

United States District Court  
For the Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

No. C 94-2307 CW

Plaintiffs,

v.

ORDER GRANTING IN  
PART PLAINTIFFS'  
MOTION TO ENFORCE  
THE MAY 30, 2006  
ORDER

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

\_\_\_\_\_ /

On August 16, 2007 at 3:00 p.m., this matter came on regularly for hearing. Having considered the parties' pleadings, the arguments of counsel, and the record in this case, and good cause appearing therefor, the Court hereby finds and orders as follows:

The Court entered a Permanent Injunction in this action on December 22, 1999 as to Defendants, government officials and entities responsible for conducting parole proceedings by the Board of Parole Hearings (BPH, formerly Board of Prison Terms)<sup>1</sup>,

\_\_\_\_\_

<sup>1</sup>The current government officials and entities serving as Defendants are Governor Arnold Schwarzenegger, the California Department of Corrections and Rehabilitation (CDCR), Secretary of the CDCR James Tilton and Executive Director of the Board of Parole

1 following trial and findings that Defendants were in violation of  
2 the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 et  
3 seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §  
4 794, and the Due Process Clause of the Fourteenth Amendment. The  
5 Permanent Injunction was supported by Findings of Fact and  
6 Conclusions of Law, filed on December 22, 1999, stating that the  
7 order for relief was narrowly drawn, extended no further than  
8 necessary to correct the violation of federal rights, and was the  
9 least intrusive means necessary to correct the violation of federal  
10 rights. The Court entered a Revised Permanent Injunction on  
11 February 11, 2002.

12 The Revised Permanent Injunction requires, among other things,  
13 that Defendants create and maintain a system for tracking prisoners  
14 and parolees with disabilities; that Defendants take reasonable  
15 steps to identify prisoners and parolees with disabilities prior to  
16 parole proceedings, including checking the tracking system and  
17 reviewing all relevant and reasonably available information in the  
18 central or medical file; and that Defendants provide reasonable  
19 accommodations to prisoners and parolees with disabilities at all  
20 parole proceedings, including parole revocations and revocation  
21 extensions, life prisoner hearings, Mentally Disordered Offender  
22 (MDO) proceedings, and Sexually Violent Predator (SVP) proceedings.  
23 See Revised Permanent Injunction ¶¶ 15-17.

24 Based on Defendants' ongoing failure to comply with the above  
25 provisions of the Revised Permanent Injunction and the resulting

26

27 \_\_\_\_\_  
Hearings (BPH) John Monday.

28

1 harm to members of the plaintiff class, Plaintiffs filed an  
2 enforcement motion, which was heard by this Court on May 26, 2006.

3 On May 30, 2006, this Court entered an Order Granting Motion  
4 to Enforce Revised Permanent Injunction (May, 2006 Order). The  
5 Court found that Defendants were violating paragraphs fifteen,  
6 sixteen and seventeen of the Revised Permanent Injunction, the ADA,  
7 the Rehabilitation Act, and the Due Process Clause, and were  
8 violating the rights of plaintiff class members by failing to  
9 provide necessary accommodations during parole proceedings. May,  
10 2006 Order at 3-8. Plaintiffs' evidence of these violations and  
11 the harm caused to class members was uncontested. Id. at 4:15-18,  
12 5:1-6:14, 6:23-25, 8:11-14. Plaintiffs' counsel demonstrated  
13 numerous and ongoing failures of Defendants' existing systems for  
14 tracking prisoner and parolee disabilities and necessary  
15 accommodations, and failures to provide reasonable accommodations  
16 during parole proceedings.

17 To remedy Defendants' violations, the Court ordered that:

18 Defendants must implement a State-wide, computerized,  
19 networked, real-time database system, preferably the  
20 Revocation Scheduling and Tracking System (RSTS), to  
21 ensure compliance with paragraphs fifteen, sixteen and  
22 seventeen of the Revised Permanent Injunction in this  
23 action. For parole revocations and extensions, this  
24 system must be implemented on or before January 1, 2007.  
25 For life prisoner hearings, MDO proceedings, and SVP  
26 proceedings, this system must be implemented on or  
27 before May 1, 2007. It may be included in the RSTS, the  
28 LSTS or an equivalent system. In addition, Defendants  
must develop and implement a plan to assure that  
accommodations, including but not limited to sign  
language interpreters, are actually provided at each  
parole proceeding without delay.

26 May, 2006 Order, ¶ 1 at 8:15-9:3. The order outlined further  
27 requirements for the capabilities and use of the tracking system,

1 and required that Defendants take a series of specific steps in  
2 connection with the tracking system and the accommodations plan.  
3 Id. ¶¶ 1-6 at 8:15-11:2.

4 Defendants have failed to comply with the remedial provisions  
5 of the May, 2006 Order. On November 27, 2006, Defendants filed a  
6 Request for Extension of Time, seeking to extend the January 1,  
7 2007 deadline to March 30, 2007 for implementation of the tracking  
8 system in parole revocations and for implementation of the  
9 accommodations plan, to extend the January 1, 2007 deadline to  
10 November 30, 2007 for implementation of the tracking system in  
11 revocation extensions, and to extend the May 1, 2007 deadline to  
12 November 30, 2007 for implementation of the tracking system in life  
13 prisoner, MDO, and SVP proceedings. The Court denied Defendants'  
14 request for an extension of time by order entered on December 14,  
15 2006, finding, "The declarations in support of the request  
16 demonstrate that Defendants have made some progress toward  
17 complying with the Court's order, but offer no evidence that  
18 Defendants have made any special effort to meet a deadline they  
19 anticipated would be difficult to achieve. Rather, it appears that  
20 Defendants have resigned themselves to being unable to meet the  
21 Court's deadlines." December 14, 2007 Order Denying Defendants'  
22 Motion for Extension of Time at 3. Despite the Court's order,  
23 Defendants have failed to meet the Court's deadlines, as detailed  
24 below.

25 I. Disability and Tracking Database

26 The May, 2006 Order required that the disability tracking  
27 database be a "State-wide, computerized, networked, real-time  
28

1 database system, preferably the Revocation Scheduling and Tracking  
2 System (RSTS)." May, 2006 Order ¶ 1 at 8:16-19. Defendants have  
3 developed a computerized, networked database system called the  
4 Disability and Effective Communication System (DECS), accessible  
5 through either the CDCR intranet or the internet via the world wide  
6 web.

7 The disability tracking database "must include access to  
8 information previously gathered by the BPH regarding an inmate or  
9 parolee's disabilities and needs for accommodation." May, 2006  
10 Order ¶ 2 at 9:5-7. DECS allows access to information previously  
11 gathered by the BPH in the BPH form 1073 file review and  
12 inmate/parolee interview process, for current and prior parole  
13 proceedings. Defendants failed, however, to maintain such  
14 information from parole revocations in any electronic form  
15 whatsoever for a seven-week period from March 13, 2007 to April 27,  
16 2007. This information gap has not been rectified. In addition,  
17 at least some disability and accommodation information gathered for  
18 parolees subject to the MDO certification process has not been  
19 entered into DECS.

20 The tracking system "must be updated with new information  
21 about disabilities identified during the parole proceedings, and  
22 accommodations requested and provided." May, 2006 Order ¶ 2 at  
23 9:12-14. Defendants' procedures provide no clear deadlines for  
24 when disability information is entered into DECS during the life  
25 prisoner, MDO or SVP processes, such that information on a  
26 prisoner's need for accommodation due to a disability may not be  
27 available when needed for the next step in the applicable parole

28

1 proceeding.

2 The tracking system "must be able to transmit information back  
3 to CDCR Institutions and [BPH] for future use." May, 2006 Order  
4 ¶ 2 at 9:14-15. Defendants admit that they failed to comply with  
5 this requirement.

6 II. Tracking System for Parole Revocations and Revocation  
7 Extensions

8 Defendants also failed to meet the January 1, 2007 deadline  
9 for implementation of the disability tracking system in parole  
10 revocations and revocation extensions. See May, 2006 Order ¶¶ 1, 6  
11 at 8:15-22, 10:19-24. After the Court denied their Request for an  
12 Extension of Time, Defendants filed an untimely "Certification of  
13 Implementation Of Interim Plan and Tracking System" on January 3,  
14 2007, containing their interim plan for tracking disability  
15 information in revocation and revocation extension proceedings  
16 (Interim Database), and for providing accommodations in all parole  
17 proceedings (Interim Plan). The Interim Database tracking system  
18 was an inadequate stop-gap measure in that it failed to comply with  
19 critical requirements of the May, 2006 Order.

20 The new DECS tracking system was finally available for use for  
21 parole revocations and revocation extension hearings as of March  
22 26, 2007.

23 III. Tracking System for Life Prisoner, MDO and SVP Proceedings

24 Defendants failed to meet the May 1, 2007 deadline for  
25 implementation of the disability tracking system in life prisoner,  
26 MDO and SVP proceedings. See May, 2006 Order ¶¶ 1, 6 at 8:22-24,  
27 10:24-11:2. Defendants have yet to implement fully the use of the

1 Tracking System in life prisoner, MDO and SVP proceedings.

2 IV. Identification of Parole Proceedings

3 Defendants agreed that the DEC System would be checked at many  
4 specific steps in parole proceedings, and the parties enumerated  
5 these steps in their Joint Certification of Meet and Confer Results  
6 filed on August 25, 2006. See Joint Certification ¶ 7(a)-7(dd).  
7 Defendants have failed to comply with several of these agreements.  
8 Their policies and procedures implemented to date make no adequate  
9 provision for checking DECS prior to some parole proceeding steps  
10 (Joint Certification ¶ 7(e), (g), (h), (j), (k), (l), (u), (v),  
11 (w), (y) and (z)), and Defendants have been unwilling to check  
12 DECS at other steps (Id. ¶ 7(o)-(t)).

13 The parties' Joint Certification noted four remaining points  
14 of disagreement as to whether certain proceedings are "parole  
15 proceedings" subject to the requirements of the Revised Permanent  
16 Injunction and the May, 2006 Order:

- 17 (a) Notice of conditions of parole by Correctional Counselor I
- 18 in CDCR Institutions and Parole Agent in parole field offices;
- 19 (b) Inclusion in the Life Prisoner Board Report by the
- 20 Correctional Counselor I in CDCR Institutions of information
- 21 regarding the life prisoner's ability to access programs
- 22 previously recommended by the BPH under Paragraphs 36 and 37
- 23 of the Revised Permanent Injunction;
- 24 (c) Communication of special conditions of parole for parolees
- 25 released to Not In Custody (NIC) status while parole
- 26 revocation proceedings are pending; and
- 27 (d) Consideration of diversion to remedial sanctions

28

1 programs.

2 See Joint Certification ¶ 8.

3 V. Certification of Funding

4 Defendants were required to certify to the Court, by November  
5 27, 2006, "that they have taken all necessary steps to secure  
6 funding for utilization of the RSTS, or other State-wide  
7 computerized tracking system, and of the plan to provide  
8 accommodations in a timely manner, including sign language  
9 interpreters." May, 2006 Order ¶ 5 at 10:12-17. On November 27,  
10 2006, Defendants filed a Certification of Funding, but only as to  
11 the tracking system, not as to the accommodations plan. Defendants  
12 requested clarification as to whether the May, 2006 Order required  
13 certification as to only the status of the accommodations plan, or  
14 also as to the funding of the accommodations plan. In an order  
15 entered on December 14, 2006 denying Defendants' request for an  
16 extension of time, the Court clarified that "it ordered Defendants  
17 to certify that they had taken all necessary steps to obtain  
18 funding for the plan to provide timely accommodations." December  
19 14, 2006 Order at 4:6-8. Defendants have failed to make any  
20 subsequent certification to the Court that they have obtained  
21 funding for their accommodations plan.

22 VI. Accommodations Plan

23 By January 1, 2007, Defendants were required to certify to the  
24 Court "that they have fully implemented . . . the plan to provide  
25 accommodations in a timely manner, including sign language  
26 interpreters." May, 2006 Order ¶ 6 at 10:19-24. Defendants were  
27 required to meet and confer with Plaintiffs' counsel regarding the

28



1 plan. Id. ¶ 4 at 10:6-11.

2 Defendants failed meaningfully to meet and confer with  
3 Plaintiffs' counsel before the January 1, 2007 deadline, and filed  
4 a "Certification of Implementation of Interim Plan and Tracking  
5 System" on January 3, 2007, containing their interim plan for  
6 providing accommodations in all parole proceedings between January  
7 1, 2007 and March 30, 2007. On February 20, 2007, Defendants filed  
8 their "Plan to Provide Accommodations in Parole Proceedings."  
9 Defendants' meet-and-confer efforts following the issuance of their  
10 Accommodations Plan have been sporadic and insufficient. During  
11 that process, Defendants have provided Plaintiffs' counsel with  
12 draft policies and procedures that address some of the deficiencies  
13 in the Accommodations Plan, but have yet to implement those  
14 procedures, and have not filed an amended plan with the Court.

15 Defendants' Accommodations Plan is deficient in many respects.  
16 As described above, Defendants have failed to certify that they  
17 have secured funding for the Accommodations Plan. The  
18 Accommodations Plan has not been distributed to all necessary CDCR  
19 staff, nor has training been provided on its requirements, aside  
20 from training on the use of DECS for certain staff. The Plan also  
21 fails to provide adequate means to ensure that there are not delays  
22 in parole proceedings in order to arrange needed accommodations.  
23 Defendants have failed to provide an adequate plan to ensure the  
24 timely provision of needed accommodations for parole proceedings  
25 that take place in county jails (including parole revocation and  
26 revocation extension hearings). There is no proof to support  
27 Defendants' assertions that all county jails where parole

28

1 proceedings take place have structurally accessible locations for  
2 those parole proceedings, or that the county jails provide adequate  
3 access to necessary assistive devices for class members. This is  
4 particularly disturbing, given the uncontested evidence presented  
5 by Plaintiffs in April, 2006 that a paraplegic parolee had to drag  
6 himself up stairs to consult with his revocation defense attorney  
7 at Kern County Jail.

8 Defendants have also failed to ensure that there are  
9 structurally accessible locations for BPH hearings at Folsom State  
10 Prison. And Defendants have failed to demonstrate that there are  
11 structurally accessible locations at each CDCR institution for  
12 parole proceedings other than hearings, such as attorney  
13 consultations and file reviews.

14 There is no procedure for panel attorneys retained by the BPH  
15 to access current information from DECS prior to their  
16 consultations in life prisoner, MDO, or SVP proceedings. Instead,  
17 Defendants provide panel attorneys only with a hard copy printout  
18 from DECS that may contain no information, or information that is  
19 outdated by the time of the consultations and subsequent  
20 proceedings.

21 Defendants have identified serious problems with their  
22 contracts to provide sign language interpretation at parole  
23 proceedings, including unacceptably long lead times for securing  
24 interpretation, but have not developed any plan to address these  
25 problems. Defendants' problems with providing timely sign language  
26 interpretation continue. Defendants also plan to rely on  
27 videoconferencing as a backup method for providing sign language

28

1 interpretation at parole proceedings, but have failed to  
2 demonstrate that videoconferenced sign language interpretation is  
3 effective, or that they have the capability to provide it.

4 Defendants' Accommodations Plan acknowledges that training,  
5 such as annual training on the Armstrong Remedial Plan for DAPO  
6 staff, is an essential component, but the Plan fails to acknowledge  
7 the need for improved ADA and Armstrong training for BPH panel  
8 attorneys who represent prisoners in life prisoner, MDO, and SVP  
9 proceedings, despite long-standing evidence that the current  
10 training is inadequate.

11 Defendants have failed to ensure that there is adequate DECS  
12 access at Department of Mental Health (DMH) institutions where MDO  
13 hearings are held. They have also failed to inform staff there  
14 adequately about resources available for providing accommodations.

15 Defendants have failed to maintain their policies and  
16 procedures for ensuring compliance with the ADA, the Revised  
17 Permanent Injunction, and this Court's remedial orders in a  
18 coherent or comprehensive manner.

19 In order to remedy Defendants' violations and deficiencies and  
20 ensure compliance with the terms of the May, 2006 Order, the Court  
21 issues further remedial orders, as follows.

22 A. Use of DECS in Parole Proceedings

23 1. Within fourteen days of this order, Defendants shall  
24 provide DECS access to all hearing officers and parole agents  
25 involved in MDO hearings conducted at DMH institutions. Within  
26 fourteen days of this order, Defendants shall certify to  
27 Plaintiffs' counsel that hearing officers and parole agents at DMH

28

1 institutions have DECS access; the certification shall be based on  
2 personal knowledge and accompanied by documents demonstrating that  
3 such access is established.

4       2. By January 1, 2008, Defendants shall provide full DECS  
5 computer connectivity, by providing DECS access for the following  
6 individuals, as set forth in the Joint Certification of Meet and  
7 Confer Results Pursuant to the May, 2006 Order Granting Plaintiffs'  
8 Motion To Enforce Permanent Injunction, Paragraph 7: all  
9 Classification and Parole Representatives, Reception Center  
10 Correctional Counselor III's, BPH hearing schedulers, Correctional  
11 Counselor I's, mental health clinicians (permanent, contract and  
12 employed by DMH), staff assigned as assistants in life prisoner  
13 proceedings, MDO and SVP Coordinators, "lifer desk" and "revocation  
14 extension desk" staff, and BPH Commissioners and Deputy  
15 Commissioners. The DECS access for BPH Commissioners and Deputy  
16 Commissioners shall be in hearing rooms and real time. By January  
17 1, 2008, Defendant Tilton, or his designee, shall certify to  
18 Plaintiffs' counsel that all of the above-listed staff have DECS  
19 access; the certification shall be based on personal knowledge and  
20 accompanied by documents demonstrating that such access is  
21 established.

22       3. "Access," as used in paragraphs one and two above, and  
23 throughout this order, shall mean that the user can utilize DECS at  
24 his or her workstation personally, individually, and routinely in  
25 the ordinary course of business. Utilizing another user's  
26 workstation, login, or computer to enter DECS shall not constitute  
27 "access."

28

1           4.     Correctional Counselors shall check DECS prior to all  
2 parole proceedings including but not limited to: notice of charges  
3 and rights for parole revocation extension hearings, reviewing life  
4 prisoner packets with life prisoners, service of life prisoner  
5 packets, interviews with life prisoners for Board reports,  
6 providing assistance with life prisoner parole plans, review of  
7 Board Reports, including psychological evaluations, with the  
8 prisoner, providing assistance with life prisoner appeals,  
9 interviews with alleged MDOs, interviews with alleged SVPs, and  
10 service of notice of conditions of parole. Within thirty days of  
11 this order, Defendant Tilton, or his designee, shall certify to  
12 Plaintiffs' counsel that all Correctional Counselors have been  
13 instructed to check DECS for the above-listed proceedings and have  
14 been trained on the use of the system.

15           5.     Defendants shall require mental health clinicians  
16 employed on either a permanent or contract basis by the CDCR to  
17 check DECS prior to all parole proceedings including, but not  
18 limited to: interviews with life prisoners for the purpose of  
19 providing an evaluation of the prisoner to the BPH, review of a  
20 life prisoner psychiatric report with the prisoner, interviews with  
21 alleged MDOs and alleged SVPs in CDCR institutions and interviews  
22 regarding a "knowing and intelligent" acceptance or refusal of the  
23 MDO condition in a CDCR institution. Within thirty days of this  
24 order, Defendant Tilton, or his designee, shall certify to  
25 Plaintiffs' counsel that all such mental health staff have been  
26 instructed to check DECS for the above-listed proceedings and have  
27 been trained on use of the system.

28

1           6. Parole agents shall check DECS prior to all parole  
2 proceedings, including but not limited to: the initial meeting with  
3 parolees following each release to parole when the agent gives  
4 notice of conditions of parolee, any meeting when the parole agent  
5 gives notice of amended conditions of parole, notification to a  
6 parolee of any alleged violation of parole, notice of the date and  
7 time of a Not-In-Custody parole hearing, and service of notice and  
8 rights for MDO certification, placement and annual review hearings  
9 in state hospitals. Within thirty days of this order, Defendant  
10 Tilton, or his designee, shall certify to Plaintiffs' counsel that  
11 he has issued a policy directive requiring parole agents to check  
12 DECS prior to the above-listed events and that training on use of  
13 the system has been provided to all parole agents.

14           7. If Defendants contend that inadequate connectivity is a  
15 bar to implementing the requirements of paragraphs one through six  
16 at particular institutions or parole offices, within thirty days of  
17 this order, they shall report to Plaintiffs' counsel that  
18 connectivity is not established and explain the barriers to  
19 connectivity. In addition, they shall develop local procedures  
20 based on the existing connectivity to ensure that Correctional  
21 Counselors, mental health staff and Parole Agents are all provided  
22 with the information in DECS prior to all parole proceedings. The  
23 local procedures shall be provided to Plaintiffs' counsel within  
24 thirty days of any relevant report of non-connectivity.

25           8. In no case shall a local procedure set forth in paragraph  
26 eight be operative beyond January 1, 2008.

27           9. If Defendants are unable to comply with any requirement  
28

1 included in paragraphs one through eight, they shall present  
2 evidence regarding any and all attempts to secure funding for,  
3 establish connectivity to, and provide training on DECS.

4 10. The Court finds that each of the following events is  
5 essential to "parole proceedings" as defined by the Revised  
6 Permanent Injunction, because they are "events related to the  
7 hearings that occur prior to . . . the [life prisoner or  
8 revocation] hearings." Revised Permanent Injunction

9 ¶ 3. In addition, these events have due process implications  
10 requiring a heightened standard for effective communication under  
11 Defendants' own policies and procedures. Therefore, DECS must be  
12 checked by CDCR staff prior to each of the following four steps in  
13 order to determine disability information and accommodation needs.  
14 This list is not exhaustive and does not supersede the Revised  
15 Permanent Injunction's definition; it only clarifies that these  
16 events are parole proceedings, or are essential to parole  
17 proceedings, and therefore treated as parole proceedings for  
18 purposes of this case:

19 a. Notice of conditions of parole by Correctional  
20 Counselor I in CDCR Institutions and Parole Agent in parole field  
21 offices;

22 b. Inclusion in the Life Prisoner Board Report by the  
23 Correctional Counselor I in CDCR Institutions of information  
24 regarding the life prisoner's ability to access programs previously  
25 recommended by the BPH under paragraphs thirty-six and thirty-seven  
26 of the Revised Permanent Injunction;

27 c. Communication of special conditions of parole for  
28

1 parolees released to Not In Custody (NIC) status while parole  
2 revocation proceedings are pending; and

3 d. Consideration of remedial sanctions in lieu of  
4 returns to custody for parolees with pending parole violation  
5 charges.

6 Within thirty days of this order, Defendant Tilton, or his  
7 designee, shall certify that DAPO and BPH and CDCR staff have been  
8 ordered to check DECS prior to each of these proceedings, have been  
9 trained on DECS and have appropriate access to DECS. The  
10 certifications shall be based on personal knowledge and shall be  
11 accompanied by supporting documentation.

12 11. Defendants shall enter into DECS, within twenty-four  
13 hours of completion of the prisoner/parolee interview, all  
14 information gathered on the hard copy of the BPH form 1073.  
15 Defendants shall enter the information at the institution level and  
16 immediately cease the practice of sending 1073 forms to BPH  
17 headquarters for data entry purposes. Within thirty days of this  
18 order, Defendant Tilton, or his designee, shall certify to  
19 Plaintiffs' counsel that Defendants have ceased sending 1073 forms  
20 to the ADA Compliance Unit for entry into DECS and that information  
21 on the 1073 forms is being entered in DECS at the institutions  
22 within twenty-four hours of completion of the interview. Defendant  
23 Tilton, or his designee, shall specify how Defendants effected the  
24 practice and how they have verified that it was followed.

25 12. Defendants shall certify within fourteen days of this  
26 order that they have remedied the gap in entering disability  
27 information in DECS between March 10, 2007 and April 16, 2007.

28



1 B. Defendants' Plan to Provide Accommodations in Parole  
2 Proceedings

3 13. Within ten days of this order, Defendants shall develop  
4 and implement procedures for ensuring the effective communication  
5 of the situation when detaining prisoners past their release dates  
6 for SVP evaluations and of any way in which prisoners can challenge  
7 their continued detention. The procedures must include a DECS  
8 review prior to the communication of the information to the  
9 parolee. Within fourteen days of this order, Defendant Tilton, or  
10 his designee, shall certify, based on personal knowledge and with  
11 supporting documentation, how Defendants are communicating to  
12 prisoners the reason they are being retained past their release  
13 dates and the procedures by which prisoners can challenge the  
14 retention, and the manner in which the rights of class members with  
15 developmental, learning, hearing and vision impairments are being  
16 preserved in the new process.

17 14. Within thirty days of the date of this order, Defendants  
18 shall report to Plaintiffs' counsel how they have addressed the  
19 problems with Defendants' sign language interpretation contracts  
20 and services identified in the February 15, 2007 Review of  
21 Sign-Language Interpretation Contracts Utilized for Parole  
22 Proceedings, including, but not limited to, the long lead times  
23 required by most of the agencies. Defendants also shall produce to  
24 Plaintiffs' counsel, within ten days of this order, the BPH forms  
25 1103 and 1104 or any other documentation explaining the reason for  
26 the untimely hearings for the nine parolees that required sign  
27 language interpretation between January and June of 2007.

28

1           15. Defendants shall not use video teleconferencing as a  
2 substitute for live sign language interpretation in parole  
3 proceedings and hearings unless and until they have demonstrated  
4 and certified that the equipment, resolution, connectivity,  
5 reliability and procedures are adequate to ensure effective  
6 communication.

7           16. Defendants' failure to provide a necessary accommodation  
8 for a disability does not constitute good cause for delaying any  
9 parole proceeding, including, but not limited to, parole hearings,  
10 life prisoner hearings, MDO hearings and SVP hearings. Defendants  
11 shall permit Plaintiffs' counsel to monitor life prisoner parole  
12 proceedings as follows:

13           a. On a monthly basis, Defendants shall produce to  
14 Plaintiffs' counsel documents and information, concerning life  
15 prisoner parole consideration hearings scheduled during the next  
16 sixty days for class members, sufficient to demonstrate that  
17 Defendants have identified and arranged for all necessary  
18 disability accommodations.

19           b. The documents shall include all disability  
20 information, including BPH forms 1073 and 1074, and relevant source  
21 documents, and shall include evidence that Defendants have  
22 recognized the need for accommodations, such as scheduling sign  
23 language interpreters in advance of hearings, and whether they have  
24 provided accommodations in prior parole proceedings.

25           c. Plaintiffs' counsel shall be permitted, in addition  
26 to any regular monitoring, to observe and monitor any life prisoner  
27 hearings of class members as well as parole proceedings prior to  
28

1 the hearings, and to make informal inquiries directly to Defendants  
2 on specific cases.

3 17. Defendant Tilton, or his designee, must certify within  
4 fourteen days of this order that he has obtained funding for all  
5 components of Defendants' plan to provide disability accommodations  
6 and access to DECS in all parole proceedings, including details  
7 showing the specific allocations for staffing, training, computer  
8 software and hardware, outside contracts and capital items.

9 18. Within thirty days of this order, Defendants shall  
10 produce to Plaintiffs' counsel any and all draft or final requests  
11 for funding or Budget Change Proposals or work load studies,  
12 prepared by or for the BPH, DAPO, CDCR, DMH or the Department of  
13 Finance, regarding funding, staffing, training, construction or  
14 other resources necessary to comply with the terms of this Court's  
15 May, 2006 Order, including, but not limited to, the development of  
16 DECS, and any other provisions of the Accommodations Plan since the  
17 issuance of the May, 2006 Order. Plaintiffs shall report to the  
18 Court, within fourteen days after the production of these  
19 documents, as to the adequacy of the funding for implementation of  
20 the May, 2006 Order and the need for any additional orders.

21 19. Within thirty days of this order, Defendants shall report  
22 to Plaintiffs' counsel which housing units in Alameda, Sacramento  
23 and Los Angeles County Jail facilities are wheelchair accessible  
24 and how Defendants ensure that class members at those institutions  
25 who are designated DPW and DPO are housed in the accessible  
26 facilities and receive necessary accommodations and assistive  
27 devices in both their housing units and at their hearings. Within

28

1 ninety days of this order, Defendants shall do the same with the  
2 remaining county jails. A necessary component of both reports is  
3 how Defendants track class members who are housed in county  
4 facilities due to parole holds.

5 20. Within thirty days of the date of this order, the Warden  
6 of Folsom State Prison shall provide, in the form of a sworn  
7 declaration, evidence that he or she has established written  
8 policies and procedures for ensuring that mobility-impaired inmates  
9 are able to access the locations where parole proceedings are held  
10 at Folsom State Prison.

11 21. Within thirty days of the date of this order, the Warden  
12 of each CDCR prison shall certify to Plaintiffs' counsel that the  
13 prison has sufficient structurally accessible locations for parole  
14 proceedings other than hearings, such as attorney consultations and  
15 file reviews, and that local policies, procedures and training are  
16 in place to assure appropriate and timely access and  
17 accommodations.

18 C. Training of BPH Panel Attorneys

19 22. Within 120 days of this order, Defendants shall certify  
20 that all attorneys contracted by the BPH to represent prisoners in  
21 life prisoner, MDO, and SVP proceedings have participated in the  
22 ADA and effective communication training provided to CalPAP  
23 revocation defense attorneys, or an equivalent training approved by  
24 Plaintiffs' counsel. In the interim, Defendants shall assign class  
25 members to those attorneys who have already completed the CalPAP  
26 training.

27

28

1 D. Accountability

2 23. The accountability procedures and provisions of the  
3 January 18, 2007 Injunction at 7:5-19 in this case shall also apply  
4 to CDCR staff, including BPH and DAPO staff, responsible for  
5 carrying out parole proceedings in institutions. Within 120 days  
6 of this order, Defendants shall develop a system for holding Parole  
7 District Administrators, Associate Chief Deputy Commissioners and  
8 all subordinate staff accountable for compliance with the orders of  
9 this Court. The accountability system shall track the record of  
10 each parole district and track the conduct of individual staff  
11 members who are not complying with the Court's orders. Defendants  
12 shall refer any individual with a record of repeated violations to  
13 the Office of Internal Affairs for investigation if appropriate.  
14 Prior to the next status conference, Defendants shall report to  
15 Plaintiffs' counsel on their progress toward complying with this  
16 paragraph.

17 E. Revision of Accommodation Plan and Meet and Confer  
Requirements

18 24. Within sixty days of this order, Defendants shall revise  
19 the Plan for Providing Accommodations in Parole Proceedings. The  
20 revised plan shall integrate all policies and procedures for  
21 providing accommodations in parole proceedings. Within 180 days of  
22 this order, Defendants shall certify to Plaintiffs' counsel that  
23 they have trained all staff involved in parole proceedings on the  
24 provisions of the plan.

25 25. Any policies and procedures developed pursuant to this  
26 order must be presented to Plaintiffs' counsel at least fourteen  
27


United States District Court  
For the Northern District of California

1 days in advance of the deadlines therefore. Both parties must make  
2 all possible efforts to resolve any disagreements as to their  
3 adequacy. Defendants shall ensure that staff with sufficient  
4 authority to amend and approve procedures attend all meet and  
5 confer sessions. In the event that disagreements cannot be  
6 resolved, Defendants shall implement, on the date ordered, the  
7 procedures as written and Plaintiffs' counsel may file objections  
8 with the Court. The Court will rule on the objections and issue  
9 orders amending procedures as necessary.

10 25. The Court finds that the relief ordered is narrowly  
11 drawn, extends no further than necessary to correct the violation  
12 of federal rights, and is the least intrusive means necessary to  
13 correct the violation of the federal rights.<sup>2</sup>

14 IT IS SO ORDERED.

15  
16 Dated: 9/11/07



17  
18 CLAUDIA WILKEN  
United States District Judge

19  
20  
21  
22  
23  
24  
25 \_\_\_\_\_  
26 <sup>2</sup> Plaintiffs' objections to evidence submitted by Defendants  
27 are overruled as moot. The Court did not consider any improper or  
28 inadmissible evidence in deciding these motions. Plaintiffs'  
motion for leave to file a supplemental declaration in support of  
their motion to enforce is granted. (Docket No. 1181).