control temperatures locally at stations, except
15 at Nogales Station. Agents at all other stations must contact facilities management
16 personnel to report temperature problems. *See* Allen Decl’n at 6 ¶¶ 14-16.

17 82. According to agents I interviewed, Tucson Sector Border Patrol hold room
18 temperatures are maintained at 68 to 80 degree Fahrenheit, which is standard in detention
19 centers.

20 83. All facilities I visited felt warm and comfortable. I spot checked some
21 holding cell temperatures with a hand-held thermometer. At the Nogales Station,
22 temperatures ranged from 68.5 to 71.9 degrees Fahrenheit. There, a supervisor had
23 drawn a specific mark in each cell to ensure supervisors took the temperature in the same
24 location (using a hand-held laser thermometer). At the Douglas Station, temperatures I
25 took ranged from 73.5 to 75.1 degrees Fahrenheit. At the Casa Grande Station,
26 temperatures ranged from 71.4 to 71.9 degrees Fahrenheit.

27 84. Border Patrol leadership provides appropriate oversight of holding cell
28 temperatures, and supervisors take holding cells temperatures each shift and document

1 them on a log. Hold room checklists I reviewed supported this as well.

2 85. Detainees are required to remove outer layers of clothing, belts, and
3 shoelaces for safety and security of agents and detainees. This is standard and proper law
4 enforcement practice in detention facilities, and ensures that detainees cannot conceal
5 contraband or weapons. If Tucson Sector did not have this type of procedure in place,
6 there could be a legitimate risk of detainees and agents being exposed to unacceptable
7 risks of knife attacks, strangulation, illegal drugs, or fire hazards, among other dangers.

8 86. Children are allowed to keep outerwear. Each facility I inspected had a
9 store of clothing available for distribution to detainees in need of additional or
10 replacement clothing. This fact was verified by Mr. Vail during his inspection of the
11 Douglas Station when he observed that Border Patrol agents had provided every detainee
12 with a sweatshirt/jacket. Vail Decl'n at 25. Mr. Vail's experience with Border Patrol's
13 response to an air conditioning unit's malfunctioning is consistent with my finding that
14 Border Patrol takes appropriate steps to ensure detainees are not exposed to unnecessary
15 hardships during their immigration processing.

16 87. Any clothing items that a detainee removes are placed in the detainee's
17 property, which is tagged and returned to detainees upon their transfer out of Border
18 Patrol's custody. This is accepted practice throughout corrections institutions.

19 **X. PERSONAL HYGIENE ITEMS ARE SUFFICIENT**

20 88. It is my opinion that Border Patrol provides detainees with access to
21 necessary personal hygiene items, and adequately stocks personal hygiene items for men,
22 women, and children.

23 89. The TEDS Hygiene standard § 4.11 requires, "Detainees must be provided
24 with basic personal hygiene items, consistent with short term detention and safety and
25 security needs. Families with small children will also have access to diapers and baby
26 wipes. Reasonable efforts will be made to provide showers, soap, and a clean towel to
27 detainees who are approaching 72 hours in detention. Detainees using the restroom will
28 have access to toiletry items, such as toilet paper and sanitary napkins. Whenever

1 operationally feasible, soap may be made available.” *See* TEDS (USA 000634).

2 90. Border Patrol keeps baby wipes, diapers, and diaper cream near to family
3 hold rooms.

4 91. I also found toilet paper adequately stocked in hold rooms, and observed
5 large supplies of hygiene items such as toothbrushes, soap, and sanitary napkins for
6 females at each station.

7 92. Each facility issues detainees a toothbrush containing toothpaste either
8 upon request, or at a regularly scheduled interval. For example, at the Tucson Station
9 every detainee who wants one is issued a toothbrush at 5:00 a.m.

10 93. It is my opinion that Border Patrol leaders take detainee health and hygiene
11 seriously. For instance, at Tucson Station, Border Patrol has cells equipped with blinds
12 in which detainees can shower, if needed.

13 94. Border Patrol takes special care regarding families, and provides personal
14 hygiene supplies, including diapers, diaper rash cream, baby wipes, lip balm, and sanitary
15 napkins on an accessible cart outside the family hold rooms at Tucson Station. *See*
16 Attach. C (photos).

17 **XI. BORDER PATROL PROVIDES APPROPRIATE BEDDING**

18 95. Detainees are brought to holding facilities at all hours of the day and night,
19 and must be processed for transfer or repatriation as soon as possible.

20 96. I am very familiar with processing individuals apprehended for various
21 criminal allegations. In many facilities this administrative process is called booking or
22 screening.

23 97. In Border Patrol, this processing is unique. Unlike ordinary law
24 enforcement agencies, Border Patrol has to run extensive criminal and immigration
25 checks. It also has to coordinate large groups apprehended at once.

26 98. In my experience, and based on my inspections and interviews, this type of
27 processing can sometimes be completed in hours. But if detainees arrive in large groups
28 or have unusual criminal or immigration issues, their cases may take an extended time to

1 process.

2 99. Like other short-term facilities I have seen, Border Patrol tries to process
3 detainees as quickly as possible. Agents explained to me that to move detainees through
4 the system as rapidly as possible, it is necessary to continue the process, regardless of the
5 time of day or night. In my opinion, this practice is appropriate, especially given the
6 potential for a group apprehension at any time.

7 100. It is necessary to remove detainees from their holding cells to complete
8 processing. Similar to booking, immigration processing usually involves asking
9 questions, taking fingerprints, and taking photographs of detainees. The agent also has to
10 complete several required forms and computer checks, which takes time.

11 101. Along the same lines, in my opinion it is operationally necessary to keep
12 lights on in the hold cells to facilitate this processing. If detainees were not processed
13 during the hours of darkness, it would only increase their detention time. Leaving
14 holding cells illuminated also serves the law enforcement purpose of enhancing security,
15 which ensures that agents and detainees are properly supervised and protected.

16 102. I disagree that having Tucson Sector's short-term holding cells illuminated
17 is improper or punitive. Based on my review of the unique requirements of short-term
18 immigration detention, it is my opinion that leaving lights on in holding cells serves the
19 important operational purpose of expediting processing. Ultimately, this law
20 enforcement practice benefits detainees by enhancing security and speed of processing.

21 103. I inspected the bedding available to detainees. Each of the facilities had a
22 supply of sleeping or mattress pads when I inspected them on January 26 – 28, 2016.
23 These pads are similar in size and composition to those commonly found in jails, and are
24 used as mattress pads. Detainees all receive blankets. The blankets are comfortable and
25 effective, and can be used even in outdoor environments for survival to ensure retention
26 of 90 percent of body heat.

27 104. Tucson Sector hold rooms are equipped with benches for detainees to sit on
28 until they are transported to another facility or processed for repatriation. The hold

rooms were never designed to accommodate beds.

105. However, Mr. Vail wrongly compares these processing centers to jails and prisons, where inmates are confined for long periods of time, and then opines that they fall short based on that comparison. In my opinion, this is a misleading comparison. As discussed, Border Patrol facilities are processing centers, not jails or prisons. Detainees are held for the sole purpose of processing and transfer to other facilities or deportation. In my opinion, they are properly suited for that task, and are run effectively.

XII. MEDICAL SCREENING AND CARE ARE SUFFICIENT

106. Medical Screening Forms provided to me by Border Patrol staff, although basic, meet the purposes outlined in the statement quoted by Mr. Vail from the “Core Jail Standards.” The forms ask specific questions of the detainee regarding their health and then require the interviewing agent to make specific observations regarding illnesses and or injuries displayed by the detainee.

107. This inspection is similar to that used in other short-term facilities. In my opinion, it is adequate in these facilities because they are merely processing centers. Individuals spend a relatively brief period of time there, and are then repatriated or transferred to another facility where a more thorough screening may be conducted.

108. Detainees displaying medical issues are either treated at the facility by agents who are licensed emergency medical technicians (“EMTs”) or, if the injury or illness is beyond the capabilities of the EMT, transported to a local hospital for treatment.

109. Many city police departments function as processing centers for arrestees, much like the Border Patrol’s holding facilities. They arrest an individual suspected of committing a crime, transport the arrestee to the police station, interview or interrogate the arrestee for a period of time, and then transport the arrestee to a county jail for confinement. They do not conduct any medical screening beyond merely asking a few basic questions, much like those asked of Border Patrol detainees. Police officers make the same visual inspection of the arrestee. If an arresting officer discovers that the arrestee has medical issues, they transport the arrestee to a hospital for treatment or a

1 medical clearance before they take them to the county jail. This practice is proper and
2 widely accepted.

3 110. Just as is done at local police stations or precincts, detainees in Tucson
4 Sector are not issued prescription medication. Pills they bring in must be confiscated as
5 potential narcotics, unless accompanied by a prescription. This is routine, and is good
6 law enforcement practice for safety of detainees and agents, especially because narcotics
7 and controlled substances are widely available near the Southwest Border.

8 111. Individuals with any emergency medical needs, or who require a
9 prescription, are taken to a local hospital emergency room. This happens regularly.

10 112. In my opinion, this practice further illustrates Border Patrol's
11 professionalism and concern toward detainees. Based on the short duration of the
12 detention in these facilities, and the emergency medical services available, this process is
13 sufficient and appropriate. It is reasonable and raises no concerns from my perspective.

14 **XIII. CONCLUSION**

15 113. Taking into consideration my experience of over 33 years of working in,
16 managing, and administering large and small correctional facilities, reviewing the
17 documents provided to me in this case, and my personal observations made while
18 inspecting each of the four facilities mentioned in Plaintiffs' allegations, I firmly believe
19 that the Border Patrol provides safe and humane conditions for detainees.

20 114. Tucson Sector facilities are clean, sanitary, and well maintained.

21 115. Tucson Sector hold rooms are maintained at a comfortable temperature, and
22 Mylar blankets are provided to every detainee for additional warmth and comfort.

23 116. Adequate food and water are provided to each detainee upon their
24 admittance, and are continuously resupplied throughout their detention in Tucson Sector.

25 117. Personal hygienic supplies, e.g., toothbrushes, soap, diapers, sanitary
26 napkins and toilet paper, are provided to each detainee in Tucson Sector stations.

27 118. The health screening process Border Patrol agents conduct is consistent
28 with the process utilized by officers running short term holding facilities throughout the

1 nation. It provides adequate protection for the health and welfare of detainees, and
2 ensures those who are injured get help in an emergency room.

3 119. The fact that Tucson Sector stations are designed to be processing centers,
4 not jails or prisons, necessitates around-the-clock processing, and warrants continued
5 illumination to facilitate this ongoing processing.

6 120. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
7 foregoing is true and correct.

8
9 Signed this 24TH day of February, 2016.

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12 RICHARD S. BRYCE
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DEFENDANTS' EXHIBIT 19

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Jane Doe #1, *et al.*,

Plaintiffs,

v.

Jeh Johnson, Secretary of Homeland
Security, *et al.*,

Defendants.

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

**DECLARATION OF
PHILIP HARBER**

I, Philip Harber, hereby declare:

I. INTRODUCTION

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

2. I am a medical doctor, and have been a Professor of Public Health at the Mel and Enid Zuckerman College of Public Health, University of Arizona since 2011.

3. I am also a Professor Emeritus at the University of California, Los Angeles, where I held various positions from 1981-2011 including Professor of Medicine, Professor of Family Medicine, and Chief of the Division of Occupational-Environmental Medicine.

1 4. I have been licensed to practice medicine in California since 1981 and
2 Arizona since 2012.

3 5. My education includes an M.P.H from Johns Hopkins University (1980), an
4 M.D. from the University of Pennsylvania (1972), and a B.S. from Muhlenberg College
5 (1968).

6 6. My post-graduate training includes: Johns Hopkins University (Fellowships
7 in Pulmonary Diseases and Occupational Medicine, 1978-80); Washington Veterans
8 Hospital/Georgetown University (Internal Medicine Residency, 1977-78); Thomas
9 Jefferson University Hospital (Radiation Oncology Residency, 1974-75); Hospital of the
10 University of Pennsylvania (Anesthesia/Critical Care Residency, 1973-74); and Rhode
11 Island University/Brown University (R-1 Medical, 1972-73). A true and correct copy of
12 my current curriculum vitae is attached as Attachment A.

13 7. My expertise is in the areas of occupational-environmental (preventive)
14 medicine, pulmonary medicine, and internal medicine.

15 8. I have served in several professional organizational positions such as chair
16 of the Study Section for The National Institute for Occupational Safety and
17 Health/Centers for Disease Control and Prevention; Vice Chair for Preventive Medicine
18 RC of the American Accreditation Council for Graduate Medical Education; and two
19 terms on the Board of the American College of Occupational Environmental Medicine.

20 9. I am an academic and a researcher, and in the course of my professional
21 activities I visit diverse environments to assess conditions and potential impact on health.

22 10. In 35 years as a practicing physician, I also have significant experience in
23 the direct care of many patients.

24 11. I have not previously served as an expert witness for the Department of
25 Justice.

26 **II. ASSIGNMENT**

27 12. I have been asked by Defendants' counsel to offer my opinion on the
28 overall health conditions of Tucson Sector Border Patrol hold rooms and, in particular,

1 the medical screening and care of detainees in Tucson Sector.

2 **III. MATERIALS RELIED UPON**

3 13. I have reviewed Plaintiffs' Motion for Preliminary Injunction, and related
4 declarations, exhibits, and filings in this case.

5 14. I conducted environmental inspections of the Tucson Coordination Center
6 (TCC) on November 30, 2015 and the Nogales Border Patrol Station on December 2,
7 2015. I also interviewed agents and employees, and observed Border Patrol operations.

8 15. I was accompanied by attorneys Sarah B. Fabian, Daniel Shieh, and Dillon
9 Fishman of the U.S. Department of Justice.

10 16. Diane Skipworth was present during the inspections I conducted, and I have
11 read her declaration. I believe her account of the conditions fairly and accurately
12 represents substantially the same conditions I observed.

13 17. I read the declaration of Richard Bryce, and believe that it fairly and
14 accurately describes substantially the same conditions I observed during site inspections.

15 18. I reviewed documents related to medical screening and care in Tucson
16 Sector Border Patrol, including: medical care records; cleaning service contracts; logs of
17 time in custody; OSHA records; and health care policy and training documents.

18 19. The policy standards used for this report include U.S. Customs and Border
19 Protection ("CBP") National Standards on Transportation, Escort, Detention, and Search,
20 October 2015 ("TEDS") (USA000618-648).

21 20. I also reviewed numerous health-related documents provided to Plaintiffs,
22 most of which Plaintiffs' experts failed to mention.

23 **IV. SUMMARY OF OPINIONS AND OBSERVATIONS**

24 21. It is my observation that Tucson Sector Border Patrol conducts screening of
25 each detainee, including for basic medical concerns, multiple times.

26 22. In my opinion, Border Patrol in Tucson Sector has a system of medical care
27 in place for detainees. This system provides detainees medical care and treatment,
28 including emergency treatment and prescription medication, when needed.

23. Considering the short duration of the detention in these facilities, and the plan in place related to health of detainees, Tucson Sector Border Patrol's process of medical screening and care is an appropriate system under the circumstances.

24. It is also my opinion that Plaintiffs' filings do not demonstrate any actual adverse medical effects to individuals in Tucson Sector Border Patrol facilities. Nor do the conditions in Tucson Sector indicate to me any serious medical or health risk to detainees. Discussed below are some of the deficiencies in Plaintiffs' claims.

25. The overall conditions in the Tucson Sector hold rooms are sanitary, and are adequate to protect detainee health and wellness.

V. BORDER PATROL PROVIDES CONSISTENT MEDICAL SCREENING AND REGULAR ACCESS TO MEDICAL CARE

26. The TEDS standard states: "Upon a detainee's entry into any CBP hold room, officers/agents must ask detainees about and visually inspect for any sign of injury, illness, or physical or mental health concern and question . . . about prescription medications." *See* USA000631. It also states: "Observed or reported injuries or illnesses should be communicated [and] documented[,] and appropriate medical care should be sought in a timely manner." *Id.*

27. In my opinion, this policy is appropriate to identify imminent medical problems. I understand from my inspections and interviews with agents that TEDS is an official policy that applies to Tucson Sector Border Patrol. It requires that agents affirmatively ask questions, but does not require documentation if no appropriate information or visual clues are noted. Hence, the absence of a note does not imply that medical questioning and inspection did not occur.

28. Further, other medical guidance in Section 4.10 of TEDS shows that Border Patrol has specific policies to address health problems proactively. *See, e.g.,* USA 000631, 634 (discussing required medical screening and ongoing care in hold rooms). Those include medication administration policy, which seems appropriate when dealing with individuals who may have a variety of licit or illicit medications or prescription

1 medicines that may be of uncertain quality or safety. *Id.*; *see also* USA000124-130
2 (“Authorizations for Health Care Services for Persons in Custody of U.S. Customs and
3 Border Protection and U.S. Border Patrol” dated September 12, 2013 (discussing
4 pharmacy and prescription policies for detainees)); USA000154 (“Abandoned
5 Medication and the Administering of Medication to Detainees” dated August 2012)
6 (describing procedures for prescriptions for detainees).

7 29. Based on my inspections, interviews, and review of documents, it is my
8 understanding that detainees are preliminarily screened in the field by apprehending
9 agents, and are asked basic health questions before they are transported. *See* Attach. C
10 (requiring Border Patrol agents to arrange immediate medical treatment for any injured
11 individual encountered). Detainees with urgent medical conditions are immediately
12 taken to an emergency room. *Id.* Upon arrival at one of the stations in Tucson Sector,
13 detainees are again asked basic questions related to their health. *See* USA000631 (TEDS
14 policy).

15 30. Border Patrol has a basic medical screening form regarding illnesses and
16 injuries displayed by detainees. *See* Attach. B (USA 000082). The attached Medical
17 Screening Form demonstrates a specific medical screening approach including
18 questioning detained persons about symptoms in a manner that is appropriate, given
19 Border Patrol’s operations.

20 31. Because Border Patrol facilities are merely processing centers where
21 individuals spend a relatively brief period of time before they are transferred or
22 repatriated, this inspection assessment is sufficient to identify significant medical
23 conditions requiring immediate attention.

24 32. I also observed in my inspections that Border Patrol agents have ongoing
25 interaction with detainees from the moment of apprehension through their time in
26 detention. This is important because regular observation during immigration processing
27 gives agents the opportunity to observe detainee health conditions, including signs and
28 symptoms of illness, and any acute medical conditions that may develop or present

1 thereafter.

2 33. Detainees displaying medical issues are either treated at the station by
3 agents who are qualified Emergency Medical Technicians or, if the injury or illness is
4 beyond the capabilities of the on-site agents, detainees are transported to a local hospital
5 emergency room for treatment.

6 34. Detainees are taken to a local hospital emergency room for any emergency
7 medical needs, significant identified health conditions, or to receive prescription
8 medication. I questioned several agents, and they confirmed that this is standard practice.

9 35. My review of medical care records concerning 2,648 entries for Fiscal
10 Years 2015 and 2016 reveals that Border Patrol regularly provides medical screening,
11 care, and treatment to detainees in Tucson Sector. These records support my own
12 observations and interviews of agents, and document care provided for both minor and
13 more serious conditions in all stations.

14 36. It is significant to me that many of these medical care notations document
15 detainee reports of medical issues that are less serious, such as skin problems and
16 headaches. That indicates that Border Patrol treats detainee health complaints seriously.
17 The examples of medical conditions reported, ranging from scabies to loss of
18 consciousness, shows that Border Patrol consistently responds to detainee complaints for
19 a full range of medical issues.

20 37. Based on my site inspections, interviews of agents, and review of these
21 medical records, it is my opinion that Tucson Sector Border Patrol's system for screening
22 detainees and responding to their medical needs is consistently applied and effective.

23 38. On the other hand, I have reviewed the statement of Dr. Goldenson, and the
24 declarations in Plaintiffs' filings related to medical screening and care. These statements
25 do not document any actual physical harm from the healthcare deficiencies alleged by the
26 Plaintiffs. Nor do they document that Dr. Goldenson has conducted sufficient analysis to
27 establish any medical diagnosis. Dr. Goldenson did not visit any detention sites. Dr.
28 Goldenson simply repeats the declarants' brief statements.

1 39. For example, Dr. Goldenson refers to one individual's 2014 complaint of
2 "head pain and sickness." Goldenson Decl'n at 10 ¶ 46. But the actual translated
3 statement of that individual is extremely brief, stating: "I was sick when I arrived. My
4 head hurt and I did not feel well." ECF No. 2-3, Ex. 39 ¶ 4. Dr. Goldenson does not
5 state that he performed any examination, and has not actually diagnosed any "sickness."
6 Rather, he has simply restated the terms "sick" and "not feeling well," which are non-
7 specific terms. The original terms used in Spanish are not even provided, and he does not
8 state any other information he relied upon. This is not a medical diagnosis, nor is it
9 sufficient to draw any medical conclusions.

10 40. Dr. Goldenson repeats these errors numerous times. *See, e.g.*, Goldenson
11 Decl'n at 10 ¶ 46 (citing ECF No. 2-2, Ex. 19 ¶ 19) (concluding that patient's
12 characterization of "ear infection" was correct but not showing any medical
13 documentation of ear infection symptoms); Goldenson Decl'n at 10 ¶ 46 (citing ECF No.
14 2-2, Ex. 30 ¶¶ 20, 21) (changing "my son and I had a bad cough" to describe presence of
15 a "severe cough" without providing any additional information such as whether the cough
16 was associated with sputum or dyspnea, whether a fever was present, and if it was a
17 persistent problem); Goldenson Decl'n at 10 ¶ 46 (citing ECF No. 2-3, Ex. 35 ¶ 30)
18 (restating complaint regarding head and stomach hurting but failing to provide any
19 reported symptom of diagnostic medical significance or any medical diagnosis);
20 Goldenson Decl'n at 10 ¶ 46 (ECF No. 2-1, Ex. 7 ¶ 17) (restating declaration's
21 characterization that "Someone in the cell was suffering from an allergy attack" but not
22 providing any medical details or medical diagnosis); Goldenson Decl'n at 10 ¶ 46 (citing
23 ECF No. 2-1, Ex. 9 ¶ 13) (reiterating statements about "fever" and "headache" but failing
24 to provide any details or diagnosis regarding reported conditions).

25 41. Assessing the significance of an expressed concern must consider the
26 degree to which a statement is likely to be accurate. Many of the statements upon which
27 Dr. Goldenson relies are extremely brief. Some are not even from the person providing a
28 declaration, but rather represent a report of a brief overheard snippet of conversation. No

1 case description includes any documented significant adverse health outcome. If indeed
2 there were significantly adverse impacts of the screening approach, one would anticipate
3 that he would have identified such outcomes. It is therefore my opinion that there is no
4 objective basis for Dr. Goldenson's statement that effective health screening did not
5 occur.

6 42. Dr. Goldenson's description of a two-step screening (Goldenson Decl'n at
7 3, ¶ 13) also does not seem to take into consideration the processes in place in Tucson
8 Sector. For example, he does not acknowledge the fact that preliminary or triage
9 screening already occurs, and that medical referrals are regularly conducted in Tucson
10 Sector. *See, e.g.*, Attach. B (USA 000082) (health screening form); Attach. C
11 (USA000044-47) (2007 guidance requiring agents to provide assistance); TEDS
12 (USA000631) Section 4.3 (requiring agents to conduct health inspection and examination
13 upon detainee's entry to hold room). Thus, the "visual inspection" Dr. Goldenson
14 describes as lacking appears in reality to be what already occurs. The 2,648 documented
15 entries of various medical issues addressed in Fiscal Years 2015-2016 show me that
16 Border Patrol's screening is in fact working.

17 43. Dr. Goldenson's description of a more thorough medical and mental health
18 screening seems to be appropriate upon admission to a longer-term facility, and it is my
19 understanding that this is what occurs to detainees who are transferred to long-term
20 detention facilities such as Immigration and Customs Enforcement or the Bureau of
21 Prisons.

22 44. In my opinion, longer-term detention facilities are the appropriate venue for
23 a more formal medical screening. Individuals may be there for a longer time, so that
24 more chronic conditions may be identified and addressed. For example, screening for
25 latent tuberculosis infection is both infeasible and inappropriate in the initial setting
26 where the majority of detainees are present for less than 24 hours. Tuberculosis screening
27 requires placement of the skin test and follow-up to assess several days later or,
28 alternatively, obtaining a blood sample to be sent to a distant laboratory for analysis.

1 45. While Dr. Goldenson reports that health-related records are not documented
2 and are not transferred to the detention facility (Goldenson Decl'n at 4 ¶ 17), this is
3 inconsistent with my observations during site inspections, interviews of agents, and the
4 Attachment B (USA 000082), which I understand is included in the standard records of
5 detainees.

6 46. Dr. Goldenson also emphasizes that failure to screen at entry creates a
7 "risk" because detainees will not have access to care. Goldenson Decl'n at 6 ¶ 29. This
8 is inconsistent with the actual procedures I observed. There is considerable interaction
9 between officers and detainees quite frequently. This may differ from the standard jail
10 situation, in which individuals are simply placed in holding facilities. In this case,
11 detainees move from location to location quickly, appear multiple times for questioning,
12 and undergo various processing actions. Each of these steps affords the opportunity for
13 visual inspection, officer-initiated communication, and detainee-initiated communication.
14 During one of my site visits, I observed that this interaction actually occurred.

15 47. Dr. Goldenson places particular emphasis on the possibility of infections
16 such as scabies in Border Patrol facilities. Goldenson Decl'n at 7 ¶ 30. During my site
17 inspections and interviews, I spoke with several officers who acknowledged that scabies
18 is sometimes present. Agents reported to me that they provide treatment locally, or refer
19 such individuals for treatment at a hospital emergency room. I also reviewed documents
20 from Border Patrol demonstrating that agents received training for identifying and
21 responding to scabies, and showing the procedures in place to address scabies.

22 48. Agents I interviewed also confirmed that they receive training for treatment
23 and detection of contagious diseases, including skin diseases such as scabies.

24 49. Dr. Goldenson notes that Border Patrol relies on emergency rooms and
25 ambulance staff for medical treatment. Goldenson Decl'n at 9 ¶ 41. My site inspections,
26 review of documents, and interviews confirm that this observation is consistent with
27 Border Patrol practices. Border Patrol also has numerous trained EMTs on staff. While
28 reliance on emergency rooms may not be optimal for longer-term, chronic care, this

1 approach provides round-the-clock availability of well-qualified medical facilities and
2 personnel. Having on-site physicians or nurse practitioners/physician assistants, as Dr.
3 Goldenson appears to support, would likely reduce the access to care since the number of
4 referrals is inadequate to justify complete 24-hour coverage. Therefore, in my opinion,
5 the current practice exists based on the operational requirements, and is medically
6 sufficient.

7
8 **VI. BORDER PATROL'S EXISTING HEALTH CARE POLICIES**
9 **ADEQUATELY PROTECT DETAINEE WELFARE**

10 50. My review of documents concerning medical policy demonstrates that
11 Border Patrol in Tucson Sector has procedures in place for identifying and managing
12 medical conditions ranging from minor to major. The "Medical Responsibilities"
13 document (August 2012) explicitly defines responsibility for providing care in Tucson
14 Sector. *See* Attach. C (USA000044-47) (written guidance regarding encounters with
15 injured subjects issued November 6, 2007); Attach. D (USA000164-169); Attach. E
16 (USA000350-355) (suicide prevention memorandum dated November 5, 2014).

17 51. Documents I reviewed confirmed assessments I made during interviews
18 and site inspections. Border Patrol has a longstanding practice of providing medical care
19 and assistance to injured individuals, from first encounter to apprehension. In particular,
20 Border Patrol's policy entitled "Encounters with Injured Subjects" issued November 6,
21 2007, Attach. C (USA000044-47), demonstrates to me that Border Patrol leadership takes
22 this responsibility seriously.

23 52. Border Patrol's 2007 policy requires agents to assist individuals who are
24 injured or require medical assistance, regardless of their immigration status, citizenship,
25 or involvement in potential criminal activity. *See* Attach. C (USA000045). Agents are
26 required to take "immediate action" to obtain medical attention for such individuals upon
27 first encounter. *Id.* A Border Patrol "Medical Responsibilities" document dated August
28 2012 states: "Detainees should never be repatriated in lieu of being given medical
attention." Attach. D (USA000164). When I questioned various Border Patrol agents

1 and employees during my site inspections, their answers confirmed that agents follow
2 this guidance and take these responsibilities seriously.

3 53. Documents I reviewed and interviews during my inspections showed me
4 that Border Patrol trains its agents and employees to recognize illnesses, injuries, and
5 outbreaks. *See, e.g.*, Attach. C (USA000044-47) (written guidance regarding encounters
6 with injured subjects issued November 6, 2007); Attach. D (USA000164-169)
7 (discussing medical responsibilities, care of pregnant detainees, chiggers, and scabies);
8 Attach. E (USA000350-355) (suicide prevention memorandum dated November 5, 2014).
9 Border Patrol also trains its personnel to ensure that detainees receive appropriate
10 medical screening and care, and to protect the wellness and health of detainees and
11 employees. For example, Border Patrol has documents on scabies, and provides training
12 to ensure detainees are treated for scabies and know how to respond to prevent scabies
13 outbreaks among detainees. *See, e.g.*, Attach. D (USA000167).

14 54. Border Patrol has other policies in place that further support my conclusion
15 that agents in Tucson Sector receive training and guidance to care for detainees, and that
16 detainee welfare is a priority. There is specific guidance concerning topics such as
17 preventing and responding to sexual assault in CBP holding facilities (Attach. F)
18 (USA000051-57), and preventing detainee suicide (Attach. G) (USA000039-43).

19 55. It is my opinion that the healthcare policies delineated in TEDS, and the
20 related policies, are adequate to protect the health of Tucson Sector detainees.

21 56. Because characteristics of the detainee population differ from those of
22 individuals brought to county or municipal jails, it is incorrect to directly apply
23 recommended medical guidelines such as those set forth by Dr. Goldenson, Mr. Vail, and
24 Dr. Powitz to Border Patrol facilities. The guidelines upon which they base their
25 opinions include “Core Jail Standards” and “Performance-Based Standards for Adult
26 Local Detention Facilities-American Correctional Association.” Given the differences in
27 the population, the short-term duration of the detention, and the medical screening and
28 care procedures in place, it is my opinion that the TEDS standard better addresses

1 healthcare requirements for detention in Border Patrol facilities in Tucson Sector.

2 **VII. OVERALL CONDITIONS IN TUCSON SECTOR FACILITIES**

3 57. While the facilities in Tucson Sector are clearly designed for short-term
4 processing, it is my opinion that Border Patrol provides basic health necessities for
5 detainees.

6 58. My inspections, review of Plaintiffs' filings, and interviews of Border
7 Patrol agents lead me to conclude that Border Patrol provides detainees with food, water,
8 and basic hygiene items.

9 59. The available burritos, drinks (including water), and other food items are
10 adequate to meet nutritional demands on a limited-time basis. While long-term nutrition
11 requires a greater diversity and more fresh items, in my opinion the food provided is
12 acceptable for the very short term needed. In addition, I observed that detainees always
13 have access to potable water. Therefore, the complaint about absent food and water
14 based upon current conditions appears to be unwarranted.

15 60. The overall conditions at the Border Patrol facilities I visited are sanitary.

16 61. The report of Ms. Diane Skipworth documents similar conclusions for the
17 holding facilities she inspected in the Sector, and is consistent with my inspections.

18 62. Contrary to the statement that cells are not regularly or properly cleaned,
19 statements of agents indicate that they are indeed cleaned on a regular basis by
20 professional contractors. I reviewed the contracts for services that require regular
21 cleaning, and these validate that professional cleaning services are in place.

22 63. While Plaintiffs complain that holding cell conditions further endanger
23 detainees suffering from exposure related to medical impairments, there are in fact
24 functional systems in place to provide medical care, and detainees do not face
25 dehydration or undernutrition.

26 64. My review of data regarding detention duration shows that detention
27 beyond 48 hours is relatively uncommon. Further, the TEDS standard specifically
28 includes a policy goal of processing detainees in 72 hours or less. *See* TEDS

1 (USA000631). This is based on operational conditions. *Id.* My interviews of
2 supervisors demonstrated a commitment to process individuals as rapidly as possible,
3 which is supported by the data I have reviewed showing detention times in Tucson
4 Sector.

5 65. Plaintiffs' concern about the inability of detainees to get adequate sleep
6 was not consistent with my observations. During the visits to Nogales and Tucson
7 facilities, there was sufficient physical space for individuals to lie as well as stand or sit
8 in every one of the rooms I observed. Further, some mattresses were present. While
9 inadequate sleep may lead to impaired ability to drive, operate machinery, etc., the
10 detainees were not in a situation where such activities would be conducted. Therefore,
11 any lack of full alertness would not lead to physical hazards to the detainees.

12 66. The holding rooms I observed had appropriate temperature conditions
13 during the inspections. In addition, I reviewed the temperature logs, showing that
14 temperatures were not in a range that could be described as "painfully cold." Compl. at
15 24. In my opinion, the temperatures I observed on the temperature logs and during site
16 inspections do not pose any danger to the health of detainees.

17 67. I also observed that detainees were uniformly given blankets. This was
18 confirmed by interviews with officers on site. The blankets were of Mylar rather than
19 cloth material. Such blankets are known to be effective for thermal protection. They also
20 offer the advantage of a higher level of hygiene than is possible with more traditional
21 cloth blankets since they are disposable and may be more readily cleaned.

22 68. While daily bathing may be desirable, there are no demonstrated medical
23 consequences of any inability to bathe during the short detention time. I understand that
24 Border Patrol policy is to provide showers, if possible, to the small number of individuals
25 detained for over 72 hours, and in my opinion that is sufficient for health purposes.

26 69. I have reviewed Dr. Powitz's statement regarding inadequate ventilation
27 concerns. Powitz Decl'n at 21, ¶¶ 109-110. While concern about total and ambient
28 ventilation aspects is valid, the application to this specific instance is purely theoretical

1 and not applicable. Low oxygen content in the breathing air is very unlikely to occur
2 since the rooms I inspected are large, and were not completely sealed. Tucson Sector
3 hold rooms do not constitute a “confined space” that might give rise to real concerns.
4 The rooms I visited appeared to be ventilated. Further, Dr. Powitz’s concerns about
5 mildly increased carbon dioxide levels as a marker of inadequate ventilation do not lead
6 to physiologic consequences. Thus, his comments are completely speculative.

7 70. I have reviewed Dr. Powitz’s comments regarding “public health risks.”
8 Powitz Decl’n at 22-23. Much of the material he quotes is irrelevant. For example,
9 standards for holding laboratory animals, typically for prolonged times, have no
10 relevance to management of detainees in this context.

11 71. Dr. Powitz also refers to the potential for spread of infectious diseases
12 through fomites or airborne spread. Powitz Decl’n at 22 ¶ 114. He is correct that there is
13 potential for such spread. However, Border Patrol’s practice of removing individuals
14 with evident disorders for medical care mitigates this risk. In addition, his concern about
15 spread during the prodromal phases of infections (i.e., before the infection is actually
16 diagnosable), is purely theoretical. There is comparable theoretical concern about spread
17 during prodromal stages applicable to travel on an airplane or bus, sitting in a university
18 classroom, or going to the supermarket. This poses no unacceptable health risk.

19 72. Other items Dr. Powitz mentions are a “risk of unintentional injury because
20 of limited free movement by detainees” and potential musculoskeletal injuries from
21 inadequate space. These are also purely hypothetical, and present no significant concern.
22 Detainees are able to move about the rooms, and are not confined to any particular
23 position. In my inspections, detainees had adequate room to walk, sit, and sleep, and the
24 ability to move about. Therefore, these concerns also present no unacceptable health risk.

25 73. Dr. Powitz also appears to speculate about potential risk to staff members
26 due to “unhygienic” conditions in these facilities. However, OSHA records and
27 interviews with officers have not shown any outbreaks; nor has he provided any
28 documentation that these actually occur.

1 **VIII. CONCLUSION**

2 74. In my opinion, the policies and environmental conditions in Tucson Sector
3 Border Patrol facilities are adequate to protect the health of detainees, and public health
4 and safety.

5 75. Review of the extensive written materials provided and my on-site visits
6 have not shown any medical harm to detained persons from the detention facilities or
7 processes, or any serious risk of future harm.

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

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11 Signed this 25 day of February, 2016.

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14 PHILIP HARBER, M.D.
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