

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

GARFIELD GAYLE, *et al.*,

Plaintiffs,

v.

JANET NAPOLITANO, *et al.*,

Defendants.

No. 3:12-cv-02806-FLW

DECLARATION OF MICHAEL TAN

I, Michael Tan, hereby declare:

1. I am a Staff Attorney at the ACLU Immigrants' Rights Project ("ACLU") and counsel for the plaintiffs in this case. I submit this declaration in support of the plaintiffs' Motion for Class Certification.

2. Attached hereto as exhibits are true and correct copies of the following:

Exhibit Document

- A Letter from Catrina M. Pavlik Keenan to Michael Tan Re: ICE FOIA Case Number 2012FOIA5180 (Feb. 21, 2012).
- B Immigration and Customs Enforcement, ERO LES Statistical Tracking Unit, FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention (produced by ICE to the ACLU in response to FOIA request).
- C Email from Andrew Lorenzen-Strait, Senior Advisor, Office of Enforcement and Removal Operations, Immigration and Customs Enforcement to Michael Tan (Jan. 10, 2012).
- D FY2011: Individuals Subject to Detention Under INA 236(c) in Newark and New York ICE Areas of Responsibility (summary of data provided by ICE to the ACLU in response to FOIA request).
- E U.S. Dep't of Homeland Security, Notice of Custody Determination (Form I-286) of Plaintiff-Petitioner Sheldon Francois (Aug. 6, 2012).
- F Excerpts from Official Transcript of Deposition of Wesley Lee, Assistant Field Office Director, Los Angeles Field Office of Immigration and Customs Enforcement, *Rodriguez v. Robbins*, No. 2:07-cv-03239 (C.D. Cal. deposition filed June 25, 2012) (ECF No. 232-2).

3. The ACLU has a longstanding commitment to enforcing the constitutional and statutory constraints on the federal government's power to subject noncitizens to immigration detention. As part of our research and advocacy, we routinely request government records under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, regarding the size and characteristics of the immigration detention population.

4. On February 21, 2012, U.S. Immigration and Customs Enforcement ("ICE") disclosed a set of spreadsheets in response to a FOIA request seeking population "snapshots" of the ICE detention population for one day of every month of FY2011. *See* Ex. A. The spreadsheets show the number of individuals in ICE custody on each day the snapshot was taken, organized geographically according to ICE Area of Responsibility and whether the individuals were subject to "mandatory" and "non-mandatory detention." *See* Ex. B..

5. For each month, the spreadsheets also include the number of individuals in each ICE Area of Responsibility subject to mandatory detention based on a charge of removability enumerated at 8 U.S.C. § 1226(c), sometimes cited as § 236(c) of the Immigration and Nationality Act ("INA"). In previous correspondence, ICE confirmed that it identifies who is subject to detention under § 1226(c) in its databases according to charge of removability. *See* Ex. C.

6. Attached to this declaration is summary of the data showing the number of individuals subject to mandatory detention in the Newark and New York City Areas of Responsibility based on these predicate charges. I prepared this summary on the basis of the data provided by ICE, described above. *See* Ex. D.

7. The Newark and New York City ICE field offices jointly oversee immigration detention in New Jersey. The Newark Area of Responsibility includes the following facilities:

the Elizabeth Contract Detention Facility in Elizabeth; the Delaney Hall Detention Facility in Newark; and the Essex County Jail in Newark. *See* ICE Facility Locator, <http://www.ice.gov/detention-facilities/> (last visited November 15, 2012).

8. The New York City Area of Responsibility includes the following New Jersey facilities: the Bergen County Jail in Hackensack; the Hudson County Correctional Facility in Kearny; and the Monmouth County Correctional Institution in Freehold. The only other facility supervised by the New York City field office is the Orange County Correctional Facility in Goshen, New York. *See* ICE Facility Locator, <http://www.ice.gov/detention-facilities/> (last visited November 15, 2012).

9. The ICE data show that, on one day in each month of Fiscal Year 2011, anywhere from 149 to 266 individuals were subject to mandatory immigration detention under § 1226(c) in the Newark Area of Responsibility. *See* Ex. D, at 1.

10. The ICE data also show that, on one day in each month of Fiscal Year 2011, anywhere from 191 to 259 individuals were subject to mandatory detention under § 1226(c) in the New York City Area of Responsibility. *See* Ex. D, at 1.

11. The ICE data further show that, taken together, there were anywhere from 342 to 519 individuals subject to mandatory detention under § 1226(c) in the Newark and New York City Areas of Responsibility on one day in each month of Fiscal Year 2011. *See* Ex. D, at 1.

12. In FY 2011, approximately 110 ICE detainees were held at the Orange County Correctional Facility in Goshen, New York on any given day, according to information provided to me by immigration attorneys who routinely represent immigrants detained at that facility. Thus, even if one were over-inclusive and counted *all* 110 of those detainees as subject to

detention under § 1226(c), there were still anywhere from 232-409 mandatory detainees held in New Jersey for each month in FY 2011.

13. Moreover, these numbers likely undercount the individuals subject to mandatory detention because the ICE data lacks charge information for numerous detainees. Anywhere from 45-86 detainees in the New Jersey Area of Responsibility and 41-69 detainees in the New York City Area of Responsibility on the date each snapshot was taken have no charge information. *See* Ex. D, at 2, 5. Several of those detainees were likely subject to detention under § 1226(c).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2012, at San Francisco, CA.

A handwritten signature in black ink, appearing to read 'Michael Tan', written over a horizontal line.

Michael Tan