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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JOHN DOE #1, an individual; JOHN DOE #2, an individual; JOHN DOE #3, an individual; and JOHN DOE #4, an individual;

Plaintiffs,

vs.

JOHN KERRY, in his official capacity as Secretary of State of the United States; JEH JOHNSON, in his official capacity as Secretary of Homeland Security; LORETTA LYNCH, in her official capacity as Attorney General of the United States; SARAH SALDANA, in her official capacity as Assistant Secretary of Immigration and Customs Enforcement; R. GIL KERLIKOWSKE, in his official capacity as Commissioner of U.S. Customs and Border Protection; DAVID HARLOW, in his official capacity as Acting Director of the United States Marshals Service; and DOES 1 to 20, inclusive,

Defendants.

CASE NO. 4:16-CV-654-PJH

DECLARATION OF ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, Michael H. Miner, declare as follows:

1. I currently serve as President of the Association for the Treatment of Sexual Abusers (ATSA), an international organization dedicated to preventing sexual abuse. ATSA promotes research, evidence-based practice, public policy and community strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse.

2. The statements made below, except for biographical statements, represent the official position of ATSA and have been reviewed by both the Executive Director and Policy Chairman of that organization.

3. I was graduated with a Bachelor of Arts degree from Ohio University in psychology in 1975.

4. I was graduated with a Master of Arts degree from Loyola Marymount University in counseling psychology in 1977.

5. I was graduated with a Ph.D. in psychology from St. Louis University in 1984.

6. I am a licensed psychologist in the states of California and Minnesota. I am also on the National Register of Health Service Psychologists and a Diplomate in Psychology, American College of Forensic Examiners.

7. I am currently employed by the University of Minnesota, Department of Family Medicine and Community Health, as a professor and research director of the Program in Human Sexuality.

8. I am currently the Principal Investigator for a five-year, $1.49 million grant from the National Institute of Justice, "Evaluation of the Implementation of the Sex Offender Treatment Intervention and Progress Scale." I have served as Principal Investigator for nine additional state and federal grants, many of which addressed sex offending issues.

9. I am an author of more than 70 peer-reviewed publications, including "The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems," which was published in "Sexual Abuse: A Journal of Research and Treatment" in February 2015.

10. I am also an editor or co-editor of three books regarding sex offender treatment. In addition, I have contributed chapters regarding sex offenders and sex offending to 10 additional books.

11. I am also the author or co-author of 15 reports, including "A multi-site state recidivism study using Static-99R and Static-2002 risk scores and tier guidelines from the Adam Walsh Act" which was funded by the National Institute of Justice and completed in 2012.

12. A copy of my complete Curriculum Vitae is attached to this declaration as Exhibit A.

13. The rate of re-offense for the group of individuals known as "sex offenders" is the lowest rate of re-offense for any group of individuals convicted of a crime with the exception of murderers. According to Meta analyses, the rate of re-offense for "sex offenders" is, on average, approximately 14 percent, with a recent study finding rates ranging from 6 % to 34% depending on risk level[1].

14. The rate of re-offense for "sex offenders" declines with advanced age. That is, the older the "sex offender", the less likely he is to commit a subsequent sex offense.

15. In addition to age, re-offense risk decreases the longer that a "sex offender" is free in the community without a subsequent sex crime arrest.

16. Dr. Karl Hanson is one of the world's preeminent researchers regarding re-offending and risk assessment for "sex offenders." Dr. Hanson is also a former ATSA board member and a current consultant on my ongoing research grant,

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[1] Hanson, R.K., Thornton, D., Helmus, L.M. & Babchishin, K.M. (2015). What sexual recidivism rates are associated with Static 99R and Static 2002R scores? *Sexual Abuse, ??*, 1-35.

"Evaluation of the Implementation of the Sex Offender Treatment Intervention and Progress Scale", funded by the National Institute of Justice.

17. Dr. Hanson is one of the developers of the Static-99R, the most well-researched and widely used an risk assessment tool worldwide, to determine an individual "sex offender's" relative risk of re-offense, with categories designating risk as low, moderate low, moderate high, or high.

18. According to the results of extensive research conducted by Dr. Hanson, an individual "sex offender" who has a low risk of re-offense is no more likely to commit a subsequent sex offense than an individual who has never committed a sex offense.[2]

19. Also, according to the results of Dr. Hanson's extensive research, an individual "sex offender" who has a moderate risk of re-offense and who has not committed a new sex offense in 12.5 years is no more likely to commit a subsequent sex offense than an individual who has never committed a sex offense.[3]

20. Further, according to the results of Dr. Hanson's extensive research, an individual "sex offender" who was deemed at release as high risk of re-offense and who has not committed a new sex offense in 17 years is no more likely commit a subsequent sex offense than an individual who has never committed a sex offense.[4]

21. There are multiple treatment options available to reduce the rate of re-offense for "sex offenders". The most effective treatment options are those that adhere to principles that apply counseling and management strategies according to an individual's risks, criminogenic needs, and responsiveness to interventions, and include cognitive-behavioral psychotherapeutic treatments and, sometimes, medication.[5]

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[2] See Exhibit B, line C.
[3] See Exhibit B, line B.
[4] See Exhibit B, line A.
[5] Hanson, RK, Bourgon, G., Helmus, L., & Hadgson, S. (2009). The principals of effective correctional treatment also apply to sex offenders: a meta-analysis. *Criminal Justice and Behavior, 36*, 865-891.

22. Meta-analyses indicate that appropriate psychotherapeutic and/or pharmacologic interventions can result in a 25 to 30 percent reduction in the rate of re-offense for "sex offenders"[6].

23. Research conducted by the Minnesota Department of Corrections indicates that intensive probation or parole supervision is effective in reducing rates of re-offending in high risk "sex offenders".

24. There is little evidence indicating that prevailing legislative responses to sexual offending, such as residence restrictions, community notification, and registration, are likely to reduce the likelihood of re-offense for most "sex offenders." Conversely, there are indications that many of these policies produce unintended consequences such as unemployment, social isolation, and residential instability – factors that may in fact increase risk of re-offense and decrease public safety.

25. The International Megan's Law (IML) is based upon several misconceptions and is too broad because it treats all registered sex offenders as though they pose a high risk for future sexual crime or human trafficking. That is, the law treats every "sex offender" as a high-risk "sex offender" and does not taken into consideration factors that be correlated with recidivism. . In fact, empirically derived methods for assessing risk are available and could be used in the implementation of IML.

26. Further, IML treats individuals who committed their sex offenses as juveniles in the same manner as those who offended as adults, despite clear research demonstrating that juveniles pose a lower risk for re-offending.

27. The IML inflicts travel restrictions on registered persons and, potentially, their families. "Sex offenders" with family abroad may be impeded in their ability to maintain contact with relatives or to provide support for dependent family members.

[6] Schmucker, M. & Lösel, F. (2015). The effects of sexual offender treatment on recidivism: an international meta-analysis of sound quality evaluations. *Journal of Experimental Criminology,* published on-line, 19 August 2015.

Further, it restricts the right to travel, potentially interfering with educational opportunities, business ventures, and employment options.

28. The unique identifier, required by the IML to be added to the passports of some "sex offenders," will falsely imply that all "sex offenders" pose a threat to public safety. This requirement will also stigmatize individuals and expose them to possible vigilante violence domestically and abroad.

29. Importantly, The IML fails to identify those who actually engage in human sex trafficking because those individuals are more likely to be motivated by financial incentives (rather than sexual deviance) and are more likely to be involved in organized criminal activities than they are to be registered as "sex offenders."

30. The IML incorrectly uses the terms "pedophile", "child molester" and "sexual predator" interchangeably. Each of those terms has a different definition as explained below.

31. Pedophilia is a mental health diagnosis defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, as a pattern of exclusive or primary attraction to *prepubescent* children. A person with Pedophilia may or may not have touched a child inappropriately or been convicted of a sexual crime.

32. The phrase "child molester" is applied to individuals who have inappropriately touched a child in a sexual manner. He may or may not have the disorder of Pedophilia.

33. The phrase "sexual predator" is legal term with no clinical meaning. While the term has been statutorily defined by some states to denote a limited sub-class of high-risk "sex offenders" for purposes of registration, civil commitment, lifetime supervision, and related provisions, these definitions have varied considerably across states. These legal designations are generally reserved for chronic repeat or violent offenders or those deemed to be at especially high risk of re-offense, and do not apply to the vast majority of registered "sex offenders."

34. The media has played a significant role in creating a "moral panic" about anyone labeled a "sex offender". This is largely due to their focus on tragic but statistically improbable crimes such as sexually motivated abductions and murders of children.

35. Media coverage and widespread access to information via the Internet has led to the presumption of an increase in sexual assaults upon and murders of children domestically or abroad. However, research evidence indicates that sexual abuse has decreased in frequency over the last two decades.

36. While prevention of global human trafficking is an important public safety initiative, the costs associated with IML are likely to be enormously disproportionate to any potential protective benefit of the law. The law is likely to impede the ability of many "sex offenders" to engage in productive and prosocial work-related and family activities afforded to other criminal offenders who have served their time and intend to positively reintegrate into society.

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

Dated: February 19, 2016

Michael H. Miner, Ph.D.