DECLARATION OF PABLO STEWART, MD IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. Background / Expert Qualifications

1. I am a physician licensed to practice in the states of California and Hawai'i, and I maintain a practice in clinical and forensic psychiatry. I am currently a Clinical Professor and Psychiatrist at the Burns School of Medicine at the University of Hawai'i. As part of my academic duties, I serve as an attending psychiatrist at the Oahu Community Correctional Center and supervise psychiatry residents assigned to work at the facility. I have extensive experience in forensic and correctional psychiatry, including monitoring conditions of confinement and assessing policies, procedures, and protocols for the adequacy of mental health and medical care in custodial settings. As an expert for more than 30 years, I have rendered professional assistance to courts, governmental agencies, and counsel for incarcerated and detained people with regard to managing, monitoring, and reforming correctional mental health and medical care systems, including the implementation of remedial decrees in conditions of confinement cases; assessing the quality of medical and mental health care provided to incarcerated and detained people; and opining as to conditions of confinement that aggravate or exacerbate traumatic symptoms and mental illness. My responsibilities include inspecting correctional institutions, reviewing custodial, medical, and mental health care policies and procedures, and rendering an opinion on the risks posed to incarcerated and detained populations by inadequate or ineffective custodial and health care procedures.

2. Most recently, from 2016 to the present, I have served the U.S. District Court for the Central District of Illinois as its court-appointed monitor in *Rasho v. Baldwin*, a statewide class action involving mental health care in the Illinois state prison system. From 2014 to the present, I have served as an expert in *Hernandez v. County of Monterey*, in the U.S. District Court for the

Northern District of California. In 2014, I participated in a year-long review of segregated housing units for the Federal Bureau of Prisons' Special Housing Unit Review. From 2008 to 2019, I served as an expert in *Graves v. Arpaio*, a case in the District of Arizona involving conditions in the Maricopa County Jail. I was an expert in the U.S. Supreme Court case *Brown v. Plata*, and my opinion is cited in that decision. 563 U.S. 493, 519 and n.6 (2011). From 1998 to 2004, I was a psychiatric consultant to the Institute on Crime, Justice and Corrections at George Washington University, which monitored the agreement between the U.S. Department of Justice and the State of Georgia to improve the quality of that State's juvenile justice facilities, critical mental health, medical, and educational services, and treatment programs. From 2003 to 2004, I monitored the provisions of a settlement between incarcerated people and the New Mexico Corrections Department about conditions in the Department's "supermax" unit. I have testified numerous times in state and federal courts as an expert and provided expert opinions relied on by federal district courts, the federal courts of appeals, and the Supreme Court.

3. I have held numerous positions with responsibility for ensuring quality clinical services at inpatient and community-based programs, and maintaining the psychological well-being of incarcerated people. I have extensive clinical, research, and academic experience in the diagnosis, treatment, and community care programs for persons with psychiatric disorders, and the management of patients in institutionalized populations with dual diagnoses, including psychotic disorders. From 1986 to 1990, I was the Senior Attending Psychiatrist at the Forensic Unit at University of California, San Francisco ("UCSF") / San Francisco General Hospital ("SF General"), where I was responsible for a twelve-bed maximum-security psychiatric ward. From 1988 to 1989, I was the Director of Forensic Psychiatric Services for the City and County of San Francisco, and had administrative and clinical responsibilities for psychiatric services for the jail

population. My duties included direct clinical and administrative responsibility for the Jail Psychiatric Services and Forensic Unit at SF General. From 1991 to 1996, I served the Department of Veterans Affairs Medical Center in San Francisco as: Medical Director of the Comprehensive Homeless Center (where I had overall responsibility for the medical and psychiatric services at the Homeless Center); Chief of the Intensive Psychiatric Community Care Program (a community-based case management program); Chief of the Substance Abuse Inpatient Unit (where I had overall clinical and administrative responsibilities for the unit); and Psychiatrist for the Substance Abuse Inpatient Unit (where I provided consultation to the Medical / Surgical Units regarding patients with substance abuse problems). From 1991 to 2006, I served as the Chief of Psychiatric Services at the Haight Ashbury Free Clinic.

4. Concurrent to this professional work, I have held several academic appointments where I actively supervise medical students, residents, and fellows in psychiatry. As noted above, I am currently a Clinical Professor and Psychiatrist at the Burns School of Medicine at the University of Hawai'i. At UCSF School of Medicine's Department of Psychiatry, I was a Clinical Professor from 2006 to 2018; Associate Clinical Professor from 1995-2006; Assistant Clinical Professor from 1989-95; and Clinical Instructor from 1986-89. I received multiple awards for "Excellence in Teaching" and "Outstanding Faculty Member of the Year," including the academic years 1985-86, 1986-87, 1988-89, 1990-91, 1994-95 and 2014-15.

5. In 1973, I obtained a Bachelor of Science in chemistry from the U.S. Naval Academy, and served in the U.S. Marine Corps from 1973 to 1978. I received my Doctor of Medicine degree from UCSF in 1982. I also completed my residency in Psychiatry at UCSF. In 1985, I received the Mead-Johnson American Psychiatric Association Fellowship for demonstrated commitment to public sector psychiatry and was selected as the Outstanding

Psychiatric Resident by the graduating class at UCSF. In 1985-1986, I was the Chief Resident for the Department of Psychiatry at UCSF Hospital and SF General.

6. My current CV is attached as **Exhibit 1**. My billing rate for my work in this case at a rate of $300 per hour, with a daily cap of $2,500.

II. Analysis and Conclusions

7. For this declaration, I have been asked to offer my opinions on the effects that certain serious mental illnesses and intellectual disabilities have on people's ability to communicate with their attorneys, and measures that must be taken to ensure that people with these illnesses or disabilities can communicate with their attorneys at a level approaching that of people without these illnesses or disabilities. I have been asked to consider three categories of serious mental illnesses or cognitive impairments.

8. The first category is psychotic disorders. Serious psychotic disorders include Schizophrenia, Schizoaffective Disorder, and Unspecified Psychosis. People with serious psychotic disorders exhibit thinking that is not based in reality, which can make communication difficult. People with serious psychotic disorders generally find it most straightforward and effective to communicate in person. Communications through other means such as telephone or mail can be complicated by delusions that frequently cause people with serious psychotic disorders to mistrust these means of communication or to experience miscommunications through them. The best method of remote communication for people with serious psychotic disorders is by video because that best mimics in-person communication, but even video communication can be challenging. Communications by means other than video can be very challenging for people with serious psychotic disorders.

9. The second category of serious mental illness is mood disorders. Serious mood disorders include Bipolar Disorder and Major Depressive Disorder. These disorders can also have effects that make it difficult for people to communicate. For example, mood disorders can cause psychotic symptoms similar to those discussed above for psychotic disorders. They can also cause cognitive distortions that affect people's ability to communicate. For example, someone with Major Depressive Disorder who missed a phone call with an attorney, a disappointing experience for anyone, might experience cognitive distortions that cause them to have suicidal ideations as a result of missing this phone call. For this category of serious mental illness, too, in-person communications will be most effective, and communications over video will generally be much more effective than communications by other means such as phone or mail. Where a phone call is the best available option, support and facilitation of this call is often necessary.

10. The third category I considered is cognitive impairments. This category includes Neurocognitive Disorder (sometimes referred to as "dementia") and Intellectual Development Disorder. People with cognitive impairments frequently experience logistical difficulties communicating by telephone or mail and are generally better able to understand communications that include a visual component in addition to a voice component. These people generally are best able to communicate in person, and may also be able to communicate effectively by video and, to a lesser extent, by telephone, so long as an on-site facilitator can ensure that this method of communication is properly set up and working.

11. For people who fall into any of these three categories and are institutionalized or incarcerated, facilitated communication (where a staff member walks the person to a private room, sets up the connection, makes sure it is working, and then leaves the person alone) is far more effective than relying on the person with the disorder or impairment to start the videoconference

or place the call. This is because symptoms of any of these disorders or impairments can complicate a person's ability to navigate the steps necessary to place a call themselves, which include remembering the scheduled time for a call, placing the call at that time, and navigating through the sometimes complex menu of options to place the call.

12. Before 2020, my work with patients with serious mental illnesses took place almost exclusively in person. After the COVID-19 pandemic began, I started to see some patients for competency evaluations and other purposes remotely. I conduct these remote sessions over video because I find that I am not able to communicate effectively with these patients over other means, like by telephone or mail. These video communications are facilitated by staff at the facilities where the patients are housed, a measure that I view as necessary to ensure that I can effectively communicate with those patients with serious mental illnesses.

13. Counsel have requested that I review a definition that the court in the case *Franco-Gonzalez v. Holder* used to identify a set of people with serious mental illness who should be evaluated to determine whether they should be appointed a lawyer. That group of people was defined as those identified by a qualified mental health provider to have "a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (e.g. communicating, reasoning, conducting activities of daily living, social skills); or a severe medical condition(s) (e.g. traumatic brain injury or dementia) that is significantly impairing mental function; or exhibition of one or more of the following active psychiatric symptoms or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity; or . . . significant symptoms of Psychosis or Psychotic Disorder, Bipolar Disorder; Schizophrenia or Schizoaffective Disorder; Major Depressive Disorder with Psychotic Features; Dementia and/or a

Neurocognitive Disorder; or Intellectual Development Disorder (moderate, severe, or profound)." *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX, 2014 WL 5475097, at *3 (C.D. Cal. Oct. 29, 2014). This definition generally consists of people who fall into the three categories I discuss above. People who fall within this definition will necessarily experience difficulty communicating with their lawyers unless they are able to do so in person or by facilitated telephone or, preferably, video calls.

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

Dated this 11TH day of November, 2022, at Honolulu, Hawai'i.

PABLO STEWART, M.D.