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12 AMERICAN CIVIL LIBERTIES UNION OF
13 NORTHERN CALIFORNIA and
14 SAN FRANCISCO BAY GUARDIAN

15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 AMERICAN CIVIL LIBERTIES UNION
19 OF NORTHERN CALIFORNIA; SAN
20 FRANCISCO BAY GUARDIAN,

21 Plaintiffs,

22 v.

23 DRUG ENFORCEMENT
24 ADMINISTRATION,

25 Defendant.

26 CASE NO.: C 11-01997 RS

27 **DECLARATION OF LINDA LYE ISO *EX***
28 ***PARTE* APPLICATION TO SHORTEN**
TIME ON PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION

1 I, Linda Lye, declare as follow:

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3 1. I am counsel for Plaintiffs in the above-named action. The information in this
4 declaration is based upon my personal knowledge and if called to testify, I would and could
5 competently testify thereto.

6 2. On January 4, 2011, Plaintiffs submitted requests under the Freedom of
7 Information Act ("FOIA") to Defendant Drug Enforcement Administration ("DEA") for records
8 relating, among other things, to state efforts to import sodium thiopental, one of three drugs used
9 in the lethal injection protocol commonly used to execute condemned inmates in the United
10 States. Although DEA granted Plaintiffs' request for expedited processing, no records were
11 forthcoming as of the week of April 18, 2011.

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13 3. On April 20, 2011, Plaintiffs learned that on April 19, 2011, Arizona had set an
14 execution for May 25, 2011.

15 4. On April 22, 2011, Plaintiffs learned that Nebraska, earlier that same day, had set
16 an execution date for June 14, 2011.

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18 5. Later that day, on April 22, 2011, Plaintiffs filed the complaint in this action and
19 served the summons, complaint and other initial filing documents on Defendant.

20 6. On April 22, 2011, I called the office of the United States Attorney for the
21 Northern District of California. I spoke to duty attorney Assistant United States Attorney Ila
22 Deiss, and informed her that Plaintiffs had filed this FOIA action, that the requests pertained to
23 lethal injection, and that the requests had become highly time sensitive because two states had just
24 scheduled executions, and that Plaintiffs wished to obtain the records before the executions
25 occurred. I further explained that Plaintiffs were hoping to negotiate a schedule for processing the
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1 records, but that Plaintiffs were prepared to seek a preliminary injunction on shortened time early
2 the following week.

3 7. Later that day, Ms. Deiss informed me via voicemail that she was the Assistant
4 United States attorney assigned to the case and would respond the following business day.

5 8. Later that day, on April 22, 2011, I informed Ms. Deiss via voicemail that the
6 Arizona execution was scheduled for May 25, 2011 and that Plaintiffs therefore sought Arizona
7 related documents by April 16, 2011; and that the Nebraska execution was scheduled for June 14,
8 2011, and that Plaintiffs therefore sought the remaining documents by June 7, 2011.

9 9. The next business day, on April 25, 2011, I informed Ms. Deiss that Plaintiffs were
10 requesting a response by midday the following day, April 26, 2011.

11 10. On April 26, 2011, Ms. Deiss informed me that she anticipated DEA would be able
12 meet the deadlines Plaintiffs were concerned about.

13 11. On April 27, 2011, the parties exchanged written proposals setting forth a schedule
14 for the production of documents, and discussed their respective positions telephonically. In the
15 course of that exchange, DEA indicated that it commit to producing some of the documents in
16 advance of the Arizona and Nebraska executions, but was unable to confirm that it would be able
17 to complete processing of the requests by a date certain.

18 12. In particular, DEA took the position that it could only produce by a date certain
19 documents where it was the "originating entity." With respect to documents (including emails)
20 authored or created by another agency, DEA indicated that it would be unable to commit to
21 complete processing of the request by a certain date because it would be need to consult with the
22 other agency.
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