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In re Robert Escareno
Kings County Superior Court
Case No. 17W0140A

(Updated July 2019)

Thank you for your letter. We send this information to you in response to your questions or concerns about a recent case involving unconstitutional conditions in the Facility A Dining Hall of the California Substance Abuse Treatment Facility and State Prison in Corcoran (SATF). This letter includes an overview of the procedural history of the case, a short explanation of the law, and an Order from Kings County Superior Court Judge Donna Tarter, requiring the closure of the Facility A Dining Hall until it is repaired.

On October 2, 2017, Mr. Robert Escareno filed a petition for writ of habeas corpus in the Kings County Superior Court, alleging that the conditions in the SATF Facility A Dining Hall were unconstitutional and in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. Mr. Escareno's habeas corpus petition followed his exhaustion of SATF's grievance process. Mr. Escareno began that process by submitting a Form 22 — a general purpose form that allows an incarcerated person to request an interview, item, or service — in January 2017 about “massive amounts of leaks” in the dining hall that caused “bird feces and water mold to fall onto the tables where inmates eat their morning and evening meals.” Mr. Escareno never received a response and, as such, the following month he filed a group appeal on behalf of himself and dozens of other incarcerated people reiterating his concerns. Mr. Escareno eventually exhausted his administrative appeals after receiving several unsatisfactory responses.

Following an informal response to the habeas petition, submitted by the California Attorney General's Office, and an amicus letter submitted by the Prison Law Office, Judge Donna Tarter issued an Order to Show Cause on February 23, 2018, and appointed our office to represent Mr. Escareno's interests in the habeas proceeding.

On August 9, 2018, after extensive briefing and discovery, the Court ordered an evidentiary hearing to learn more about the conditions in the Facility A Dining Hall. The purpose of the hearing was to resolve evidentiary conflicts raised by the pleadings. Specifically, the Court sought to determine the sufficiency of remedial measures taken by prison officials to ameliorate the risk of harm associated with the failing roof, including the

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inevitable flow of contaminated water through moldy and disintegrating ceiling panels into the dining space below.

Over a period of three days, the Court heard testimony from experts, prison officials, and people living at SATF. Hundreds of photographs, inspection reports, and work orders were admitted into evidence. We offered testimony from experts Steven Norris, in architecture and building construction, and Richard Subia, in prison administration, as well as from Mr. Escareno himself and another SATF resident, Marvin Dominguez. The California Attorney General offered testimony from several prison staff and administrators as well as experts in mechanical ventilation systems, electrical systems, and industrial hygiene.

The Eighth Amendment's prohibition against cruel and unusual punishment protects people not only from inhumane methods of punishment, but also from inhumane conditions of confinement. (*Farmer v. Brennan* (1994) 511 U.S. 825, 832.) To state an Eighth Amendment challenge to conditions of confinement, we had to make two showings. First, we had to make an "objective" showing that the conditions were "sufficiently serious" to form the basis for an Eighth Amendment violation. (*Wilson v. Seiter* (1991) 501 U.S. 294, 298.) Second, we had to make a "subjective" showing that prison officials acted "with a sufficiently culpable state of mind" i.e., deliberate indifference. (*Ibid.*) We argued that the conditions in the SATF Facility A Dining Hall — a failed roof, contaminated water flowing into the dining hall and the electrical and ventilation systems, persistent mold, disintegrating ceiling tiles, and mice and maggots falling from the ceiling — were "sufficiently serious" to satisfy the objective component of the Eighth Amendment, and that SATF officials had demonstrated deliberate indifference in their refusal to cease use of the dining hall despite their awareness of the risk of harm to incarcerated people.

The California Attorney General's Office, on the other hand, argued that the conditions in the Facility A Dining Hall, as alleged by Mr. Escareno, were not objectively sufficiently serious and that the evidence presented during the evidentiary hearing did not support a finding that the Facility A Dining Hall presented a substantial risk of serious harm to Mr. Escareno or other residents housed on Facility A.

Judge Tarter disagreed with the government. The Court found that the intrusion of water contaminated with fecal matter, the presence of moldy and saturated ceiling tiles, and the entry of mice and maggots through areas of the ceiling that were unprotected by tiles, posed a substantial risk of harm to inmate health and safety and recognized that janitorial efforts were insufficient to abate that risk. These conditions violated the Eighth Amendment.

As a result, Judge Tarter granted Mr. Escareno's writ of habeas corpus on June 4, 2019 and ordered SATF to cease use of the Facility A Dining Hall by June 18, 2019. Referring to the state of the dining hall, Judge Tarter wrote:

It is a shame that the State of California and the Department of Corrections and Rehabilitation have allowed the Facility A Dining Hall to fall into such a state of disrepair. The evidence paints a picture of a correctional dining facility long neglected of basic building maintenance that is nearly irreconcilable with its location in a nation and state of such financial abundance and advanced legal standards for the habitability of real property and cleanliness of food service establishments.

In June 2019, SATF began housing unit feeding in the dormitories on Facility A. The Court's Order will remain in effect until the Facility A Dining Hall is completely repaired and thus, alternative feeding may continue indefinitely. We are including a copy of the Court's Order and opinion with this letter.

Our office will continue to monitor the situation at SATF until conditions improve. In the meantime, if you believe the living conditions at your institution may be unconstitutional, we advise you to first exhaust all of your administrative remedies, like Mr. Escareno, and send us the third level response. Even if we cannot represent you in your individual case, we may still be able to send you relevant information, including a manual on how to file a petition for writ of habeas corpus.

We hope this information is helpful for you. Please let us know if you have any further questions or concerns.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS

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JUN 04 2019

MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
 DEPUTY

In re Application of

No. 17W0140A

ROBERT ESCARENO,

ORDER RE: PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner,

for Writ of Habeas Corpus.

Petitioner ROBERT ESCARENO ("Petitioner") filed a petition for writ of habeas corpus on October 2, 2017 ("petition"). Petitioner claims that the Facility A Dining Hall at the California Substance Abuse Treatment Facility ("SATF") suffers from a damaged and leaky roof which causes water contaminated with bird feces and bat guano to fall into the dining hall where he consumes his breakfast and dinner. Petitioner claims that as a result of the leaks, mildew and toxic mold has formed on the ceiling and walls of the dining hall. Petitioner submitted a group inmate administrative appeal on February 3, 2017. The appeal was partially granted at the First and Second Levels of Review on February 28, 2017 and May 17, 2017, respectively. On August 7, 2017, a Third Level Appeal decision directed the California Department of Corrections and Rehabilitation ("CDCR") ("Respondent") to do the following: 1) perform monthly inspections and make the recorded findings available for inspection; 2) perform a weekly sanitation inspection; and 3) provide proof of completed work orders relative to the deficiencies identified. Petitioner alleges no repairs were made and that any intermediate remedial efforts taken by Respondent are

ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS

1 insufficient to abate the mildew and mold. Petitioner asserts the hazardous and unsanitary
2 conditions in the Facility A Dining Hall are violative of the cruel and unusual punishment
3 clause of the Eighth Amendment.

4 On November 15, 2017, an Order Re: Petition for Writ of Habeas Corpus issued
5 directing Respondent to informally respond to the petition. Respondent's informal
6 response was filed on January 12, 2018. On January 29, 2018, Petitioner filed a reply. On
7 February 9, 2018, the Prison Law Office filed an amicus letter in support of Petitioner's
8 claims. On February 23, 2018, an Order to Show Cause issued. Respondents filed a
9 return on April 6, 2018. A traverse was filed by Petitioner on July 10, 2018. An order
10 setting the matter for an evidentiary hearing issued August 9, 2018.

11 The scope of the evidentiary hearing was to resolve evidentiary conflicts raised by
12 the pleadings as to the following issues: (1) whether the actions Respondent has taken to
13 repair the roof leak and clean the mold and mildew are sufficient and in compliance with
14 the Third Level of Review Decision; 2) whether Petitioner has suffered physical or mental
15 harm due to the conditions in the dining hall; 3) whether contaminated rain water has
16 continued to fall on the dining tables; and, 4) whether sufficient interim measures have
17 been effectuated, including but not limited to the cleaning of animal waste from the roof,
18 replacement of ceiling tiles, temporary patching or tarping of the roof, regular cleaning with
19 bleach, cleaning roof gutters, using fans to control moisture, mopping up water and
20 keeping inmates away from areas of water intrusion. The evidentiary hearing was
21 conducted on December 7, 2018, February 11, 2019, and March 14, 2019. Parties
22 submitted their closing arguments in brief form on April 5, 2019.

23 I. Legal Standard

24 The Eighth Amendment of the United States Constitution prohibits cruel and
25 unusual punishment. The Eighth Amendment "embodies broad and idealistic concepts of
26 dignity, civilized standards, humanity, and decency." (*Estelle v. Gamble* (1976) 429 U.S.
27 97, 102.) The conditions under which inmates are confined are subject to Eighth
28 Amendment scrutiny. (*Helling v. McKinney* (1993) 509 U.S. 25, 35.) "Prison officials must
ensure that inmates receive adequate food, clothing, shelter and medical care, and must
take reasonable measures to guarantee the safety of the inmates." (*Farmer v. Brennan*
(1994) U.S. 825, 832.) In order to prevail in his claim that CDCR has violated his Eighth
Amendment rights, Petitioner must make two showings.

1 First, he must make an *objective* showing that the alleged deprivation is sufficiently
2 serious. For a deprivation to be sufficiently serious, "a prison official's act or omission must
3 result in the denial of the minimal civilized nature of life's necessities." (*Farmer v. Brennan*,
4 *supra*, at p. 834.) For a claim based on failure to prevent harm, "the inmate must show he
5 is incarcerated under conditions posing a substantial risk of serious harm." (*Ibid*; *Parsons*
v. Ryan (9th Cir. 2014) 754 F.3d 657, 676.)

6 Second, Petitioner must make a *subjective* showing that prison officials acted with a
7 sufficiently culpable state of mind, *i.e.* deliberate indifference. Prison officials only violate
8 the Eighth Amendment if they know of yet disregard a substantial risk of serious harm to
9 inmate health or safety. (*Farmer v. Brennan, supra*, at p. 839-840.) If officials aware of the
10 substantial risk to inmate health or safety responded *reasonably* to the risk, they are free
11 from liability even if the harm is ultimately not avoided. (*Farmer v. Brennan, supra*, at p.
12 844.) A petitioner seeking a remedy for unsafe conditions does not have to await actual
13 harm or injury before obtaining relief. (*Farmer v. Brennan, supra*, at p. 845; citing *Helling v.*
14 *McKinney, supra*, at 33-34.) In a habeas corpus proceeding, Petitioner bears the burden
15 of proof by a preponderance of the evidence. (*People v. Ledesma* (1987) 43 Cal.3d 171,
16 218.)

17 II. Review of Claim

18 a. The state of Facility A Dining Hall

19 It is a shame that the State of California and the Department of Corrections and
20 Rehabilitation have allowed the Facility A Dining Hall to fall into such a state of disrepair.
21 The evidence paints a picture of a correctional dining facility long neglected of basic
22 building maintenance that is nearly irreconcilable with its location in a nation and state of
23 such financial abundance and advanced legal standards for the habitability of real property
24 and cleanliness of food service establishments.

25 Mr. Steven Norris, an expert in architecture and building construction, testified the
26 Facility A Dining Hall roof was one of the worst he had inspected in terms of overall
27 condition, safety and usability. (RT, Evidentiary Hearing December 7, 2018, 78: 1-4.) He
28 testified that there is "widespread failure of the roof membrane over the dining hall facility"
creating "large cavities and/or openings in the system." (*Id.* at p. 17: 17-24.) He testified
that such roofing failures compromise the waterproofing of the building and create a
medium for birds and other debris to enter the structure. (*Id.* at p. 18: 1-4.) Upon
inspection of the Facility A Dining Hall roof, he observed a "large amount of bird droppings

1 [and] feces upon the roof [and] bird parts...in the proximity of the kitchen facility.” (Id. at p.
2 18:7-13.) He testified that the roofing failures at horizontal and vertical integration points
3 create “a pathway for rainwater mixed with feces” to flow downward into the architectural
4 systems and the dining room below. (Id. at p. 18: 22-25.) Photographs admitted into
5 evidence depict separated layers of roofing membrane and exposed gaps in the building
6 structure. (Exhibit 5 at p. 26.) Large quantities of bird fecal matter are caked on top of the
7 roofing membrane in areas of failure. (Id. at p. 27.)

8 Mr. Norris explained that as a consequence of this type of roof failure, electrical and
9 ventilation systems, as well as interior wall and roofing materials, will be compromised by
10 water intrusion. (RT, Evidentiary Hearing December 7, 2018, 19: 11-16.) Notably, he
11 testified that upon inspection of the Facility A Dining Hall, he observed bioorganic growth
12 along the walls of the scullery and disintegration of the fireproofing material on the
13 underside of the structural steel of the roof. (Id. at p. 19:23-25; 20: 13-15.) Mr. Norris
14 testified that he observed acoustic ceiling panels that were “disintegrating”. (Id. at p. 78:
15 11-13.) Specifically, he observed between 30 to 60 ceiling tiles with evidence of
16 disintegration. (RT, Evidentiary Hearing March 14, 2019, 462: 21-22.) Photographs
17 contained in Mr. Norris’s report depict multiple areas of white ceiling tiles stained with
18 several large rings of brown, water-type marks. (Exhibit 5 at p. 33, 44.) Other photographs
19 depict ceiling tiles with pieces missing that appear to have crumbled off; some images
20 depict sections of ceiling with no tiles through which plumbing and electrical materials are
21 visible in the attic. (Exhibit 5 at p. 32, 43.) Mr. Mitchell Bergner, a certified industrial
22 hygienist and expert in environmental hazards, testified that he observed mold on
23 damaged, wet ceiling tiles in the dining area. (RT, Evidentiary Hearing March 14, 2019,
24 427: 8-13; 435: 18-22.)

25 In some parts of the ceiling, sections of multiple acoustic tiles have been removed
26 completely. (RT, Evidentiary Hearing December 7, 2018, 78: 8-9.) Mr. Norris stated that
27 the disintegration of ceiling tiles and fireproofing material poses possible hazards to
28 individuals utilizing the dining space below. (Id. at p. 19: 19-22; 20: 5-6.) While removal
mitigates the risk of the panels from crumbling and falling, the lack of ceiling tiles creates a
large space for various debris to fall from the roofing structure into the interior space. (Id. at
p. 78: 18-23.) Mr. Norris and an expert in electrical systems, Mr. Meher Marti, testified that
they observed evidence of water intrusion in ceiling mounted light fixtures. (Id. at p. 18-19;
401: 5-15.)

1 If the legal question presented to this court were simply whether the California
2 Department of Corrections and Rehabilitation has maintained the roof of the Facility A
3 Dining Hall, the answer would be simple – no. However, this court must examine whether
4 Petitioner has proved by a preponderance of the evidence whether the building conditions
5 resulting from the roof failure pose a *substantial risk* to inmate health and safety *and*
6 whether Respondent disregarded this substantial risk of serious harm to inmate health or
7 safety by failing to act reasonably in response. Petitioner asserts the following present an
8 unacceptable risk of harm to him and other inmates using the Facility A Dining Hall: 1)
9 contaminated debris, mice and maggots falling into the dining hall; 2) water contaminated
10 with bird feces, bird body parts, building chemicals and mold flowing into the dining hall; 3)
11 the water damaged electrical system; and, 4) contaminated air from the corroded
12 ventilation system. Petitioner asserts any remedial efforts made by Respondent are
13 ineffective.

14 **b. Water damage to the electrical system does not pose a substantial**
15 **risk to the health and safety of Petitioner and fellow inmates**

16 This court is not convinced that water damage to the electrical system poses a
17 substantial risk to inmate health and safety. There were conflicting expert opinions
18 regarding the extent of the damage. Mr. Norris and Mr. Marti testified to visible evidence of
19 water intrusion in ceiling mounted light fixtures. (RT, Evidentiary Hearing December 7,
20 2018, 26: 18-19; 401: 5-15.) Mr. Marti testified that upon inspection of the Facility A
21 Dining Hall, he observed several light fixtures that were “rusted out”. (RT, Evidentiary
22 Hearing March 14, 2019, 401: 12-19.) Mr. Norris asserted there was water damage to
23 electrical junction boxes and wall mounted fuse boxes that could cause a risk of shock to
24 persons using the system. (RT, Evidentiary Hearing December 7, 2019, 26: 8-24; 27: 9-
25 12.)

26 However, Mr. Marti testified that upon his inspection of an injunction box, he did not
27 observe any damage to the junction structure. (RT, Evidentiary Hearing March 14, 2019,
28 397: 18-22.) Furthermore, any light fixture or junction box damage does not pose a risk to
inmates because the units are located in the ceiling. (Id. at p. 397: 10-13; 400: 3.) Mr.
Marti did not observe any damage to electrical outlets on the wall. (Id. at p. 400: 12-13.)
While Mr. Marti agreed the systems should be repaired to prevent an unsafe condition from
developing, he testified that the deficiencies would only pose a risk to electricians going
into the ceiling area to conduct electrical repairs. (Id. at p. 404: 1-4; 23-25.) In addition to

1 Mr. Marti's testimony that the systems do not pose a threat to inmates in the dining hall,
2 there is *no evidence that inmates come into contact with electrical systems and*
3 *components*. Finally, Mr. Tony Brasil, a correctional plant supervisor who oversees
4 electrical repairs at SATF testified that he reviewed 19 months of work orders and did not
5 locate any documenting a tripped fuse or circuit breaker in the Facility A Dining Hall. (Id. at
6 p. 391: 9-22.)

7 **c. There is insufficient evidence to support the claim that the**
8 **ventilation system is circulating contaminated air that poses a**
9 **substantial risk to the health and safety of Petitioner and fellow**
10 **inmates**

11 Mr. Norris testified that he observed localized corrosion within the ventilation ducts
12 of the Facility A Dining Hall and that this indicates water has entered the ducting. (RT,
13 Evidentiary Hearing December 7, 2018, 22: 2-6.) He testified that this causes some
14 concern for the usability of the building because the water leaking through the failing roof
15 and onto the ducts would be mixed with fecal matter. (Id. at p. 22: 7-13.) His opinion was
16 contradicted by Mr. Michael Southworth, an expert in mechanical engineering and
17 ventilation systems. Mr. Southworth inspected the duct systems on February 8, 2019 and
18 did not observe any water inside. (RT, Evidentiary Hearing March 14, 2019, 374: 6-9.)
19 Although he observed water stains on the outside of the duct work, he did not observe any
20 areas or holes where the water could get inside the ducts. (Id. at p. 375: 7-23.) Mr.
21 Southworth did testify that there was water leaking into the mechanical ventilation unit and
22 that some drains and filters appeared dirty. (Id. at p. 378: 11-14.) Mr. Southworth testified
23 he inspected the ducts for evidence of bird feces, bird parts and pests and found no
24 evidence of the same. (Id. at p. 376: 3-7.) There is no evidence before this court that the
25 ventilation systems have mold inside of them. He testified any rust on the inside of the
26 ducts would be consistent with the age of the evaporative cooling system. (Id. at p. 388: 4-
27 5.) There is insufficient evidence to support the claim that the ventilation system itself has
28 been compromised by the failed roof in the Facility A Dining Hall.

29 What is dispositive of the lack of risk from the ventilation system is the air sample
30 testimony adduced from Mr. Bergner. He testified that mold spore counts inside Facility A
31 Dining Hall were consistent with exterior mold counts, which indicates no mold spore
32 amplification within the structure. (RT, Evidentiary Hearing March 14, 2019, 412: 1-3.)
33 The measurements were not consistent with levels that could harm human health. (Id. at p.

1 412: 4-8.) This court finds his testimony that the mold spore levels in the Facility B Dining
2 Hall were three times the outdoor control count highly relevant in determining that
3 Petitioner and other inmates are not subjected to a risk of harm from mold or other
4 pathogens being circulated by the ventilation system in the Facility A Dining Hall. There
5 was no evidence that the air in Facility A Dining Hall contained avian pathogens.

6 **d. Responsive janitorial efforts are insufficient to abate the substantial**
7 **risk of harm to inmate health and safety posed by the intrusion of**
8 **water contaminated with fecal matter, the presence of moldy and**
9 **saturated ceiling tiles, and the entry of mice and maggots through**
10 **areas of ceiling unprotected by tiles**

11 Both expert witnesses agreed the ceiling tiles are damaged, wet and contain visible
12 mold. (RT, Evidentiary Hearing, March 14, 2019, 426: 1-6.) Areas of the roof that have
13 failed contain bird feces, feathers, and other evidence of bird activity. (Id. at p. 449: 17-
14 21.) Although the ceiling tiles were not tested for mold, avian or mice pathogens, Mr.
15 Bergner admitted that it was possible the ceiling tiles are contaminated. (Id. at p. 436: 13.)
16 This court is not persuaded by Respondent's argument that the lack of positive tests for
17 airborne or surface pathogens supports the conclusion that the state of the ceiling does not
18 pose any substantial risk to the health and safety to Petitioner and other Facility A inmates.

19 While the air sample evidence negates the idea that Petitioner and other inmates
20 are breathing harmful pathogens by way of air specifically circulated by the duct system,
21 there is sufficient evidence to conclude the water leaks and missing or damaged ceiling
22 tiles create alternate paths of transmission for harmful pathogens. The evidence
23 introduced at the hearing establishes by a preponderance of the evidence that water
24 leaking into the dining hall mixes with harmful contaminants in the roof. (Exhibit 63 at p. 5;
25 RT Evidentiary Hearing December 7, 2018, 82: 21; March 14, 2019, 463: 6-8.)

26 Petitioner testified that when it rains, he observes water coming down the walls of
27 the Facility A Dining Hall. (RT, Evidentiary Hearing December 7, 2018, 96: 7-10.) He
28 testified that the water is green, white and sometimes brown. (Id. at p. 98: 8-11.) Inmate
Marvin Dominguez also observed water coming through the roof that is dark brown in
color. (Id. at p. 118: 20- 119: 7.) Petitioner has observed this discolored water falling onto
dining tables while he is eating. (Id. at p. 98: 13-16.) Lieutenant Owens admitted that
inmates do sit at tables under portions of the ceiling with missing tiles. (Id. at p. 147: 6-24.)
He also testified water has come down the walls and fallen on the tables when it rains. (Id.

1 at p. 156: 2.) Upon his inspection, Mr. Norris observed inmate food trays stored beneath
2 areas of missing ceiling tiles. Mr. Bergner testified that contaminated food trays could be a
3 source of transmission. (RT, Evidentiary Hearing March 14, 2019, 419: 6-9.)

4 Ceiling tiles saturated with this water pose a substantial risk of falling on inmates,
5 causing them either physical injury from the impact or placing them in direct contact with
6 fecal matter or mold spores. (RT, Evidentiary Hearing, March 14, 2019, 462: 10-17.) It is
7 logical that this risk would only increase when it rains since the ceiling tiles would become
8 heavier from additional saturation. Petitioner has observed the ceiling tiles to be saturated
9 like a wet paper towel. (RT, Evidentiary Hearing December 7, 2018, 100: 1-3.)

10 Alternatively, the lack of ceiling tiles creates an entry point for mice, maggots and other
11 materials to enter the dining hall. (Id at p. 78: 21-23.) Inmate Dominguez testified that on
12 one occasion, he briefly glanced away from his dining table and when he looked back, a
13 maggot had appeared on the table. (Id at p. 120: 19-22.) CDCR documents detail
14 complaints of maggots falling from the ceiling. In April of 2018, Inmate Dominguez
15 observed a mouse fall from the ceiling above him where a tile was missing. (Id at p. 123:
16 7-9.) On a separate occasion, a mouse fell onto his dining table from the ceiling. (Id. at p.
17 123: 21-24.)

18 Petitioner's primary treating physician, Dr. Ryan Kim, testified that daily exposure to
19 the inside of a building with extensive leaks from water contaminated with mold, feces and
20 building chemicals poses a risk of illness. (RT, Evidentiary Hearing February 11, 2019,
21 269: 11-16.) Additionally, Dr. Kim testified that exposure to mice feces has the potential to
22 make an individual very ill. (Id. at p. 280: 2-6.) While Mr. Bergner testified that regular
23 cleaning would neutralize any risks, his opinion was isolated to the presence of mold on
24 the walls and other hard surfaces in the dining area. (RT, Evidentiary Hearing March 14,
25 2019, 416: 6-8.) His opinion about the safety of Facility A Dining Hall did not factor in the
26 existence of avian, mold and other contaminants in the ceiling tiles. Mr. Norris testified that
27 the conditions of the building pose a risk to those who eat in the space below. (RT,
28 Evidentiary Hearing December 7, 2018, 82: 14-18.)

Petitioner testified to suffering from watery eyes, a cough and a runny nose when he
enters the dining hall; he does not experience these symptoms in other areas of the facility.
(RT, Evidentiary Hearing December 7, 2018, 101: 12; 102: 6.) While evidence establishes
that Petitioner does have seasonal allergies that predate his 2015 assignment to SATF, Dr.
Kim testified that exposure to mold, building chemicals, and fecal matter from birds and

1 mice would aggravate seasonal allergy symptoms. (Id. at p. 280:12-281:18.) The
2 testimony that is most concerning and persuasive to this court is Petitioner's statement that
3 he often chooses to forego his evening meal because he does not want to deal with
4 worsening symptoms during the night when he is sleeping. (Id. at p. 101: 21.)

5 The next inquiry is whether Respondent officials have disregarded this substantial
6 risk. The court acknowledges that a roof replacement has been funded by the State of
7 California, but it is currently in design phase with an unspecified construction date. In the
8 interim, the roof of the Facility A Dining Hall was cleaned of bird waste. However,
9 photographs indicate the same has returned to the roof. (Exhibit 5 at p. 26, 27.)
10 Respondent previously replaced the ceiling tiles, but the new ceiling tiles are either
11 missing, broken, or damaged due to ongoing water leaks from the roof. (Exhibit 5 at p. 32,
12 33, 43, 44.) Tarping or patching of roof leaks would be ineffective given the roof design,
13 the extent of roof membrane failure and the consequences from the previous intrusion of
14 contaminated water. (RT, December 7, 2018, 80:19-81:12.)

15 Pursuant to the Third Level of Review decision, Respondent has implemented
16 extensive janitorial practices in response to the water intrusion. Water is mopped and
17 wiped up and sections of the dining hall are blocked off from inmate access. (RT
18 Evidentiary Hearing December 7, 2018, 148: 4-11.) Walls are cleaned with bleach on an
19 "as needed, if not a daily basis", or anytime there is discoloration. (Id. at p. 149: 18-23.)
20 Tables are wiped down after inmate use. (Id. at p. 149: 10-14.) The facility is inspected
21 weekly. (Id. at p. 152: 22.) Mr. Bergner testified that cleaning the enamel walls and other
22 hard surfaces with halogen cleaners as frequently as water intrusion would render these
23 surfaces safe for use. (RT, Evidentiary Hearing March 14, 2019, 416: 1-3.) However,
24 mopping up water and sanitizing surfaces does not address the risk from contaminated
25 water leaking from the ceiling onto the tables *at the same time* inmates are consuming
26 their meals. Keeping inmates away from active leaks during mealtime does not abate the
27 serious risk created by placing them at tables under disintegrating ceiling tiles. Even when
28 it is not raining, the evidence establishes that inmates are seated at tables under exposed
ceiling from which mice and maggots fall during meal time.

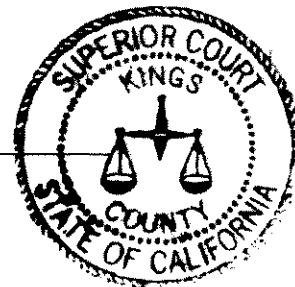
This court finds that the remedial measures taken by Respondent pending full replacement of the roof do not reasonably address these specific, substantial risks of harm to inmates. It appears the risks cannot be abated by ordering another replacement of the ceiling tiles. Further sanitization does not remedy contaminated water, mice and maggots

1 falling onto inmates and their dining tables during meal times. Similarly, further sanitization
2 does not abate the multiple risks of moldy, saturated ceiling tiles falling onto dining tables
3 or inmates *during* meal time.

4 Accordingly, **IT IS HEREBY ORDERED**, the writ of habeas corpus is granted. **IT IS**
5 **FURTHER ORDERED**, Respondent is ordered to cease use of the Facility A Dining Hall
6 within two weeks of the date of this order. Respondent may designate an appropriate
7 location and method by which to feed Facility A inmates so long as it is consistent with the
8 safety and security of staff and inmates and complies with all relevant laws and
9 regulations. This order shall remain in effect until the Facility A Dining Hall has been
10 repaired.

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12 Dated: JUNE 4, 2019

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Donna Tarter
Judge of the Superior Court



SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS

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JUN 05 2019

In re Application of

Case No. 17W0140A

ROBERT ESCARENO

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MICHELLE S. MARTINEZ, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
DEPUTY

Petitioner,

For Writ of Habeas Corpus

I hereby declare under penalty of perjury that I am employed by the Kings County Superior Court, over the age of 18 years, and not a party to the within action. I further declare that on JUN 05 2019, following the Court's ordinary business practices with which I am readily familiar, I served the within ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS by depositing a true copy thereof, enclosed in a sealed envelope, at the location designed by my place of business for collection and mailing with the United States mail at Hanford, California, addressed as follows:

Robert Escareno, H83031
Corcoran State Prison SATF
Post Office Box 5248
Corcoran, CA 93212

Donald Specter, Attorney at Law
Sara Norman, Attorney at Law
Camille Woods, Attorney at Law
Prison Law Office
General Delivery
San Quentin, CA 94964

Janine Boomer
Deputy Attorney General
Office of the Attorney General
1300 I Street Suite 125
Post Office Box 944255
Sacramento, CA 94244

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Hanford, California.

Executed on JUN 05 2019 at Hanford, California

Michelle S. Martinez
CLERK OF THE COURT

Mona Austin
By: Mona Austin, Deputy Clerk

PROOF OF SERVICE