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U.S. DISTRICT COURT  
SAN FRANCISCO, CALIFORNIA

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20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

JCS

23 CLARENCE RAY ALLEN,

24 Plaintiff,

25 v.

26 RODERICK HICKMAN, SECRETARY,  
27 CALIFORNIA DEPARTMENT OF  
28 CORRECTIONS AND REHABILITATION,  
STEVEN ORNOSKI, WARDEN, CALIFORNIA  
STATE PRISON AT SAN QUENTIN, ARNOLD  
SCHWARZENEGGER, GOVERNOR OF  
CALIFORNIA, AND DOES 1 THROUGH 25,  
INCLUSIVE,

Defendants.

Case No. 05 5051

**PLAINTIFF'S APPLICATION FOR  
A TEMPORARY RESTRAINING  
ORDER TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

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1 **INTRODUCTION**

2 Plaintiff Clarence Ray Allen submits this application for a temporary restraining order  
3 staying his execution and all proceedings related to his execution until he is provided with the  
4 medical care necessary to enable him to properly prepare his clemency petition. On  
5 November 17, 2005 the Governor directed that Mr. Allen file any clemency petition no later than  
6 35 days prior to the date set for his execution. On November 18, 2005, the Superior Court of  
7 Glenn County set January 17, 2006 as Mr. Allen's execution date. Accordingly, Mr. Allen's  
8 clemency petition is due on December 13, 2005. Because the due date for the clemency petition  
9 is imminent, Mr. Allen also seeks an order requiring that those proceedings not go forward until  
10 he is provided with the medical care necessary to enable him to properly prepare his clemency  
11 petition.

12 Mr. Allen has acted promptly and diligently to prepare the clemency petition. However,  
13 Defendants' conduct has substantially impaired his ability to prepare the petition or to participate  
14 meaningfully in its preparation. Defendants have failed to provide necessary medical care to  
15 Mr. Allen and have denied him access to his counsel. As discussed below, there is evidence that  
16 Mr. Allen may suffer from organic brain damage—information highly relevant to the  
17 appropriateness of a grant of clemency. However, Defendants' conduct has prevented Mr. Allen  
18 from developing this information for the clemency petition. Accordingly, Mr. Allen seeks a stay  
19 of execution to permit his counsel and experts to perform this investigation, and also to require  
20 Defendants to provide the medical care necessary to enable Mr. Allen to participate meaningfully  
21 in the preparation of the clemency petition.

22 **FACTUAL SUMMARY**

23 Clarence Ray Allen is a 75-year-old Native American inmate on Death Row at  
24 San Quentin State Prison. He is the oldest person on Death Row in California. Mr. Allen suffers  
25 from coronary heart disease, is severely diabetic, and is legally and functionally blind. On  
26 November 18, 2005, the Glen County Superior Court set a January 17, 2006, execution date for  
27 Mr. Allen. On November 17, 2005, the Governor directed that Mr. Allen submit any petition in  
28 support of his request for executive clemency by December 13, 2005. Declaration of Michael

1 Satris In Support of Plaintiff's Application For A Temporary Restraining Order and Order to  
2 Show Cause ("Satris Decl.") ¶¶2-4.

3 During the course of Mr. Allen's incarceration at San Quentin, Defendants have  
4 repeatedly manifested a deliberate disregard for his medical needs. Defendants' disregard for  
5 Mr. Allen's medical condition ultimately has interfered with the preparation of Mr. Allen's last  
6 hope for sparing his life — a petition for clemency.

7 Mr. Allen was already in a medically compromised position in August 2005 when  
8 Defendants arbitrarily cut off his medication and set in motion a chain of events which  
9 culminated in a serious heart attack in September 2005. Mr. Allen had suffered his first heart  
10 attack in April 1993 while incarcerated at San Quentin. Satris Decl. Ex. F. The treating doctor  
11 diagnosed Mr. Allen with myocardial infarction, diabetes, hypertension, and hyperlipidemia. *Id.*  
12 Ex. F. Although at that time the doctor recommended that Mr. Allen undergo a stress  
13 echocardiogram within two weeks, and despite Mr. Allen's requests for the tests, the records do  
14 not show that a stress test was ever done or that Mr. Allen received any follow-up care. *Id.* Ex. F.  
15 Mr. Allen also had suffered a stroke in 1994. Satris Decl. Ex. J. There is no evidence that he  
16 received treatment for this condition.

17 **A. The Termination of Mr. Allen's Medication Before His September**  
18 **2005 Heart Attack**

19 During the course of Mr. Allen's incarceration, Defendants inexplicably cut off his  
20 medication on several occasions. For example, in February 1997, Mr. Allen's diabetic  
21 medication was abruptly cut in half from about 56 to 28 tablets every two weeks, without any  
22 explanation or medical examination. Satris Decl. Ex. H. Mr. Allen's repeated requests to discuss  
23 his condition and medication were ignored. *Id.* Ex. H.

24 This pattern continued through 2005. On or about June 16, 2005, Defendants cut off  
25 critical medication that Mr. Allen had been taking. Mr. Allen's Outpatient Medication  
26 Administration Record shows that the following critical medications were not renewed after the  
27 prescriptions for them expired on June 16: Furosemide 20 mg; Enteric Aspirin 325 mg; Atenolol  
28 50 mg; Lovastatin 20 mg; Nifedipine XL 30 mg; Metformin 500mg; and Multivitamin Plain.

1 These medications were intended to treat his heart condition, high blood pressure, diabetes and  
2 kidney damage. Satris Decl. Ex. K. Mr. Allen complained and demanded his medication, but the  
3 Defendants ignored him. It was not until about August 4, 2005, that his medication was restored.  
4 Satris Decl. Ex. K. The damage done to Mr. Allen during this two-month period when his  
5 medication was denied may have been critical, for Mr. Allen soon suffered a serious heart attack.

6 **B. Mr. Allen's September 2005 Heart Attack**

7 On September 1, 2005, Mr. Allen began experiencing recurring chest pains. He ingested  
8 several nitroglycerin pills in an attempt to control his symptoms. On September 2, 2005,  
9 Mr. Allen suffered a heart attack. Satris Decl. Ex. A ¶5; Ex. L. In response, Defendants failed to  
10 provide the medical procedures necessary to properly treat his heart condition.

11 After his heart attack, Mr. Allen was taken first to the hospital in San Quentin and then to  
12 Marin General Hospital. Satris Decl. Ex. A ¶5; Ex. L. While undergoing cardiac catheterization  
13 at Marin General, Mr. Allen developed cardiac arrest and his heart stopped beating three times.  
14 Doctors resuscitated him and performed angioplasty. Doctors inserted an intra-aortic balloon and  
15 stented his left main coronary artery with a drug-eluting stent. Mr. Allen responded to these  
16 measures. He was extubated and the balloon pump was removed twenty-four hours later.  
17 Mr. Allen successfully underwent cardiac catheterization while at Marin General. Satris Decl.  
18 Ex. L.

19 After Mr. Allen regained consciousness, on or about September 9, 2005, his treating  
20 physician at Marin General informed him that he would need open heart surgery, and Mr. Allen  
21 consented. Satris Decl. Ex. L. Defendants never performed this surgery.

22 Mr. Allen's Marin General Hospital Discharge Summary, dated two days later, states,  
23 "Given the severity of LAD and right coronary artery disease, it was felt that definitive  
24 revascularization with coronary artery bypass graft surgery was indicated, given his diabetic  
25 status. It was felt by the medical staff at San Quentin that the patient should be transferred to  
26 Queen of the Valley Hospital to continue antibiotic therapy and consider coronary artery bypass  
27 graft surgery." Satris Decl. Ex. L.

1 Mr. Allen remained at Marin General Hospital for approximately two weeks. However,  
2 Mr. Allen did not undergo the recommended surgery. Instead, Mr. Allen was transferred to  
3 Queen of the Valley Hospital in Sonoma County on September 18 for, among other things,  
4 revascularization. Satris Decl. Ex. O.

5 Mr. Allen was not properly advised regarding whether surgery was appropriate, and he  
6 was not permitted to confer with counsel before making a decision about surgery. Despite the  
7 clear need for bypass surgery evident in Mr. Allen's medical records, the need was never fully  
8 explained to Mr. Allen. Satris Decl. Ex. P. Mr. Allen therefore signed a "Refusal of  
9 Examination and/or Treatment" form. He was then returned to San Quentin. Satris Decl. Ex. P.

10 Immediately thereafter, on September 20, 2005, Mr. Allen informed San Quentin medical  
11 staff that the need for surgery had not been fully explained to him. Satris Decl. Ex. P. After  
12 learning more information, he consented to the surgery. Satris Decl. Ex. P.

13 On September 21, 2005, Defendants transferred Mr. Allen to Corcoran State Prison. Satris  
14 Decl. Exs. M; N. Despite the fact that instructions from Queen of the Valley and San Quentin's  
15 own medical staff advised that Mr. Allen should undergo open-heart surgery as soon as he  
16 consented, which he had done as of September 20, 2005, and should be referred "urgently" to  
17 Queen of the Valley, Mr. Allen was instead transferred to Corcoran.

18 While housed at Corcoran State Prison for about eight days, medical staff monitored  
19 Mr. Allen's vital signs and took blood samples to monitor his diabetes. However, they never  
20 discussed with him the need for bypass surgery or any other procedures to address his heart  
21 condition. Satris Decl. Ex. N.

22 On September 28, 2005, Mr. Allen was transferred back to Queen of the Valley  
23 Hospital — his fourth transfer in less than a month following his heart attack. Satris Decl. Ex. O.  
24 Mr. Allen again stated that he now wished to go through with the bypass surgery. Satris Decl.  
25 Ex. O. However, the surgery was never performed.

26 On October 17, 2005, Dr. Peter Pompei, a physician with Stanford University  
27 independently examined Mr. Allen. Declaration of Dr. Peter Pompei In Support of Plaintiff's  
28 Application For A Temporary Restraining Order and Order to Show Cause ("Pompei Decl.") ¶2.



1 Dr. Pompei concluded that Mr. Allen's heart condition and diabetes are "especially serious and  
2 advanced." *Id.* ¶10. Mr. Allen is "at serious risk of suffering another heart attack or sudden  
3 cardiac death due to his coronary artery disease." *Id.* Dr. Pompei confirmed that Mr. Allen may  
4 need further medical treatment for his coronary artery disease. *Id.* He recommended that, at a  
5 minimum, Mr. Allen should have further discussions with his primary care physician to determine  
6 whether he should undergo a stress test to assess whether a revascularization procedure is  
7 necessary to treat his artery disease adequately at this time. *Id.* ¶11. Mr. Allen has requested a  
8 stress test, but Defendants have not provided one. *Satris Decl.* ¶8, Ex. E.

9 **C. Defendants' Abuse and Neglect of Mr. Allen after His Return to**  
10 **San Quentin**

11 Upon his return to San Quentin, Mr. Allen was returned to San Quentin's Outpatient  
12 Hospital Unit (OHU). *Pompei Decl.* ¶9. This is the same unit which this Court, after touring the  
13 facility, found to be in "deplorable condition." *Plata v. Schwarzenegger*, No. C01-1351TEH,  
14 2005 U.S. Dist. LEXIS 8878, at \*9 (N.D. Cal. May 10, 2005). Mr. Allen reported to the doctor in  
15 charge that, during his last stay, he lacked adequate cover and was so extremely cold that he was  
16 unable to sleep. The doctor ignored Mr. Allen's request, and he was returned to suffer from the  
17 extreme cold. *Id.*

18 In the hospital cells, the slot for the food tray is only two to three feet from the ground.  
19 Defendants forced Mr. Allen to get down on his hands and knees and shove his arm into the tray  
20 slot for his twice-daily insulin shot. *Pompei Decl.* ¶9. This was very difficult and painful for  
21 Mr. Allen because he is generally confined to a wheelchair as the result of his diabetes.  
22 According to Dr. Pompei, "it would be an understatement to say that the conditions of his  
23 confinement at the OHU were not conducive to his good health; rather they could only have  
24 contributed to his ills." *Id.* ¶11.

25 On October 4, 2005, Mr. Allen was released from the San Quentin hospital and returned  
26 to his cell. Defendants then summarily cut off Mr. Allen's insulin. As a diabetic, Mr. Allen has  
27 been required to take a twice daily dose of insulin for approximately twenty years, but on or about  
28 October 4, 2005, his insulin was discontinued. His blood sugar rose dangerously during a nearly

1 two-week interruption of his longstanding insulin injections. Satris Decl. Ex. R; Pompei Decl.  
2 ¶12. Defendants' failure to give Mr. Allen insulin imposed a significant additional health risk to  
3 Mr. Allen, particularly in light of his recent heart attack and his exhaustion from multiple  
4 transfers to different facilities. Pompei Decl. ¶12.

5 On October 6, 2005, Mr. Allen had a legal visit in one of the prison's visiting rooms.  
6 Satris Decl. Ex. A ¶5. Upon completion of the visit, Mr. Allen was taken through the visiting  
7 room exit door and then chained to a toilet in a small bathroom. *Id.* He was left chained to the  
8 toilet for approximately three hours before he was finally escorted back to his cell. Satris Decl.  
9 Ex. A ¶5.

10 **D. Defendants' Interference with the Preparation of Mr. Allen's**  
11 **Clemency Petition**

12 **1. Arbitrary Movement Between Facilities**

13 Defendants repeatedly shuffled Mr. Allen from facility to facility. They persistently  
14 denied him adequate medical care and subjected him to abusive treatment while he was in a  
15 weakened condition. This conduct has severely impeded Mr. Allen's ability to be examined by  
16 his legal team's medical experts in order to prepare Mr. Allen's clemency petition, and has  
17 severely impeded Mr. Allen's ability to assist his legal team in their necessary work. Satris Decl.  
18 ¶5 Ex. A, ¶6.

19 For example, counsel for Mr. Allen retained Dr. Dale Watson, a forensic psychologist  
20 with a specialty in neuropsychology, to assess Mr. Allen's brain functioning to help prepare  
21 Mr. Allen's clemency petition. Declaration of Dale G. Watson, Ph.D. In Support of Plaintiff's  
22 Application For A Temporary Restraining Order And Order To Show Cause ("Watson Decl") ¶3.  
23 Dr. Watson was scheduled to see Mr. Allen on September 20, but the appointment was canceled  
24 because up until then, Mr. Allen had been at an outside hospital. Watson Decl. ¶4. The next day,  
25 September 21, Dr. Watson saw Mr. Allen. However, Mr. Allen was so fatigued that out of  
26 concern for the fragility of Mr. Allen's health, Dr. Watson had to abbreviate the session. *Id.*  
27 Mr. Allen was shackled during that session, which further impeded Dr. Watson's ability to test  
28 Mr. Allen. *Id.* On September 22, when Dr. Watson was scheduled to see Mr. Allen again for

1 further examination, Mr. Watson was advised at the gate that Mr. Allen had been transferred by  
2 prison authorities to the California State Prison at Corcoran. *Id.* These multiple transfers have  
3 materially delayed Dr. Watson's efforts to assess Mr. Allen. Satris Decl. ¶¶6-7.

4 Defendants' conduct also impeded Mr. Allen's access to counsel during this critical stage.  
5 Mr. Allen's counsel, Michael Satris, attempted to contact Mr. Allen while Mr. Allen was at  
6 Corcoran in order to prepare Mr. Allen's clemency petition. Satris Decl. Ex. A ¶5. However,  
7 Mr. Allen was transferred to Queen of the Valley Hospital before Mr. Satris could contact him.  
8 *Id.* Mr. Allen's legal team was not able to gain access to him following his heart attack until  
9 September 20, 2005. *Id.* ¶5.

10 Defendants' conduct denied Mr. Allen adequate medical care at a critical time. Further,  
11 the cumulative effects of Defendants' deliberate indifference to Mr. Allen's serious medical needs  
12 exhausted Mr. Allen and prevented him from conferring with and assisting his legal team in their  
13 preparation of his petition for clemency. Satris Decl. ¶¶6-7.

## 14 2. Failure to Provide Necessary Eye Care

15 Mr. Allen is legally and functionally blind. Pompeii Decl. ¶3; Watson Decl. ¶6.  
16 Defendants have failed to care properly for Mr. Allen's eyes and to provide him with  
17 recommended medical procedures that are necessary to enable Mr. Allen to participate in the  
18 preparation of his clemency petition.

19 In June 2005, Dr. Jahangir Sadeghi, an ophthalmologist, examined Mr. Allen. Ferry Decl.  
20 ¶3. Dr. Sadeghi concluded that Mr. Allen suffers from diabetic retinopathy, and recommended  
21 laser surgery to improve his vision. *Id.* ¶3. On July 18, 2005, Dr. Sadeghi submitted another  
22 request that Defendants schedule the recommended laser surgery. This surgery has not been  
23 performed. *Id.* ¶4.

24 As detailed in Dr. Watson's declaration, having eye surgery to improve Mr. Allen's vision  
25 is necessary to enable Mr. Allen to assist in the preparation of his clemency petition. Dr. Watson  
26 has been asked to perform a battery of neuropsychological tests to assess Mr. Allen's brain  
27 functioning in order to help prepare Mr. Allen's clemency petition, but Dr. Watson has been  
28

1 unable to complete his testing because Defendants have failed to provide the eye surgery  
2 necessary to improve Mr. Allen's vision. Watson Decl. ¶6.

3 I have been significantly hampered in the testing of  
4 Mr. Allen because of Mr. Allen's vision problems. Mr. Allen is  
5 virtually and legally blind. I have been unable to administer any  
6 neuropsychological tests or parts of any such tests that require  
7 vision, a range of which are typically administered as part of my  
8 battery of neuropsychological tests. Accordingly, my testing of  
9 Mr. Allen is incomplete in essential respects.

10 I understand that Mr. Allen is currently seeking medical  
11 treatment for his blindness and that medical authorities have  
12 prescribed surgical procedures to improve his vision that Mr. Allen  
13 is prepared to undergo. If Mr. Allen's vision improves sufficiently,  
14 I will be able to complete the battery of neuropsychological tests to  
15 more fully assess the functioning of Mr. Allen's brain and make a  
16 reliable determination of whether Mr. Allen has suffered cognitive  
17 deterioration.

18 Watson Decl. ¶¶6-7.

19 Mr. Allen's medical history reveals that he likely suffered organic brain damage from a  
20 number of assaults to his brain. Mr. Allen contracted severe pediatric encephalitis in 1946.  
21 Watson Decl. ¶3. Much of this evidence has never been presented in any court proceeding.  
22 Evidence of brain damage serves as a mitigating factor that will inform Mr. Allen's clemency  
23 petition. Thus, evaluating the functioning of Mr. Allen's brain is critical to Mr. Allen's clemency  
24 petition. But, without correcting Mr. Allen's eyesight, Mr. Allen's defense team cannot complete  
25 its evaluation of his brain function. Watson Decl. ¶6-7.

26 Although Dr. Watson has not completed his analysis, the tests that he has been able to  
27 administer thus far already show signs of neuropsychological deterioration. Watson Decl. ¶8.  
28 Dr. Watson believes that completing the battery of tests after Mr. Allen's vision has been  
improved will provide a more complete picture of his brain functioning and may provide further  
evidence of cognitive deterioration. However, Dr. Watson cannot complete the tests until  
Defendants provide Mr. Allen the eye surgery necessary to improve his vision. Watson Decl. ¶7.

To further investigate whether Mr. Allen has suffered brain damage, Dr. Watson also  
recommends that Mr. Allen undergo an MRI and SPECT (or PET) procedures. These procedures  
would provide a structural and functional picture of Mr. Allen's brain and its activity, respectively,

1 and the results would be useful in informing Dr. Watson's analysis of the functioning of  
2 Mr. Allen's brain. Watson Decl. ¶9. Mr. Allen's counsel has requested that Defendants permit  
3 Mr. Allen to obtain a SPECT test and MRI procedure, but Defendants have failed to do so. Satris  
4 Decl. ¶7, Ex. E.

## 5 ARGUMENT

### 6 I. PLAINTIFF MEETS THE STANDARD FOR A TRO

7 Mr. Allen seeks a temporary restraining order from this Court staying his execution so that  
8 he may properly prepare his clemency petition. The Ninth Circuit has set forth the following  
9 standard for preliminary relief:

10 (1) a strong likelihood of success on the merits, (2) the possibility  
11 of irreparable injury to the plaintiff if preliminary relief is not  
12 granted, (3) a balance of hardships favoring the plaintiff, and  
13 (4) advancement of the public interest (in certain cases).

14 *Johnson v. Cal. State Bd. Of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995) (internal quotation  
15 marks and citation omitted).

16 Preliminary relief also may be granted where the plaintiff demonstrates "either a  
17 combination of probable success on the merits and the possibility of irreparable injury or that  
18 serious questions are raised and the balance of hardships tips sharply in his favor." *Id.* (citation  
19 omitted). And, "the greater the relative hardship to the party seeking the preliminary injunction,  
20 the less probability of success must be established by the party." *Beardslee v. Woodford*,  
21 395 F.3d 1064, 1067 (9th Cir. 2005).

#### 22 A. Plaintiff Will Suffer Irreparable Injury Without This Court's 23 Intervention and The Balance of Hardships Tips Overwhelmingly in 24 Plaintiff's Favor

25 Mr. Allen is scheduled to be executed on January 17, 2006 if the Court does not grant a  
26 stay. There can be no injury more irreparable than this. He may be executed in a debilitated  
27 condition brought about by Defendants' neglect of his medical needs. And, he may be executed  
28 without having had a meaningful opportunity to properly prepare his petition for clemency. This  
fact alone — the possibility of death — tips the balance of hardships overwhelmingly in  
Mr. Allen's favor.

1 The requested restraining order would place no hardship on Defendants. Defendants  
2 would simply be required to provide the medical care mandated by the Constitution and provide  
3 Mr. Allen an adequate opportunity to present his case for executive clemency as required by Due  
4 Process.

5 **B. Plaintiff Has Established A Likelihood of Success on the Merits of His**  
6 **Claims and Raises Serious Questions**

7 **1. Defendants' Interference With the Preparation of Mr. Allen's**  
8 **Clemency Petition Violates the Due Process Clause**

9 The Ninth Circuit has recognized that clemency procedures are subject to procedural  
10 safeguards guaranteed by due process. *Wilson v. United States Dist. Court*, 161 F.3d 1185, 1187  
11 (9th Cir. 1998). In *Young v. Hayes*, 218 F.3d 850, 853 (8th Cir. 2000), the court held that the  
12 state's interference with plaintiff's preparation of his clemency petition violated his Due Process  
13 rights and granted plaintiff a stay of execution. The state had threatened to dismiss a lawyer if  
14 she cooperated with plaintiff's preparation of his clemency petition. The court rejected the  
15 argument that clemency is committed to the discretion of the executive and that no procedural  
16 safeguards are required. "The Constitution of the United States does not require that a state have  
17 a clemency procedure, but, in our view, it does require that, if such a procedure is created, the  
18 state's own officials refrain from frustrating it by threatening the job of a witness." *Id.* The court  
19 relied in part on the Supreme Court's holding in *Ohio Adult Parole Authority v. Woodard*,  
20 523 U.S. 272, 288-89 (1998) (O'Connor, J., concurring in part and concurring in the judgment,  
21 joined by Souter, Ginsburg, and Breyer, JJ.); *Id.* at 290 (Stevens, J., concurring in part and  
22 dissenting in part) in which Justice O'Connor stated: "I do not . . . agree with the suggestion in  
23 the principal opinion that, because clemency is committed to the discretion of the executive, the  
24 Due Process Clause provides no constitutional safeguards."

25 Here, the Defendants' course of conduct culminated in the effective denial of Mr. Allen's  
26 right to properly prepare a clemency petition. The incidents about which Mr. Allen complains are  
27 not isolated incidents, but rather, are part of a pattern of disregard for the medical needs of the  
28 inmates that this Court found unacceptable in *Plata v. Schwarzenegger*, No. C01-1351TEH, 2005  
U.S. Dist. LEXIS 8878, at \*1 (N.D. Cal. May 10, 2005). This Court specifically found that at

1 San Quentin “[e]ven the most simple and basic elements of a minimally adequate medical system  
2 were obviously lacking.” *Id.* at \*8.

3 In June 2005, Defendants arbitrarily cut off vital medications used to treat Mr. Allen’s  
4 heart disease, blood pressure, and diabetes. The medications were not restored until August 2005,  
5 which apparently was too late to protect Mr. Allen from the heart attack he suffered one month  
6 later.

7 After Mr. Allen’s heart attack, he never received the care recommended by the physicians  
8 who treated him. Instead, Mr. Allen was repeatedly moved to different facilities without being  
9 provided necessary treatment. As a result, the medical experts his counsel had retained could not  
10 examine him to gather evidence for the clemency petition, nor could his counsel meet with him  
11 for that purpose.

12 Most significantly, Defendants have denied Mr. Allen eye surgery which would improve  
13 his vision and permit him to participate in tests necessary to the preparation of his clemency  
14 petition. As noted by Dr. Watson there is evidence that Mr. Allen suffers from organic brain  
15 damage as a result of an episode of pediatric encephalitis. Without administering tests that  
16 require Mr. Allen to be able to see, his condition cannot be properly assessed. However, despite  
17 the fact that this eye surgery was recommended in June, 2005, Defendants have never provided  
18 that surgery to Mr. Allen and even at this crucial time continue to deny that surgery to him.

19 **2. Defendants’ Actions Have Denied Mr. Allen Access to Counsel**  
20 **In Violation of the Sixth Amendment**

21 The constitutional guarantee of due process of law has a corollary requirement that  
22 prisoners be afforded access to the courts in order to challenge unlawful convictions and seek  
23 redress for violations of their constitutional rights. This means that inmates must have a  
24 reasonable opportunity to seek and receive the assistance of counsel. *Procunier v. Martinez*,  
25 416 U.S. 396, 419 (1974), *overruled in part on other grounds by Thornburgh v. Abbott*, 490 U.S.  
26 401 (1989). Practices that unjustifiably obstruct the availability of professional representation or  
27 other aspects of the right of access to the courts are invalid. *Id.* (citing *Ex parte Hull*, 312 U.S.  
28 546 (1941)). The right of access to counsel is an essential component of the right to adequate,

1 effective and meaningful access to the courts. *Bounds v Smith*, 430 U.S. 817, 820, 822-23 (1983),  
2 *overruled in part on other grounds by Lewis v. Casey*, 518 U.S. 343 (1996); *Ching v. Lewis*,  
3 895 F.2d 608, 609-10 (9th Cir. 1990). In this case, Defendants have unjustifiably restricted  
4 Mr. Allen's access to his counsel. As a result of Defendants' actions, Mr. Allen has not had the  
5 opportunity to adequately prepare a clemency petition.

6 As detailed in the declaration of Michael Satris, Mr. Allen was not permitted access to his  
7 counsel during a critical time frame. Satris Decl. ¶5. Mr. Allen suffered his heart attack on  
8 September 2, 2005. Despite numerous entreaties, it was not until September 20, 2005 that  
9 Mr. Satris's representative, Ms. Ferry was able to meet with Mr. Allen. *Id.* Thereafter Mr. Allen  
10 was transferred from San Quentin to Corcoran on September 21, and then to Queen of the Valley  
11 Hospital, all without notice to Mr. Satris. *Id.* They were not able to regain access to Mr. Allen  
12 until October 6, 2005. The lack of access to Mr. Allen during this time effectively stalled the  
13 preparation of the clemency case. *Id.* ¶¶5-7.

14 **3. Defendants' Conduct Also Constitutes Deliberate Indifference**  
15 **to Mr. Allen's Serious Medical Needs and Violates the Eighth**  
16 **Amendment.**

17 The Supreme Court has interpreted the Eighth Amendment's prohibition against cruel and  
18 unusual punishment to prohibit not only those punishments which are "incompatible with the  
19 evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*,  
20 356 U.S. 86, 101 (1958), but also those that "involve the unnecessary and wanton infliction of  
21 pain." *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). The government has a positive obligation to  
22 provide medical care to prisoners to avoid the unnecessary and wanton infliction of pain.  
23 *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). The provision of medical care is a condition of the  
24 prisoner's confinement and is therefore controlled by the "deliberate indifference" standard.  
25 *Wilson v. Seiter*, 501 U.S. 294, 301 (1991). To state a cognizable claim for denial of medical  
26 care, the prisoner must allege: 1) that he had an objectively "serious medical need and 2) that the  
27 defendant was "deliberately indifferent" to this need. *Seiter*, 501 U.S. at 297. The more serious  
28 the medical needs of the prisoner, and the more unwarranted the defendant's actions in light of  
those needs, the more likely it is that plaintiff has established deliberate indifference on the part of



1 defendant. *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992), *overruled on other grounds*  
2 *by WMX Techs. v. Miller*, 104 F.3d 1133 (9th Cir. 1997).

3 In this case Mr. Allen has alleged facts sufficient to establish a violation of his Eighth  
4 Amendment right to be free of cruel and unusual punishment:

- 5 • Defendants failed to treat him after his heart attack in 1993.
- 6 • Although it has been long recommended that Mr. Allen undergo eye surgery to  
7 improve his vision, Defendants have not provided that surgery.
- 8 • Defendants repeatedly and arbitrarily cut off medications necessary to treat his  
9 diabetes, heart condition and high blood pressure. After the last such episode  
10 Mr. Allen suffered a heart attack so severe that he had to be resuscitated 3 times.
- 11 • After his heart attack Defendants failed to provide the medical care recommended  
12 by Mr. Allen's treating physicians.
- 13 • After being transferred back to San Quentin's infamous Outpatient Housing Unit,  
14 Defendants subjected Mr. Allen to abusive and degrading treatment, including  
15 forcing him to suffer extreme cold, requiring him to crawl to a low cell door  
16 opening in order to receive insulin and then abruptly and unjustifiably cutting off  
17 his insulin and causing his blood sugar to rise to dangerous levels.

18 These incidents are not random occurrences but are part of a medical system of at  
19 San Quentin that this Court condemned as "shocking" in *Plata v. Schwarzenegger*. In describing  
20 the conditions at San Quentin the Court's experts wrote:

21 We found a facility so old, antiquated, dirty, poorly staffed, poorly  
22 maintained, with inadequate medical space and equipment and  
23 over-crowded that it is our opinion that it is dangerous to house  
24 people there with certain medical conditions and is also dangerous  
25 to use this facility as an intake facility. In addition, the  
26 overcrowding and facility life-safety and hygiene conditions create  
27 a public health and life-safety risk to inmates who are housed there.  
28 We therefore strongly recommend as a life-safety issue that a  
census cap be initiated, that the existing Outpatient Housing Unit be  
closed or used for a different purpose, and that the mission of  
reception be re-directed to a different facility.

Office of the Medical Experts, *Plata v. Schwarzenegger*, N.D. Cal. C-01-1351 T.E.H. Medical  
Experts' Report on San Quentin, April 8, 2005 at p. 2 ("Report").

The experts described the system as one of "medical meltdown" and "dysfunction"  
(Report at 12, 13) and concluded that "all this dysfunction has its effect on medical care of  
inmates. Medical record reviews demonstrate multiple instances of incompetence, indifference,  
cruelty, and neglect." *Id.* at 13. The experts recommended that the OHU, where Mr. Allen was

1 placed after his heart attack be closed: “Care as evidenced in the OHU records reveals neglect and  
2 must be immediately addressed. This unit should be closed because patients are not safely or  
3 humanely housed and treated there.” *Id.* at 13.

4 Mr. Allen clearly has serious medical impairments. *See Madrid. v. Gomez*, 889 F. Supp.  
5 1146, 1201 (N.D. Cal. 1995) (recognizing that diabetes, hypertension and cardiac problems are  
6 “serious health disorders”). Defendants routinely and repeatedly failed to treat those serious  
7 medical conditions. *See Estelle*, 429 U.S. at 104-105. (stating prison officials are deliberately  
8 indifferent to a prisoner’s medical needs when they deny, delay, or intentionally interfere with  
9 medical treatment). Accordingly, Mr. Allen has established a likelihood of success on the merits  
10 of his Eighth Amendment claim.

11 **II. PLAINTIFF IS ENTITLED TO A STAY OF EXECUTION AND OF ALL**  
12 **PROCEEDINGS RELATING TO HIS EXECUTION**

13 In determining whether to grant an inmate’s request for a stay of execution, in addition to  
14 considering whether the inmate has established the requisite combination of irreparable injury and  
15 likelihood of success on the merits, the Supreme Court has stated that the Court also must  
16 consider “the extent to which the inmate has delayed unnecessarily in bringing the claim.  
17 *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004); *see also Wilson*, 161 F.3d at 1187-88. In  
18 *Wilson*, the Ninth Circuit upheld the district court’s issuance of a temporary restraining order  
19 staying the inmate’s execution where the inmate contended that the conduct of the clemency  
20 proceedings violated his due process rights. *Wilson*, 161 F.3d at 1187-88. The Court held that  
21 although the petition was filed at the last minute, the delay was not attributable to the inmate. *Id.*  
22 In this case, Allen has acted promptly and diligently and has not delayed bringing his claim to the  
23 attention of this Court. Even prior to the setting of the execution date on November 18, 2005,  
24 Allen and his counsel have attempted to prepare for the clemency hearing. *Satris Decl.* ¶¶5-6.  
25 However, their efforts were impeded by Defendants’ actions, including depriving Mr. Allen of  
26 necessary medical care and restricting his access to counsel. *Id.*

27 Mr. Allen’s request for relief is also very narrow. He seeks only to require Defendants to  
28 provide medical treatment so that he and his counsel are able to undertake the testing necessary to

1 present his case for executive clemency to the Governor. Given the limited scope of the relief  
2 requested, the strong showing of irreparable injury and likelihood of success on the merits, as  
3 well as the diligence with which Mr. Allen has pursued his claim, the request to stay his execution  
4 and all the proceedings related thereto should be granted.

5 **CONCLUSION**

6 For all of the foregoing reasons, plaintiff respectfully requests that the court enter an order  
7 restraining defendants from executing Mr. Allen or instituting procedures attendant to such  
8 execution before he is provided with necessary medical treatment, and before he is given the  
9 opportunity to prepare fully his case for executive clemency to the Governor. Plaintiff also  
10 respectfully requests that the Court order that clemency proceedings not go forward until  
11 Mr. Allen has had an adequate opportunity to prepare his case for executive clemency.

12  
13 Dated: December 7, 2005

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