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12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ISAAC KIGONDU KINITI; JOSE
15 MORALES-VARGAS; SYLVESTER
16 OWINO; HERNAN ISMAEL DELGADO;
and ANY CASTRO, on behalf of
themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 JULIE L. MYERS, Assistant Secretary,
20 U.S. Immigration and Customs
21 Enforcement (ICE); JOHN P. TORRES,
22 Director, Office of Detention and Removal
23 Operations, ICE; RON SMITH, Director,
24 San Diego Field Office, ICE; ANTHONY
25 CERONE, Officer-in-Charge at San Diego
26 Correctional Facility (SDCF), ICE;
CORRECTIONS CORPORATION OF
AMERICA, INC. (CCA); JOE
EASTERLING, SDCF Warden, CCA;
CHARLES HOWARD, SDCF Assistant
Warden, CCA,

27 Defendants.
28

Case No. 3:05-cv-01013-DMS-PCL

**DEFENDANTS CORRECTIONS
CORPORATION OF AMERICA, JOE
EASTERLING AND CHARLES
HOWARD'S RESPONSE TO PLAINTIFFS'
MOTION TO PRESERVE THE
TESTIMONY OF NAMED PLAINTIFFS
KINITI AND DELGADO BY BARRING
THEIR REMOVAL PRIOR TO
DEPOSITION**

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Defendants Corrections Corporation of America ("CCA"), Easterling and Howard ("CCA Defendants"), through counsel, hereby respond to Plaintiffs' Motion to Preserve the Testimony of Named Plaintiffs Kiniti and Delgado by Barring their Removal Prior to Deposition.¹ Although Plaintiffs' Motion is directed primarily at the ICE defendants not represented by counsel for the CCA defendants, the CCA Defendants nevertheless respond to clarify their lack of authority in garnering transfers of Plaintiffs into or out of CCA's San Diego Correctional Facility or this country.

Plaintiffs' Motion seeks to bar Plaintiffs Kiniti and Delgado's removal from this country until their depositions in this matter can be taken. Plaintiffs insinuate in the Motion that Defendants have deliberately transferred Plaintiffs into and out of various facilities (or deported out of the country), refusing to keep Plaintiffs' counsel informed of their clients' whereabouts, thus interfering with counsel's ability to correspond with their client. As previously set forth in the CCA Defendants' Motion to Dismiss and attached affidavit from Defendant Easterling who is the Warden of CCA's San Diego Correctional Facility, the CCA Defendants have no authority to determine which facility an ICE detainee is detained in or when and whether an ICE detainee is deported. Rather, whether a detainee is deported or transferred in or out of a particular detention/correctional facility is a determination that lies solely with ICE and with the Immigration Courts. Accordingly, the CCA Defendants are without any authority to comply with any Order the Court might issue with respect to Plaintiffs Kiniti and Delgado's immigration or detention status during the pendency of this lawsuit.

Based upon the foregoing, Defendants CCA, Easterling, and Howard notify this Court that they have no legal or custodial authority to take any action regarding Plaintiffs' request that Kiniti and Delgado remain in this country or in a particular detention/correctional facility during the pendency of this lawsuit.

¹ Defendants have previously filed a Motion to Dismiss Plaintiffs' Complaint. This Motion is currently pending.

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Dated: May 30, 2007

JONES, SKELTON & HOCHULI

BY: s/ Rachel Love Halvorson

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2007 a true and correct copy of *Defendants Corrections Corporation of America, Joe Easterling, and Charles Howard's Response to Plaintiffs' Motion to Preserve the Testimony of Named Plaintiffs Kiniti and Delgado by Barring their Removal Prior to Deposition* was served by ECF Filing on all counsel of record, along with all exhibits, and through agreement of the parties, has been e-mailed to:

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