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Attorney for Plaintiffs John Doe #1, John Doe #2,
John Doe #3 and John Doe #4

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 THOMAS J.
TOBIN, Ph.D., IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1 I, Thomas J. Tobin, declare as follows:

2 1. I currently reside in the State of California.

3 2. I am the Co-Founder and Chief Executive Officer of Pacific Forensic
4 Psychology Associates, Inc. (dba Sharper Future), a private sector mental health
5 organization that provides evaluation and treatment services to sex offenders and
6 other types of offenders.

7 3. Pacific Forensic Psychology Associates, Inc., was incorporated in 1999
8 and currently operates multiple clinics within the state of California at locations
9 including the Bay Area, Los Angeles, San Diego, Sacramento, and the Inland Empire.

10 4. I am a legislatively-appointed member of and currently serve as the
11 elected Vice Chair of the California Sex Offender Management Board (CASOMB),
12 which was established by the California State legislature as the state's expert resource
13 on sex offender policy issues. I have been a member of that board since 2007.

14 5. I am a member of the Board of Directors and Chair of the Public Policy
15 Committee of the California Coalition on Sexual Offending (CCOSO), a statewide
16 professional association dedicated to addressing complex issues related to sex crimes
17 and sexual deviance. I have been a member of that organization since 2002.

18 6. I am a member of the Public Policy Committee of the Association for the
19 Treatment of Sexual Abusers (ATSA), an international organization dedicated to
20 preventing sexual abuse. ATSA promotes research, evidence-based practice, public
21 policy and community strategies that lead to the effective assessment, treatment, and
22 management of individuals who have sexually abused or are at risk to abuse. I have
23 been a member of that organization since 2002. In 2015 I was recognized as an
24 ATSA Fellow.

25 7. I am a member of the American Psychological Association and have
26 been since 1982.

1 8. I am a member of the California Psychological Association and have
2 been since 1987.

3 9. I have been a licensed psychologist in California since 1984.

4 10. I was graduated with a Ph.D. in clinical psychology in 1981 from the
5 California School of Professional Psychology (now a division of Alliant University
6 located in San Francisco).

7 11. I am not authorized to speak officially on behalf of any of the above–
8 named organizations and I provide this declaration solely representing myself.

9 12. As a psychologist, I have, since 1984, provided counseling to sex
10 offenders as well as helped to create specialized sex offender treatment programs for
11 others to use.

12 13. In the state of California, all individuals convicted of a sex offense are
13 required to participate in a specialized sex offender treatment program, certified by
14 the California Sex Offender Management Board, while on county probation or state
15 parole.

16 14. Specialized treatment (counseling) is the primary tool used in the
17 rehabilitative efforts with sex offenders. The goal for counseling sex offenders is to
18 reduce their risk of committing a subsequent sex offense. Such specialized treatment,
19 delivered within the framework of criminal justice system supervision, is the only
20 management strategy showing research support for its effectiveness.

21 15. I am aware that other management strategies have been used in efforts to
22 reduce the risk of convicted sex offenders committing another sex offense. Research
23 has shown that many of those methods are unsuccessful in achieving that goal. Such
24 efforts include, but are not limited to: registration, community notification, residence
25 restrictions, electronic monitoring (GPS ankle bracelets) supervision without a
26 treatment component, and increased sentences.

27 16. The history of the introduction of various sex offender management
28 strategies reveals that well-intended approaches can prove ineffective and, in some

1 cases, are actually counterproductive in that they exacerbate factors associated with
2 recidivism. For example, residence restrictions can destabilize an individual's life by
3 rendering him homeless, thereby destroying his social support systems, ability to
4 work and readiness to reenter the community. Though at first glance some
5 approaches seem to make sense, the research says that they do not really accomplish
6 their purpose.

7 17. In California, shortly before or after they are released from custody, each
8 individual sex offender is scored using an instrument called the Static 99-R. This is
9 the most widely-used and thoroughly-researched instrument available to identify the
10 risk of re-offense of a sex offender. Recognizing that sex offenders differ
11 considerably with respect to their risk of reoffending, determining each individual's
12 level of recidivism risk, and gearing management strategies to match this information
13 is essential for proper management and treatment decisions.

14 18. Based upon the Static 99-R assessment, an individual is identified at the
15 time of scoring as having a Static risk score which places him in a group of similarly-
16 scored individuals. The average recidivism of that group has been determined by
17 researchers and is commonly described as low, medium, or high risk of re-offending.
18 This "actuarial prediction," similar to the actuarial risk determinations utilized by
19 automobile or life insurance companies and others, applies to groups of individuals
20 but only to a specific individual except insofar as the score places that person in a
21 group with a known rate.

22 19. Overall, the risk of re-offense for convicted sex offenders varies from
23 approximately 5 to 15 percent. At least in part due to inaccurate media reports,
24 members of the public, as well as officials, often erroneously believe and state that
25 the risk of re-offense is much higher, sometimes proclaiming that "they all reoffend."

26 20. The risk of re-offense for a sex offender gradually diminishes during the
27 time he continues to live offense-free in the community, even without considering
28 whether or not he has engaged in specialized rehabilitative counseling. However,

1 well-delivered treatment reduces the comparatively low re-offense rate even further.
2 Multiple studies show a reduction in sexual recidivism in the range of 26 to 40
3 percent for individuals who participate in specialized treatment.

4 21. Generally, specialized treatment programs deliver services for sex
5 offenders in some variation of weekly 90-minute group sessions or weekly 60-minute
6 individual sessions or some combination of the two. Higher-risk individuals would
7 ordinarily receive comparatively more intensive treatment.

8 22. During counseling sessions, therapists focus upon “dynamic risk factors”
9 – characteristics of the offender which are related to committing the offense and
10 which are able to be changed. These factors can be grouped into the following
11 clusters: (1) limited capacity for self-management; (2) deficiencies in social skills and
12 social support systems; (3) presence of deviant sexual arousal; (4) erroneous attitudes
13 and beliefs about sexuality and victimization; (5) more general antisocial and pro-
14 criminal attitudes and patterns. Each of these cluster areas includes multiple more-
15 highly-specified factors or treatment targets.

16 23. It is thought that there are two basic dynamics for sex traffickers. Some
17 offenders are sexually motivated and others are financially motivated. Some
18 offenders may be motivated by both dynamics.

19 24. A “pedophile” is an individual who has been medically diagnosed as
20 someone who is sexually attracted to prepubescent children. A pedophile may or may
21 not have ever acted on that attraction. A “child molester” is an individual who has
22 actually had inappropriate sexual contact with a child. A child molester may or may
23 not meet the rather strict diagnostic criteria to be correctly named a pedophile.
24 Therefore, a pedophile may or may not have actually molested a child and a person
25 who has molested a child may or may not meet the criteria for being diagnosed as a
26 pedophile. These terms are not synonymous.

27 25. A “sexual predator” – a term not clearly defined or ordinarily used by
28 professionals in the sex offender management field – is sometimes used to classify an

1 individual who has committed multiple sex offenses and has a very high risk of re-
2 offending. In a number of states, such individuals are not released from prison to live
3 in the community but instead, after the period of incarceration within the criminal
4 justice system, are "civilly committed" to a locked hospital facility. Sometimes the
5 term "sexually violent predator" (SVP) is carelessly used to refer to any convicted sex
6 offender.

7 26. I am familiar with the provisions of the International Megan's Law and,
8 because there is no research support for this approach and credible evidence that
9 similar approaches (e.g. registration) are not effective, I believe that the provisions
10 will not be effective in reducing child sex trafficking. In addition, I believe that the
11 International Megan's Law will result in unintended consequences that produce
12 harmful, not positive, results.

13
14 I declare under penalty of perjury of the laws of the United States that the foregoing is
15 true and correct.
16

17 Dated: February 17, 2016

18
19 
20 Thomas J. Tobin, Ph.D.