

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

FILED
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U.S. DISTRICT COURT
N.D. OF ALABAMA

PLAINTIFFS

- Rafiu Abimbola #A72-252-210
- Adalberto Andrade #A76-487012
- Alexander Ndaula #A78-635-873
- Leroy Bacchus #18124301
- NICO BENN #74891120
- Hussien Nasrallah #29443340
- Abdul K. Muhammad
- Agusto Moreira #41960258
- Jean Dorival #A91420735
- Christian Gonzalez
- Enrique Lopez #A74-722-700
- Okechuwu Amadi #A93-029-461
- Adriano Quante
- Dervin Headen
- Bandiau fau SAKO
- RAED JAGHAMA #A# 96-112-929
- PATRICK BROWN #A44-349-228

- Hubert Taylor A*41454991
- Cloud Williams
- ERIC Bell
- Franklin Moreno
- Jose Gonzalez

Complaint Under the
Civil Rights Act, 42 USC 1983

Bivens claim

Civil Action No. _____

CV-04-PT-1017-M

Plaintiffs,

-vs-

- CRAIG ROBINSON, Field Office Director, U.S. Immigration & Customs, Sup.
- Wes Williamson, chief of the Jail, Etowah County Detention Center
- JAMES HAYES, Sheriff, Etowah County
- DEAN HOEH, ICE SUPERVISOR, Etowah County Detention Ctr.
- Mark Johns, ICE Field Director, Atlanta

Defendants,

/

Complaint under the Civil Rights Acts
42 U.S.C. Section 1983 And Civil Rights
Complaint Pursuant to title 28
U.S.C. Section. 1331

JURISDICTION AND VENUE

This is a Civil action authorized by 42 U.S.C. Section 1983 to redress the deprivation, under Color of State Law, of rights secured by the Constitution of the United States. The Court has jurisdiction under 28 U.S.C. Section 1331 and 1343 (a) (3). Plaintiffs seeks declaratory relief Pursuant to 28 U.S.C. Section 2201 and 2202. Plaintiffs Claims for injunctive relief are authorized by 28 U.S.C. Section 2283 and 2284 and rule 65 of the Federal rules of Civil Procedures.

The United States Districts Court for the Northern district of Alabama, within whose jurisdiction the Etowah County detention Center is located is an appropriate venue under 28 U.S.C. Section 1391 (c) (2) because it is where the events giving rise this claim occurred.

PLAINTIFFS

Plaintiffs are Collectively immigration and Customs enforcement (I.C.E) detainees Currently detained at the Etowah County detention Center in Gadsden Alabama. Most of the detainees have Cases Pending in various Federal Courts Challenging their removal and for unlawful detention by I.C.E.

III DEFENDANTS

Defendant Craig Robinson is the Field director of U.S. immigration and Customs enforcement, he is legally responsible for all the detainees transferred here from Louisiana detention facilities and Parish jails.

Defendant Chief of the jail Mr Williamson is the warden or Chief of Etowah County detention Center, he is legally responsible for the operation of Etowah County detention Center and for the welfare of all the detainees and inmates.

Defendant James Hayes is the Sheriff of the Etowah County detention Center, he is legally responsible for the overall operation of Etowah County and each institution under its jurisdiction.

Defendant Mark John is the field director of I.C.E. for Atlanta. he is responsible for the supplying of legal materials to the Etowah County detention Center

Defendant Dean Roth is the on site supervisor of I.C.E. at the Etowah County detention Center he Coordinates the activities of I.C.E. at the Etowah County detention Center and is the only visible figure with which the detainees can talk to regarding their welfare and their cases.

9. Each defendant is sued individually and in his or her official capacity at all times mentioned in this Complaint each defendant acted under color of state or federal law.

III FACTS

10. Plaintiffs are all I.C.E. detainees currently detained at Etowah County detention Center in Gadsden Alabama. Majority of the detainees were transferred from Louisiana, Minnesota and other judicial districts
11. Prior to their transfer. Plaintiffs were detained at Oakdale Federal detention Center and other facilities in Louisiana, Minnesota, Atlanta. and so on.
12. Between January and February, the Oakdale detainees were first transferred to different Louisiana Parish jails. then to Etowah County detention Center in April 12-04 upon information and belief the affected detainees were the ones who choose to challenge their deportation

orders or their continued detention through a Petition for writ of habeas Corpus and other available judicial remedies. Those immigrants who agreed to be deported or continuously detained were not transferred, it is respectfully submitted that these transfers were affected as a retaliation for the immigrants exercise of their rights to judicial review of their deportation orders.

13 "ACCESS TO LEGAL MATERIALS"

At the oakdale federal detention center in Louisiana and other detention facilities in Minnesota, Georgia New York etc where Plaintiffs are previously detained they have access to all the legal materials, typewriters and computers necessary for the litigation of federal habeas Corpus.

However at Iowa County detention center there is no single federal or immigration reporter, neither is there a typewriter or computer for drafting a legal brief in fact Iowa detention center ~~did~~ not have a law library of any sort, the so called Iowa administration, what they called a law library is a room with about five books albeit outdated law books. The latest case available is from 2000.

Anytime a detainee with pending case and court deadlines request the use of a typewriter or unavailable books, the jail administration including the on site I.C.E. officer always told the detainees to write a request and none of the request were.

Answered until the Court deadline have passed
Contrary to the practice at etowa County detention
Center. The I.N.S. detention standards manual mandates
all facilities housing I.C.E. detainees to provide, at a
minimum updated legal books, typewriters, computers
and at least five hours access to these materials per
day. See detention operation standard - 4. access to
legal materials available at [i.n.s.usdoj.gov/
graphics/towreg/legal.PDF](http://i.n.s.usdoj.gov/graphics/towreg/legal.PDF). See also, 430 U.S. 817 (1977)
Prisoners have fundamental right of access to the
courts through an adequate law library.

ACCESS TO THE TELEPHONE

Defendant have collectively abridged Plaintiff's rights
to communicate with the outside world including
the courts, by contracting with global tel, a teleph-
one company that charges detainees and their families
an extortionate rate of at least \$20.00 per call
additionally, the etowa County detention center
sells telephone cards to detainees at the rate of
\$10.00 for a phone card that may only be used
once for less than 10 minutes for calls within the
united states and only 2 minutes for international
calls. There is no procedure in place for placing
legal calls to attorneys, the courts or the consu-
lates.

At the various bureau of Prisons and I.N.S.
detention facilities where the Plaintiff were
transferred prepaid calls cost only about 20-cents

Per minute and cost of Collect Calls were reasonable, additionally, detainees were allowed to make free, unmonitored Calls to their attorneys, Consulates, the Court, and their Spouses - as mandated by the I.M.S detention Standards Manual, see I.M.S Standard 2. Telephone access, available at www.imis.usdoj.gov/graphics/lawresps/teleacc.PTF

In Sum, Plaintiffs are being denied the access to the Courts and the right to Communicate with the outside world, by the telephone regulation at Etoula County Detention Center. See generally, *Washington v. Reno*, 35 F.3d 1093, 1100-01 (6th Cir. 1994) Courts have recognized that there is no legitimate governmental purpose to be attained by not allowing a reasonable access to the telephone, and such access is provided by the First Amendment, it should be noted that Plaintiffs are all immigrant with families in Foreign Countries. The extortionate rate of Phone Calls Charge, "Etoula in Concert with Global Tel. Telephone Company is an unreasonable and impracticable abridgement of the rights to Communicate with Friends and Families protected by the First Amendment as well as denial of access to the Courts."

As foreigners, Plaintiffs Communication with family members and Friends, some of which resides abroad could not be accomplished by mails System or visit because some third world Countries mail system takes several weeks for mail to be delivered, if delivered at all visits.

From foreign countries is virtually impossible considering the distance, costs and visa requirements. See, *Wooden v. Morris*, 637 F. Supp. 545 (Md. Tenn. 1986) finding cardless and expensive phone rates constitutional abuse the institution provided a procedure for indigent inmates to make free phone calls and where are means of communication like visits and mails at, \$55

"AT etowa, there is no procedure in place for indigent detainees to make free calls to their family and friends and / or legal calls to their attorneys

the etowa County detention center should be found unconstitutional as applied to the plaintiffs in this case.

ASSAULT ON DETAINEE ENRIQUE LOPEZ

Sometime in April 2004, Detainee Enrique Lopez, #A74-722-700 was assaulted by four guards in his cell, when he requested for his property and personal legal papers. He was beaten, kicked and sprayed in the face with tear gas and mace for an unspecified reason - prior to his being handcuffed and taken to Segregation.

His cellmates, Abimbola, Moreira and Andrade were all sneezing and ~~coughing~~ coughing blood as a result of the mace sprayed in the cell

RETALIATORY TRANSFERS

15 The oakdale detainees who were first transferred to Louisiana Parish jails like Concordia and Calcasieu Parish jails. Filed several Complaints with different agencies such as ACLU, Families for Freedom, 60 minutes their Congressman, Senators and the Courts.

Upon information and beliefs these detainees were now transferred to etowa County - Alabama because of the exercise of their rights to Freedom of Speech. For instance, detainee Abimbola and Amadi who first led the other detainees in several Complaints against their harsh treatment at Concordia and Calcasieu respectively were first transferred to another facility in Louisiana Pine Prairie detention Center, in order to separate them from the other detainees.

Abimbola and Amadi were transferred the same day March 10-2004, and detainee Nasrallah and Ndoula who are part of the Complaints at Concordia were also transferred to this Super maximum security etowa County detention Center as a punishment for their activism at Concordia. one of Nasrallah and Ndoula Complaint is attached as exhibit, detainee Rico Benn and Patrick Brown are victim of assault at the previous facility and have a civil rights Complaint pending in Court. it is respectfully submitted that the transfer by ICE was affected to restrict access to the Courts in the law suits pending in the western district of Louisiana and to punish Plaintiffs for filing habeas Corpus Challenging their removal and/or detention →

See *Allah v. Selvaing* - 229 F.3d. 220 (3rd Cir. 2000)
See also I.N.S. detention standard at Standard 4.R
Prohibiting retaliation because of a decision to seek
Judicial relief.

- 16 "DENIAL OF ACCESS TO RECREATION
The Etowa County detention Center do not have
any out door recreation where detainees can have
access to the sunlight, etowa maintain only 2 small
indoor lest than half the size of a basketball
court for over one hundred detainees in one unit.
"There is no adequate space or equipment to exercise
and detainees are permanently deprived of outdoor
exercise. See *Leemarie v. Maas*, 12 F.3d. 1444 (9th Cir. 1993)
Prisoners cannot be deprived of outdoor exercise for
a long time. see also I.N.S. detention standard, of
standard 27. recreation, requiring daily access to outdoor
recreation for I.N.S. detainees

- 17 DENIAL OF ACCESS TO MEDICAL NEED
AT least one detainee with serious medical needs Mr.
Abdul Kadr. Muhammad has been denied access to medical
care. Abdul Kadr is a diabetic with high blood
presume he receive only two doses of insulin at
Etowa, while the doctor at Minnesota detention facility
where he was transferred recommended four doses of
insulin. This of access to medical care to Abdul
Kadr and other similarly situated detainees constitute
a cruel and unusual punishment. see *Taylor v. Adams*
221 F.3d. 1254-1258. (11th Cir. 2000)

18

DENIAL OF ACCESS TO NUTRITIONAL FOOD

"AT Etowah, detainees are being fed with meals which will be insufficient for a kindergarten children. The food is lacking in all nutrition and variety. In fact Etowah served the I.C.E. detainees with almost every day with one slice of bread.

"To add insult to the injury, Etowah sells expensive food items in the Commissary, for instance a cup of soup that cost 25 cents at any local store is being sold to the detainees here for \$1.00.

"As a result, detainees who cannot afford to buy these Commissary items are forced to starve or constipate as a result of eating beans daily.

"UPON information and believe, Etowah serves meat to the detainees only once a week.

"IT is respectfully submitted that Etowah action or lack thereof is unconstitutional as it punishes detainees who are not under any criminal sentences with starvation and extortion of those who can afford to purchase the Commissary food items. See *Robles v. Coughlin*, 725 F.2d (2nd Cir. 1983) Prisons are required to serve food that is nutritious and prepared under clean conditions.

18 RESTRICTION, ON FREEDOM, OF RELIGIOUS

PRACTICE, FOR MUSLIMS, DETAINEES

The muslims detainees at etowa detention center are only allowed 20 minutes to perform the weekly ju-mah service, mandated by their religion the ju-mah service which includes a kuthbah (preaching) which takes approximately 1 1/2 - 2 hours of other facilities where the detainees were transferred.

Additionally, the muslim population at etowa are not allowed to elect or choose an imam to lead their prayers as is the practice of the islamic religious faith. it should be noted that the etowa detention center did not provide a non-spousal religious leader from the community. see. Anderson v. Angelone 123 F.3d 1197 (9th Cir. 1997)

IT is respectfully submitted that the restrictions on the muslims Plaintiffs rights to religious freedom violates the religious freedom restoration act (RFRA) as well as the "free exercise clause of the first amendment to the U.S. Constitution

"Totality of the Conditions Theory"

To the extent that the Court found any of the conditions described above did not on their own rises to the level of cruel and unusual punishment the Court should use the totality of the conditions theory, and find that the conditions described add up to create an overall effect that is unconstitutional. Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). see also Johnson, 501 U.S. at 305 →

(Holding that where multiple conditions add up to create a single identifiable harm - if may create an overall effect that is unconstitutional)

STANDARD FOR REVIEW OF CLAIM

Like pretrial detainees, immigration detainees like the Plaintiffs in this case may challenge the conditions of their confinement under due process clause. Some courts have held that such challenge should be analyzed under the *Bell v. Wolfish*, 441 U.S. 520 (1979) standards. See e.g. *Edwards v. Johnson*, 209 F.3d 772 (5th Cir 2000) *Medina v. Oneill*, 838 F.2d 800 (5th Cir 1988).

However, other courts have held that it is not yet clear how immigration detainees claims should be treated. In *Preval v. Reno*, 203 F.3d 821 (4th Cir 2000) the fourth circuit reversed a lower court ruling on a case brought by I.N.S. detainees because the district court had dismissed their claims using the standards for pretrial detainees, without giving the detainees the opportunity to argue about the correct standards.

In the absence of direction from the Supreme Court or the eleventh circuit on the standard to be used for evaluating immigration detainees claims, the court respectfully urged to apply the more lenient standard. The standard that is protective of immigrants rights than the standards for pretrial detainees. IF the correct standard is unclear to the court, the court should appoint a counsel to represent the Plaintiffs in this case.

EXHAUSTION OF LEGAL REMEDIES

Plaintiffs used the etowa County detention Center grievance system to try to solve the problems but no response were given to the grievance upon information and belief. the etowa County detention Center administration allegedly shredded all grievances received from I.C.E detainees.

In any event, the exhaustion requirement of P.L.R.A. did not apply to the Plaintiffs in this case as they are all I.C.E. detainees. See Agyemang v. U.S., F.3d (9th Cir. 2002) - F.3d - (9th Cir. 2002), see also, EL Restore Legal Services, 959 F.2d, 742, 746 (9th Cir. 1991)

V. LEGAL CLAIMS

Plaintiffs recite and incorporate by reference paragraphs 1 to

The denial of access to the adequate law library and reasonably priced or free legal calls to attorneys, courts, spouses and consulates. violate Plaintiffs Constitutional rights and constitute a denial of due process of the law guaranteed by the 5th amendment of the United States Constitution.

The defendant action or lack thereof in these regards also violates Plaintiffs rights to the equal of the law as stated in the 5th and 14th amendment as it inactionally discriminates between Plaintiffs and other similarly situated aliens detained at F.D.E. oakdale. B.F.D.T. batavia. new york etc.

25 Plaintiffs further submits that the retaliatory transfers of detainees for exercising their rights to judicial review of their removal orders and later the filing of complaints against the former institutions constitute a governmental conduct that shocks the conscience within meaning of the 5th amendment to the U.S. Constitution.

26 Defendants Craig Robinson, Wes. Williamson and James Hayes subjected Plaintiffs to cruel and unusual punishment although Plaintiffs are not under any criminal sentences and could not be punished at all. Plaintiffs submit that their rights under the 8th amendment is violated when the defendant detains them in a maximum security lock up, without access to outdoor recreation or any sunlight and without proper medical attention and innutritious food.

27 The fourteenth amendment is universal and applies to everyone within the territorial jurisdiction of the United States "without regards to any differences of race of colour or nationality" See, Wong Wing v. United States 163 U.S. 228 (1896), Plyler v. Doe, 457 U.S. 702 (1982) defendants have violated the Plaintiffs 14th amendment rights to equal protection of the law by subjecting restricting rights of muslim detainees to practice their religion as required by their religious faith.

28 The Plaintiffs has no Plain adequate or Complete remedy of law to redress the wrong described here Plaintiffs has been and will continue to be irreparably injured by the conduct of the defendants unless this Court grants the declaratory and injunctive reliefs which the Plaintiffs seeks.

"PRAYER FOR RELIEF"

Wherefore, Plaintiffs respectfully prays that this Court enter judgement granting Plaintiffs.

29 A declaration that the acts and omissions of the defendants described herein violated Plaintiffs rights under the Constitution and laws of the United States.

30 A Preliminary injunctions ordering defendants to comply with the ins detention standards manuals as it relate to.

- A Telephone Access: Provide a reasonable prepaid calls and collect calls rates, and a procedure for indigent detainees to make free calls to families, the Court, attorneys and other legal calls.
- B Access to legal materials: Provide updated law books typewriters and computers and a reasonable access to these materials
- C Recreation: Allow more time for recreation and provide access to an outdoor recreation.
- d. Religion: Allow the muslims detainees sufficient time (at least 1 1/2 hour) for ju-maah service and the election of an imam among the muslims detainees.

E Food Commissary: order the provision of nutritious food and sufficient meals with nutrition and enough calories to detainees.

F

F Medical needs: Provide medical needs consistent according to inmate detention standards and the United States Constitution

31 Compensatory damages in the amount to be set by the Court.

32 Punitive damages in the amount to be decided by the Court.

33 A jury trial on all issues triable by jury

34

35 Any additional relief this Court deems just and equitable.

Dated May 14, 2004

Respectfully submitted

Rafiu Abimbola

RAFIU ASADI ABIMBOLA

HA 72-852-210

Etowah County Jail

827 Forrest Ave.

Gadsden, AL 35901