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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

GARFIELD GAYLE, *et al.*,

Plaintiffs,

v.

JANET NAPOLITANO, *et al.*,

Defendants.

***ORAL ARGUMENT REQUESTED***

No. 3:12-cv-02806-FLW

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**BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

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### PRELIMINARY STATEMENT

Plaintiffs Garfield Gayle, Sheldon Francois, and Neville Sukhu bring this action on behalf of the class of all individuals who, like them, are or will be detained within the State of New Jersey pursuant to the mandatory detention provision of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(c). These individuals are held without even the possibility of bail or a bail hearing for the duration of their immigration removal cases, including during administrative appeals to the Board of Immigration Appeals (“BIA”) and judicial review by the United States Court of Appeals.

This class action challenges the standard and procedures that the government uses to determine whether an immigrant may be detained without a bond hearing under this harsh provision of the immigration law, and to which every member of the proposed class is subject. Based upon the decision of the BIA in *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), the government claims the authority to subject every putative class member to mandatory detention whenever it charges a ground for removal designated in the statute, unless an Immigration Judge determines that the government is “substantially unlikely” to prevail on the charges. That is, under *Matter of Joseph*, members of the proposed class bear the burden of affirmatively demonstrating that the government’s charges are meritless. Moreover, under current government policy, they must be detained even if they have a substantial challenge to the government’s charges of removability or a substantial claim for discretionary relief that would entitle them to remain lawfully within the United States. This violates both the governing statute and the Due Process Clause of the Constitution.

This class action also challenges the procedures by which the government has implemented so-called *Joseph* hearings. Specifically, the government has no policy to provide notice to individuals detained pursuant to 8 U.S.C. § 1226(c) of their right to request a *Joseph*

hearing. To the contrary, the standard-form Notice of Custody Determination (Form I-286) used by the immigration authorities, which advises immigrant detainees of the government's decision with respect to their detention and purports to notify detainees of their rights, is affirmatively misleading, stating that individuals subject to mandatory detention "may not request a review of this determination by an immigration judge." See Declaration of Michael Tan, Ex. E ("Tan Decl.") (Form I-286 provided to plaintiff Francois); *id.* Ex. F (Deposition of Wesley Lee, Assistant Field Office Director, Los Angeles Field Office of U.S. Immigration and Customs Enforcement, at 208:18-209:4 and 243:16-22, *Rodriguez v. Robbins*, No. 2:07-cv-03239-TJH-RNB (C.D. Cal. deposition filed June 25, 2012) (confirming notice policy)). Moreover, even if an immigrant is informed of the available procedure and is able to demand a bond hearing, the Immigration Court generally does not make or maintain a contemporaneous record of the proceedings, either by transcript, audiotape, or otherwise, thereby frustrating the ability of potential class members to meaningfully appeal adverse determinations. See U.S. Dep't of Justice, Exec. Office for Immig. Rev., Immigration Court Practice Manual, § 9.3(e)(iii) & (vii) (2008), <http://www.justice.gov/eoir/vll/OCIJPracManual/Chap%209.pdf> (providing that "[b]ond hearings are generally not recorded;" that the Immigration Judge's bond determinations, which are rendered orally, are not transcribed; and that a written memorandum decision is prepared only if a detainee appeals); see also *Matter of Chirinos*, 16 I&N Dec. 276, 277 (BIA 1977) (holding that "[t]here is no right to a transcript of a bond redetermination hearing"). These deficiencies likewise violate the statute and the Constitution.

Accordingly, plaintiffs seek certification of a class under Rule 23(b)(2) of individuals in New Jersey who are or will be detained pursuant to 8 U.S.C. § 1226(c) in order to obtain class-wide declaratory and injunctive relief, requiring (1) that the mandatory detention statute,

§ 1226(c), not be applied to individuals who have a substantial challenge to the government’s charge of removability, including a substantial claim for discretionary relief; (2) that adequate notice be provided of the right to a hearing before an Immigration Judge to challenge whether the class member is properly detained under § 1226(c); (3) that at such a hearing the government bears the burden of making a *prima facie* showing of deportability or inadmissibility on grounds that trigger mandatory detention under the statute, and the class member has the opportunity to demonstrate that he or she has a substantial challenge to the government’s charges of removability, or a substantial claim for discretionary relief that would render the individual non removable on the government’s charges; and (4) that a contemporaneous record of any such hearings be made and maintained.

### ARGUMENT

#### **I. THE CLASS SHOULD BE CERTIFIED BECAUSE PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(A) AND RULE 23(B)(2).**

Class certification is appropriate where plaintiffs establish that they meet all four requirements of Federal Rule of Civil Procedure 23(a) — numerosity, commonality, typicality, and adequacy — and at least one subpart of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997); *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 320 (3d Cir. 2009) (“Class certification requires a finding that each of the requirements of Rule 23 has been met.”). As the Supreme Court recently stated, Rule 23 “creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 1431, 1437 (2010). In this case, the Class satisfies both Rule 23(a) and Rule 23(b)(2), the latter of which “permits class actions for declaratory or injunctive relief where ‘the party opposing the class has acted or

refused to act on grounds generally applicable to the class.” *Amchem Prods.*, 521 U.S. at 614 (internal citations omitted); *accord Wal-Mart, Inc. v. Dukes*, 131 S. Ct. 2541, 2557 (2011).<sup>1</sup>

**A. The Class Is So Numerous that Joinder of All Members Is Impracticable**

Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” Impracticability is not synonymous with impossibility, but rather means “that the difficulty or inconvenience of joining all members of the class calls for class certification.” *Lerch v. Citizens First Bancorp., Inc.*, 144 F.R.D. 247, 250 (D.N.J. 1992) (internal citation omitted); *see also Marcus v. BMW of N. Am.*, 687 F.3d 583, 594-95 (3d Cir. 2012). “There is no minimum number of members needed for a suit to proceed as a class action.” *Id.* at 595. The United States Court of Appeals for the Third Circuit, however, has stated that “generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of

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<sup>1</sup> In the alternative, Plaintiff-Petitioners seek certification of a habeas corpus class of detainees in the District of New Jersey. A habeas corpus petition typically involves a claim for only individual relief. However, it is well-established that, in appropriate circumstances, a habeas corpus petition may proceed on a representative or class-wide basis. *See U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 393, 404 (1980) (holding that class representative could appeal denial of nationwide class certification of habeas and declaratory judgment claims); *Ali v. Ashcroft*, 346 F.3d 873, 886-91 (9th Cir. 2003) (affirming certification of nationwide habeas and declaratory class), *overruled on other grounds by Jama v. ICE*, 543 U.S. 335 (2005); *Williams v. Richardson*, 481 F.2d 358, 361 (8th Cir. 1973) (holding that “under certain circumstances a class action provides an appropriate procedure to resolve the claims of a group of petitioners and avoid unnecessary duplication of judicial efforts in considering multiple petitions, holding multiple hearings, and writing multiple opinions”); *Death Row Prisoners of Pennsylvania v. Ridge*, 169 F.R.D. 618, 620 (E.D. Pa. 1996) (certifying habeas class action challenging state’s status under Antiterrorism and Effective Death Penalty Act). *See also Yang You Yi v. Reno*, 852 F. Supp. 316, 326 (M.D. Pa. 1994) (noting that “class-wide habeas relief may be appropriate in some circumstances.”). The authority for such a proceeding is found by the Courts in Federal Rule of Civil Procedure 81(a)(4), which provides that the Federal Rules of Civil Procedure are applicable to proceedings for habeas corpus to the extent that the practice in such proceedings “is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Proceedings, and has previously conformed to the practice in civil actions.” Accordingly, the courts have held that even if Rule 23 is technically inapplicable to habeas corpus proceedings, courts should look to Rule 23 and apply an analogous procedure. *See, e.g., Ali*, 346 F.3d at 891 (rejecting argument that Rule 23 requirements could not be used for guidance in determining whether a habeas representative action was appropriate); *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125-27 (2d Cir. 1974) (citing *Harris v. Nelson*, 394 U.S. 286, 294 (1969)) (finding in habeas action “compelling justification for allowing a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure”); *United States v. Stelaff*, 546 F.2d 218, 221-22 (7th Cir. 1976); *Bijeol v. Benson*, 513 F.2d 965, 967-68 (7th Cir. 1975); *Fernandez-Roque v. Smith*, 539 F. Supp. 925, 929 n.5 (N.D. Ga. 1982) (noting that “a number of circuit courts have upheld the notion of class certification in habeas cases, whether certification is accomplished under Fed. R. Civ. P. 23, or by analogy to Rule 23.”); *accord* William B. Rubenstein, *Newberg on Class Actions* § 25.28 (4th ed. 2012).

Rule 23(a) has been met.” *Id.* (quoting *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001)); *see also McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 455 (D.N.J. 2008) (“When dealing with a class that numbers in the hundreds, joinder will most often be impracticable.”) (citation omitted). Moreover, “[t]he requirements of Rule 23(a), and particularly, the numerosity requirement, may be more liberally construed in civil rights cases in which injunctive relief is sought.” *Osgood v. Harrah’s Entertainment, Inc.*, 202 F.R.D. 115, 122 (D.N.J. 2001). *See also Weiss v. York Hosp.*, 745 F.2d 786, 808 (3d Cir. 1984); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001).

Plaintiffs easily satisfy these requirements because the population of individuals being mandatorily detained in New Jersey pursuant to § 1226(c) numbers in the hundreds. Indeed, data from U.S. Immigration and Customs Enforcement (ICE), gathered through a request under the Freedom of Information Act (FOIA), Tan Dec. ¶¶ 3-5, Exs. A-C, and summarized in a chart appended to the Declaration of Michael Tan, *id.* ¶ 6, Ex. D, disclose the number of individuals subject to mandatory detention in both ICE’s Newark Area of Responsibility (which includes three detention facilities in New Jersey) and ICE’s New York City Area of Responsibility (which includes four detention facilities, three of which are in New Jersey and one of which is in Goshen, New York), *id.* ¶¶ 7-10. More specifically, the data show that on any given day anywhere from 149 to 266 individuals were subject to mandatory immigration detention in the Newark Area of Responsibility — *i.e.*, were held in New Jersey detention facilities. *Id.* ¶ 9, Ex. D. An additional 191 to 259 individuals were subject to mandatory detention in the New York City Area of Responsibility. *Id.* ¶ 10, Ex. D. Together, this means that there were anywhere between 342 and 519 class members in both Areas of Responsibility. *Id.* ¶ 11. Some of these individuals are held in Goshen, New York; the data do not specify precisely how many. But a

very conservative calculation of the number of mandatory detainees in New Jersey suggests that there are well over 200 mandatory detainees in New Jersey at any given time, and therefore well over 200 class members, even without counting individuals who will enter the class in the future. *Id.* ¶¶ 12-13; *see Gurmankin v. Costanzo*, 626 F.2d 1132, 1135 (3d Cir. 1980) (in assessing numerosity, district court may consider “number of persons [in proposed class] who have been affected in the past or may be affected in the future”). This easily satisfies the numerosity requirement of Rule 23(a)(1). *See Marcus*, 687 F.3d at 594-95.

Moreover, each and every class member is, by definition, imprisoned in a detention facility, and the class members are spread among no fewer than six separate facilities throughout New Jersey. It would be enormously “administratively burdensome [to conduct an] action with all interested parties compelled to join and be present,” precisely the problem that class certification — and the “numerosity” requirement of Rule 23(a)(1) in particular — is intended to address. *Marcus*, 687 F.3d at 595. Certification of this class would also serve another objective of the “numerosity” requirement by “creat[ing] greater access to judicial relief . . . for those persons with claims that would be uneconomical to litigate individually” because of the significant obstacles inherent in the representation of detainees, especially where, as here, the detainees have no right to appointed counsel. *Id.*

Plaintiffs easily satisfy the requirement of Rule 23(a)(1). The motion for class certification should therefore be granted.

**B. There Are Common Questions of Both Law and Fact**

Plaintiffs also satisfy the requirement of Federal Rule of Civil Procedure 23(a)(2) that they share “questions of law or fact common to the class.” This requirement of commonality is “not a high bar,” as it is satisfied upon showing that the “named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *In re Chiang*, 385 F.3d 256,

265 (3d Cir. 2004) (quoting *Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 184 (3d Cir. 2001)); see also *Wal-Mart*, 131 S. Ct. at 2556 (“For purposes of Rule 23(a)(2), even a single common question will do.”) (internal quotations and alterations omitted). “A finding of commonality does not require that all class members share identical claims, and indeed ‘factual differences among the claims of the putative class members do not defeat certification.’” *In Re Prudential Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 310 (3d Cir. 1998) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). Rather, class members must show only that they “are subject to the same harm,” or that the “defendant [is] engaging in a common course of conduct toward them.” *Baby Neal*, 43 F.3d at 56–57. Most recently, the Supreme Court summarized Rule 23(a)(2) as requiring that “[proposed class members’] claims must depend upon a common contention” and that the “common contention must be of such a nature that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 131 S. Ct. at 2551.

Here, the “common contentions” of all individuals detained under § 1226(c) are plain: all putative class members are all subject to detention without bail pursuant to the standard set forth in *Matter of Joseph*, which plaintiffs contend is unlawful. In addition, pursuant to the government’s policy of providing misleading information in the Notice of Custody Determination, which states that there is no right to review of mandatory detention, members of the proposed class are denied adequate notice of their entitlement to a hearing, see Tan Decl. Exs. E-F; all have been detained without the government having been required to bear its burden of making out a *prime facie* showing of removability or inadmissibility on one of the grounds designated under the mandatory detention statute; and none have been provided with an

opportunity, in the context of a detention hearing, to establish that they have substantial challenges to the government's charges of removability or claims for discretionary relief that would allow them to remain in the United States, *see Matter of Joseph*, 22 I&N Dec. 799. Moreover, they are all subject to *Joseph* hearings that are procedurally deficient for lack of a contemporaneous record of proceedings. In other words, all individuals detained under § 1226(c) suffer the same harm: mandatory detention under an improper standard which does not require a determination as to whether they have a substantial challenge to removal, and without having been afforded lawful process for determining whether detention under § 1226(c) is appropriate.

Plaintiffs understand, of course, that the facts in the underlying immigration case of each member of the proposed class vary. But these disparate facts are irrelevant to the common contention asserted here: that the government holds all of them under the unlawful and unconstitutional *Joseph* standard and deficient hearing procedures. And the challenged conduct depends not at all on the underlying facts of their immigration cases, other than that the government has determined that each member of the class will be detained without bail under § 1226(c). Certification of a class in these circumstances is entirely appropriate — classes have been certified in the Third Circuit “in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant’s conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct.” *Baby Neal*, 43 F.3d at 57 (citing C. Wright and A. Miller, *Federal Practice and Procedure*, § 1763 at 219); *see also Stewart*, 275 F.3d at 227 (finding commonality where at least one question of fact or law is common to each member of the prospective class, “despite the differences that undoubtedly exist from case to case”).



Moreover, this is not a case in which the disparate facts of individual cases render illusory the class-wide resolution of “an issue that is central to the validity of each one of the claims.” *Wal-Mart*, 131 S. Ct. 2550-57 (finding that proposed class of all current and former female employees of Wal-Mart alleging sex-discrimination in employment lacked commonality because there was no “glue holding the alleged *reasons* for the [employment] decisions [at issue] together.”). Plaintiffs seek an order requiring the defendants to afford class members a process that would meaningfully assess whether the class members in fact, have a substantial challenge to removal and that allows them to challenge their mandatory detention consistent with the applicable statutes and constitutional protections. They are entitled to this relief irrespective of the facts underlying their particular immigration cases. To be sure, the facts of each class member’s case may affect whether, under the lawful process sought, a particular individual is or is not properly detained under § 1226(c). But those facts are not before this Court, and need not be considered in judging the adequacy of the current standards, and process under *Joseph*. That is, it is for an appropriate tribunal to judge the facts of individual cases; plaintiffs request this Court only to correct the unlawful standards and process that the defendants currently employ.

In sum, the proposed plaintiff class satisfies the commonality requirements of Rule 23(a)(2). Their motion for class certification should be granted.

**C. The Claims of the Representative Plaintiffs Are Typical of the Claims of the Class as a Whole**

Named plaintiffs Gayle, Francois and Sukhu satisfy Rule 23(a)(3)’s requirement that their claims be typical of the class as a whole. The requirement of typicality, like that of commonality, “serve[s] as [a] guidepost for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly

and adequately protected in their absence.” *General Tel. Co. v. Falcon*, 457 U.S. 147, 158 n. 13 (1982). The “independent legal significance” of the typicality inquiry “derives . . . from its ability to ‘screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class even though common issues of law or fact are present.’” *Marcus*, 687 F.3d at 598 (quoting 7A Wright & Miller, Federal Practice & Procedure § 1764). See also *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 631–32 (3d Cir. 1996), *aff’d sub nom.*, *Amchem Prods, Inc. v. Windsor*, 521 U.S. 591 (1997); *Baby Neal*, 43 F.3d at 57. The typicality inquiry thus “ensure[s] that the interests of the absentees will be adequately represented by the named plaintiffs.” *In re Cmty Bank of N. Va & Guar. Nat’l Bank of Tallahassee Second Mortg. Loan Litig.*, 418 F.3d 277, 393 (3d Cir. 2005) (citing *Falcon*, 457 U.S. at 157 n.13).

“To determine whether a plaintiff is markedly different from the class as a whole” the Court must consider “the attributes of the plaintiff, the class as a whole, and the similarity between the plaintiff and the class.” *Marcus*, 687 F.3d at 598. In particular, “(1) the claims of the class representative must be generally the same as those of the class in terms of both (a) the legal theory advanced and (b) the factual circumstances underlying that theory; (2) the class representative must not be subject to a defense that is both inapplicable to many members of the class and likely to become a major focus of the litigation; and (3) the interests and incentives of the representative must be sufficiently aligned with those of the class.” *Id.* (quoting *In re Schering Plough Co. ERISA Litig.*, 589 F.3d 585, 599 (3d Cir. 2009)).

Here, the claims of the named plaintiffs regarding the unlawfulness of the hearings at issue are identical to the claims of the class as a whole. In this regard, and as discussed above, it is immaterial that the factual circumstances underlying their immigration claims may be

substantively different from those of other class members because “[lead] plaintiff[s]’ claim[s] arise from the same . . . practice or course of conduct” — *i.e.*, the unlawful *Joseph* hearing process utilized by the government — “that give[] rise to the claims of the class members.” *Marcus*, 687 F.3d at 598. See *In re Prudential Ins.*, 148 F.3d at 311 (“Even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories or where the claim arises from the same practice or course of conduct.”); *Baby Neal*, 43 F.3d at 63 (“[A] claim framed as a violative practice can support a class action embracing a variety of injuries so long as those injuries can all be linked to the practice.”); accord 1 William B. Rubenstein, *Newberg on Class Actions* § 3.34 at 278 (5th ed. 2011).

Moreover, that plaintiffs Gayle and Sukhu have additional challenges to the lawfulness of their detention, as set forth in the Third, Fourth and Fifth Causes of Action alleged in the Complaint, does not defeat a finding of typicality. The typicality requirement acts as a bar to class certification only when “the legal theories of the named representatives *potentially conflict* with those of the absentees.” *Georgine*, 83 F.3d at 631 (emphasis added). Here, there is no conflict between the statutory and constitutional claims that all class members share and the other claims that individual class members, including the named plaintiffs, may assert. To the contrary many class members will, like certain of the named plaintiffs, have claims beyond the core allegations of the Complaint, set forth in the First and Second Causes of Action, which allege that the process underlying their detention is unlawful and that they are being improperly held without their challenges to removability having been determined. Those class members who have such alternative claims for relief from detention will not be precluded by this action from asserting those claims in their own cases; and “the [t]he mere fact that some members of

the class may have [such] additional . . . . claims, not asserted by the named plaintiffs, does not preclude a finding of typicality.” *In re Cmty. Bank of N. Va.* , 418 F.3d at 303; *see also* Rule 23(c)(4) (“When appropriate, an action may be brought or maintained as a class action [only] with respect to particular issues.”). That is, the fact that certain of the named plaintiffs have additional claims, beyond the class-wide challenge to the *Joseph* standard and hearings, does not create a conflict with the rest of the class, who may or may not have such claims in addition to the *Joseph* claims, but who, in any event, are identically situated with regard to the class-wide claims. *See, e.g., Geraghty v. U.S. Parole Comm’n*, 579 F.2d 238, 252-53 (3d Cir. 1978) (stating that district court’s observation that “not all of the grounds of action alleged in the complaint are applicable to the class” was an improper basis for denying certification), *vacated on other grounds*, 445 U.S. 388 (1980); *Cannon v. Cherry Hill Toyota, Inc.* , 184 F.R.D. 540, 544 (D.N.J. 1999) (“[T]he fact that Cannon has an additional individual claim against [the defendant] does not detract from her ability to fairly represent the interests of absent class members.”); *Kalow & Springut, LLP v. Commence Corp.* , No. 07-cv-3442-FLW, 2011 WL 3625853 (D.N.J. Aug. 15, 2011) (Wolfson, J.) (“[I]t is well settled that a district court can partially certify a class as to a single cause of action within a suit.”); *Florence v. Bd. of Chosen Free holders of County of Burlington*, No. 05-cv-3619, 2008 WL 800970 (D.N.J. Mar. 20, 2008) (“[T]he mere fact that Plaintiff brings additional claims on his own behalf does not render his unlawful strip search claim atypical of the unnamed putative class members’ claims.”); *Jordan v. Commonwealth Fin. Sys.*, 237 F.R.D. 132, 138 (E.D. Pa. 2006) (“Additional claims by the class representative do not render his claims atypical of the class; instead, the claim need only arise from the same ‘practice or course of conduct that gives rise to the claims of the class members’ and be “based on the

same legal theory.’” (quoting *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir.1992)).

The named plaintiffs satisfy the requirements of Rule 23(a)(3). For this reason too, their motion to certify this matter as a class action should be granted.

**D. The Representative Plaintiffs Will Fairly and Adequately Protect the Interests of the Class**

Class certification is also appropriate where, as here, the named representative plaintiffs will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy requirement of 23(a)(4) is meant to “to determine [1] that the putative named plaintiff has the ability and the incentive to represent the claims of the class vigorously, . . . and [2] that there is no conflict between the individual’s claims and those asserted on behalf of the class.” *Larson v. AT&T Mobility*, 687 F.3d 109, 132 (3d Cir. 2012) (quoting *In re Cmty Bank of N. Va.*, 418 F.3d at 291 (alterations in original)). cew

In this case, the named, representative plaintiffs here have both the ability and the incentive to present the claims of the class vigorously. They are, like all class members, detained without bond, and are anxious to return to their lives and to their families. And their chances of winning release on bond — exactly like those of all class members — will markedly increase if their claims on behalf of the class are successful. Having already spent months in detention during the pendency of their immigration cases, they have a strong incentive to vigorously represent the interests of the class, and the ability to do so. Nor are there conflicts between the lead plaintiffs and the other class members. Rather, as discussed above, *supra* § I.C, the named plaintiffs seek precisely the same relief as the class as a whole — an opportunity to challenge their eligibility for mandatory detention pursuant to standards and procedures that comply with the applicable statutes and with the Constitution.

Finally, the proposed class will be represented by adequate counsel. Counsel are expert in immigration law, detainee rights, and class action litigation. They have the motivation and resources to vigorously litigate this case. More to the point, and as explained in greater detail in Section II below, counsel satisfy all of the requirements enumerated in Rule 23(g) for appointment as class counsel. *See Larson*, 687 F.3d at 132 n.36 (“Although questions concerning the adequacy of class counsel were traditionally analyzed under the aegis of the adequate representation requirement of Rule 23(a)(4) . . . those questions have, since 2003, been governed by Rule 23(g).” (quoting *In re Cmty. Bank of N. Va.*, 622 F.3d at 292) (alterations in original)). Accordingly, the adequacy requirements of Rule 23(a)(4) are satisfied.

**E. Class Certification is Appropriate under Rule 23(b)(2)**

In addition to satisfying the requirements of Rule 23(a), the proposed Class here satisfies Rule 23(b)(2), which requires a showing that “the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Importantly, the Class satisfies both of Rule 23(b)(2)’s two enumerated prongs. First, Defendants have acted or refused to act on grounds generally applicable to all members of the Class. Second, the relief sought is injunctive and declaratory in nature.

As mentioned, the government policies that plaintiffs challenge — the unlawful legal standard and inadequate procedures that are utilized in detention hearings under *Matter of Joseph* — apply to all class members simply by virtue of their designation as mandatory detainees under § 1226(c), without regard to the individual circumstances of their cases or any other differences among them. It is plain, therefore, that the government has “acted . . . on grounds generally applicable to the class.” Rule 23(b)(2). Indeed, civil rights actions such as this one, which challenge government policies that target a particular class of people are prototypical (b)(2) class

actions. *See Wal-Mart*, 131 S. Ct. at 2557 (“As we observed in *Amchem*, ‘[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples’ of what (b)(2) is meant to capture.”) (quoting *Amchem*, 521 U.S. at 614)

Moreover, with regard to the class claims, plaintiffs do not seek any “individualized” relief, such as damages, whatsoever. *See Wal-Mart*, 131 S. Ct. at 2558 (holding that “[p]ermitting the combination of individualized and classwide relief in a (b)(2) class is . . . inconsistent with the structure of Rule 23(b)”). As explained above, plaintiffs seek only an order declaring that the defendants’ current standard and procedures governing mandatory detention are unlawful. Ultimately, individualized determinations will have to be made as to whether any given class member is in fact properly detained under § 1226(c), but those determinations are not — with the exception of the additional non-class claims raised by the named plaintiffs in the Third, Fourth and Fifth claims for relief — the subject of this lawsuit, and will not be made by this Court.

The second requirement of Rule 23(b)(2) — that the relief sought be injunctive or declaratory in nature — attempts to ensure that determining the legality of a defendant’s behavior with respect to an entire class is appropriate. *See* Advisory Committee’s Note to the 1966 Amendment to Rule 23. Class certification under Rule 23(b)(2) does not require that the party opposing the class has acted in a manner that is directed or damaging to each and every class member. “What is important is that the relief sought by the named plaintiffs should benefit the entire class.” *Baby Neal*, 43 F.3d at 59. As the Third Circuit has explained, Rule 23(b)(2)’s requirements are “almost automatically satisfied in actions primarily seeking injunctive relief.” *Baby Neal*, 43 F.3d at 58; *see also Stewart*, 275 F.3d at 228; *Barnes v. American Tobacco Co.*, 161 F.3d 127, 142 (3d Cir. 1998); *Weiss*, 745 F.2d at 811. Most recently, the Supreme Court

reiterated this rationale for (b)(2) class actions, stating in *Wal-Mart v. Dukes* that “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant.” 131 S. Ct. at 2557.

In this case, the proposed class seeks only declaratory and injunctive relief. This relief would resolve the claims of each and every class member with respect to the illegality or unconstitutionality of the standard and procedures that have resulted in their detention, and would provide them with an appropriate remedy. Because the proposed class accordingly satisfies all necessary requirements for certification under Rule 23(a) and Rule 23(b)(2), plaintiffs respectfully request that this Court certify the class, designate plaintiffs as class representatives, and appoint plaintiffs’ counsel as class counsel pursuant to Rule 23(g).

## **II. THIS COURT SHOULD APPOINT UNDERSIGNED COUNSEL AS CLASS COUNSEL**

Under Rule 23(g)(1), “a court that certifies a class must appoint class counsel.” In appointing class counsel, the court must consider four factors set out in Rule 23(g)(1)(A):

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Here, the plaintiffs seek appointment of the American Civil Liberties Union’s Immigrants’ Rights Project (ACLU-IRP), the American Civil Liberties Union of New Jersey (ACLU-NJ), and



the John J. Gibbons Fellowship in Public Interest and Constitutional Law at Gibbons P.C. as counsel for the class. These counsel amply satisfy the requirements set out above.

The ACLU Immigrants' Rights Project has long worked to enforce the constitutional and statutory constraints on the federal government's power to subject noncitizens to administrative immigration detention. The ACLU-IRP has litigated all of the key cases in this area as either counsel of record or *amicus curiae*. See, e.g., *Demore v. Kim*, 538 U.S. 510 (2003) (counsel of record); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (amicus); *Clark v. Martinez*, 543 U.S. 371 (2005) (amicus); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011) (amicus); *Leslie v. Attorney General of the United States*, 678 F.3d 265 (3rd Cir. 2012) (amicus); *Patel v. Zemski*, 275 F.3d 299 (3d Cir. 2001) (counsel of record); *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (counsel of record); *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) (counsel of record); *Tijani v. Willis*, 430 F.3d 1241 (9th Cir. 2005) (counsel of record); *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942 (9th Cir. 2008) (amicus); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011) (amicus); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (counsel of record). Several of these cases have been class actions brought on behalf of immigration detainees. See, e.g., *Rodriguez v. Hayes*, No. 07-cv-3239 (C.D. Cal. filed May 16, 2007) (counsel of record) (challenging the prolonged detention without bond hearings of noncitizens in the Central District of California); *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (granting class certification); *Franco-Gonzalez v. Holder*, 828 F. Supp. 2d 1133 (C.D. Cal 2011) (counsel of record) (seeking right to appointed counsel in removal proceedings for mentally disabled immigration detainees); *Alli v. Decker*, 644 F. Supp. 2d 535 (M.D. Pa 2009) (counsel of record) (challenging prolonged mandatory detention of lawful permanent residents in Pennsylvania); *Alli v. Decker*, 650 F.3d 1007 (3d Cir. 2011) (holding that the INA did not preclude classwide declaratory relief).

Moreover, as part of its research and advocacy, ACLU-IRP routinely seeks government records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, regarding the size and characteristics of the immigration detention population, and litigates FOIA enforcement actions. *See* Tan Decl. ¶ 2; *ACLU v. Dep't of Homeland Security*, No. 1:11-cv-03786-RMB (S.D.N.Y. filed June 3, 2011) (counsel of record) (FOIA suit for records related to long-term ICE detention population and ICE administrative custody review process).

The American Civil Liberties Union of New Jersey Foundation has extensive experience litigating class-wide actions in civil rights matters. Most recently, the ACLU-NJ served as class-action counsel in *Jones v. Hayman*, 418 N.J. Super. 291, 13 A.3d 416 (App. Div. 2011), and *Colon v. Passaic County*, No. 08-cv-4439 (D.N.J. filed Sept. 5 2008). In *Jones*, the ACLU-NJ represented a class of female prisoners who were improperly transferred and kept in harsh conditions in a small section of a men's prison. The ACLU-NJ successfully obtained a preliminary injunction against further transfers of women to the men's prison and, after extensive litigation, the State resolved the case by transferring the remaining women back to the women's prison. In *Colon*, the ACLU-NJ served as co-counsel to a class of detainees subjected to unjust conditions of confinement, including significant overcrowding. That action resulted in a comprehensive court-approved settlement consisting of five memoranda of understanding, covering medical health care, mental health care, environmental health, fire safety, and correctional management. *See also, e.g., Sojourner A. v. N.J. Dep't of Human Services*, 177 N.J. 318, 828 A.2d 306 (2003) (ACLU-NJ serving as counsel in a class-action challenge to New Jersey's welfare cap).

The ACLU-NJ Foundation also has extensive experience in cases involving the civil rights of immigrants. Notably, the ACLU-NJ represented both immigrants and landlords in a

successful challenge to the Township of Riverside ordinance that would have imposed sanctions on landlords and tenants who rented to or hired undocumented immigrants. *Riverside Coalition of Business Partners and Landlords, v. Twp. of Riverside*, No. BURL-L-2965-06 (L. Div. filed Oct. 18, 2006). It has also directly represented immigrants in habeas petitions. *See, e.g., Augustovsky, v. Holder*, No. 09-cv-04251 (D.N.J. filed August 18, 2009); *Joseph v. Avila*, No. 07-cv-2392 (D.N.J. filed May 22, 2007); *Jama v. Chertoff*, No. 06-cv-5185 (D.N.J. filed Oct. 27, 2006). Further, the ACLU-NJ has submitted numerous briefs to the United States Court of Appeals for the Third Circuit as *amicus* in notable immigrants' rights cases. *See, e.g., Bolmer v. Connelly Properties*, 672 F.3d 241 (3d Cir. 2012), *cert. denied*, No. 11-1435, \_\_\_ S.Ct. \_\_\_, 2012 WL 1945620 (Oct. 1, 2012); *Diop v. ICE/Homeland Security*, 656 F.3d 221 (3d Cir. 2011); *Argueta v. U.S. Immigration and Customs Enforcement*, 643 F.3d 60 (3d Cir. 2011). *See also State v. Nunez-Valdez*, 200 N.J. 129, 975 A.2d 418 (2009).

Gibbons P.C., which is one of New Jersey's largest and most prestigious law firms, also has substantial experience in prosecuting class actions concerning a wide range of public interest and constitutional issues. Particularly relevant here, Gibbons, through its John J. Gibbons Fellowship in Public Interest and Constitutional Law, has extensive experience litigating class actions brought on behalf of incarcerated populations. *See, e.g., Alves v. Main*, No. 01-cv-789 (D.N.J. filed Feb. 15, 2001) (class action, currently pending approval of settlement, regarding the adequacy of mental health treatment afforded to civilly-committed individuals held under New Jersey's Sexually Violent Predator Act); *Rouse v. Plantier*, 182 F.3d 192 (3d Cir. 1999) (remanding to district court in class action alleging failure to provide constitutionally adequate treatment to diabetic inmates at the Adult Diagnostic and Treatment Center in Avenel, New Jersey); *Pack v. Beyer*, 1995 WL 775360 (D.N.J. Dec. 22, 1995) (approving settlement of class

action regarding treatment of African-American inmates at the New Jersey State Prison held in solitary confinement); *Hairston v. Fauver*, No. 90-cv-1850 (D.N.J. filed May 11, 1990) (settlement approved Dec. 6, 1995 in class action regarding prison conditions and medical treatment at Northern State Prison); *Roe v. Fauver*, No. 88-cv-1225, 1988 U.S. Dist. LEXIS 11328 (D.N.J. Oct. 11, 1988) (denying State's motion for summary judgment in class action on behalf of New Jersey inmates diagnosed with HIV/AIDS). The Gibbons Fellowship has also acted as class counsel in many other civil rights actions. *See, e.g., M.A. v. Newark Public Schools*, 334 F.3d 335 (3d Cir. 2003) (class action challenging inadequate special education programs); *Baby Sparrow v. Waldman*, No. 96-cv-4118 (D.N.J. filed Aug. 28, 1996) (class action successfully settled on December 23, 1996, on behalf of "boarder babies" who were born to addicted mothers, removed at birth, and warehoused in hospitals rather than being placed in foster care). Likewise, the Gibbons Fellowship program has previously litigated a wide range of immigration-related matters. *See, e.g., Clark v. Martinez*, 543 U.S. 371 (2005) (amicus); *Jama v. ICE*, 543 U.S. 335 (2005) (amicus) (contesting deportation of immigrant without consent of the receiving country); *Argueta v. U.S. Immigration and Customs Enforcement*, 643 F.3d 60 (3d Cir. 2011) (amicus) (Fourth Amendment challenge to ICE raids of immigrant homes); *N. Jersey Media Group v. Ashcroft*, 308 F.3d 198 (3d Cir. 2002) (challenging the secrecy of so-called "special interest" deportation proceedings that were widely deployed following the attacks of September 11, 2001); *Castillo v. Reno*, 178 F.3d 1278 (3d Cir. 1999) (*habeas corpus* action on behalf of detained immigrant); *Kitembo v. Ashcroft*, No. 03-3108 (3d Cir. dismissed Apr. 15, 2011) (appeal from BIA decision challenging procedural deficiencies and other errors in asylum proceeding); *Qatanani v. Dep't of Justice*, No. 12-cv-4042 (D.N.J. filed June 29, 2012) (lawsuit enforcing FOIA request in support of ongoing immigration removal proceedings); *Jama v.*

*Chertoff*, No. 06-cv-5185 (D.N.J. filed Oct. 27, 2006) (*habeas* petition on behalf of immigrant detained for more than four years); *Jama v. U.S. Immigration & Naturalization Serv.*, 343 F. Supp. 2d 338 (2004) (amicus) (challenging conditions of confinement at immigration detention facility in Elizabeth).

Plaintiffs' counsel have the resources to maintain this litigation, as evidenced by the numerous class actions they have successfully prosecuted in the past. They are also willing to devote significant resources to the prosecution of the case including lead attorneys — Ms. Rabinovitz and Mr. Arulanantham of ACLU-IRP,<sup>2</sup> Mr. Barocas of ACLU-NJ, and Mr. Lustberg of Gibbons P.C. — who each have decades of experience litigating civil rights cases — as well as several other attorneys whose legal practices focus exclusively on public interest litigation or immigration law.<sup>3</sup> Moreover, ACLU-IRP, ACLU-NJ and the law firm of Gibbons P.C. have ample support staff and other resources. Finally, plaintiffs' counsel are undertaking this representation entirely *pro bono*, and will not collect any fees unless they are awarded against the defendants by the Court. *See Sheinberg v. Sorensen*, 606 F.3d 130, 133 (3d Cir. 2010) (stating that court, in determining whether to appoint counsel under Rule 23(g), may consider attorney's fee arrangement and may “order the proffered counsel ‘to propose terms for attorney's fees and nontaxable costs’ and to include provisions for such fees and costs ‘in the appointing order.’” (quoting Rule 23(g)(1)(C)-(D)).

Because plaintiffs' counsel have the interest, ability, and resources to represent the Class and will fairly and adequately represent the interests of the class, the Court should appoint them as counsel for the class under Rule 23(g).

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<sup>2</sup> *See Nadarajah v. Holder*, 569 F.3d 906, 912 (9th Cir. 2009) (noting that Ms. Rabinovitz and Mr. Arulanantham have “distinctive knowledge and specialized skill in immigration law and, in particular, constitutional immigration law and litigation involving the rights of detained immigrants”).

<sup>3</sup> For instance, Mr. Tan of ACLU-IRP has litigated several key cases — including class actions — on behalf of immigration detainees, and argued *Alli v. Decker*, 650 F.3d 1007 (3d Cir. 2011), before the Third Circuit.

**CONCLUSION**

For the foregoing reasons, plaintiffs respectfully request that the Court certify a class of all individuals in New Jersey who are or will be detained pursuant to 8 U.S.C. § 1226(c), appoint the named plaintiffs as class representatives, and appoint ACLU-IRP, ACLU-NJ and Gibbons P.C. as class counsel.

Respectfully submitted,

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Dated: November 15, 2012

*Attorneys for the Plaintiffs*

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

# EXHIBIT A

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, S.W., MS 5009  
Washington, DC 20536-5009



U.S. Immigration  
and Customs  
Enforcement

February 21, 2012

Mr. Michael Tan  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004-2400

**RE: ICE FOIA Case Number 2012FOIA5180**

Dear Mr. Tan:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated January 25, 2012. You have requested “the number of individuals in ICE custody subject to “non-mandatory” and “mandatory” detention on the first day of each month of 2011, for each ICE Area of Responsibility.”

Your request has been processed under the FOIA, 5 U.S.C. § 552. A search of the ICE Office of Enforcement and Removal Operations (ICE ERO) for records responsive to your request produced one Microsoft Excel spreadsheet. After review of that spreadsheet, I have determined that it can be released in its entirety.

Please be advised that information for the “first day of each month” was unavailable; however, ICE ERO was able to locate reports containing information generated on dates near the beginning of each month.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need to contact our office about this matter, please refer to FOIA case number **2012FOIA05180**. This office can be reached at (202) 732-0600 or (866) 633-1182.

Sincerely,

A handwritten signature in black ink, appearing to read "KMK FOR".

Catrina M. Pavlik-Keenan  
FOIA Officer

Enclosure(s): Your January 23, 2012 FOIA Request  
One Spreadsheet, on disc

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<sup>1</sup> 6 CFR § 5.11(d)(4).

# EXHIBIT B

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	October	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,022	1,818
Baltimore Area of Responsibility	153	169
Boston Area of Responsibility	505	325
Buffalo Area of Responsibility	213	307
Chicago Area of Responsibility	665	695
Dallas Area of Responsibility	431	330
Denver Area of Responsibility	236	267
Detroit Area of Responsibility	340	442
El Paso Area of Responsibility	727	1,087
HQ Area of Responsibility	1	0
Houston Area of Responsibility	957	866
Los Angeles Area of Responsibility	719	1,129
Miami Area of Responsibility	930	969
New Orleans Area of Responsibility	874	1,072
New York City Area of Responsibility	424	362
Newark Area of Responsibility	504	415
Philadelphia Area of Responsibility	528	553
Phoenix Area of Responsibility	1,385	1,315
Salt Lake City Area of Responsibility	220	238
San Antonio Area of Responsibility	1,899	2,166
San Diego Area of Responsibility	552	611
San Francisco Area of Responsibility	460	404
Seattle Area of Responsibility	416	603
St. Paul Area of Responsibility	351	492
Washington Area of Responsibility	472	248
<b>TOTAL</b>	<b>14,984</b>	<b>16,883</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	November	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,074	1,889
Baltimore Area of Responsibility	133	172
Boston Area of Responsibility	517	318
Buffalo Area of Responsibility	241	309
Chicago Area of Responsibility	636	704
Dallas Area of Responsibility	425	366
Denver Area of Responsibility	264	279
Detroit Area of Responsibility	353	418
El Paso Area of Responsibility	748	1,093
HQ Area of Responsibility	0	0
Houston Area of Responsibility	1,008	945
Los Angeles Area of Responsibility	522	847
Miami Area of Responsibility	1,049	979
New Orleans Area of Responsibility	813	1,079
New York City Area of Responsibility	444	346
Newark Area of Responsibility	466	441
Philadelphia Area of Responsibility	549	584
Phoenix Area of Responsibility	1,336	1,316
Salt Lake City Area of Responsibility	204	262
San Antonio Area of Responsibility	1,647	2,217
San Diego Area of Responsibility	537	621
San Francisco Area of Responsibility	401	352
Seattle Area of Responsibility	460	698
St. Paul Area of Responsibility	352	459
Washington Area of Responsibility	464	274
<b>TOTAL</b>	<b>14,643</b>	<b>16,968</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	December	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,162	1,745
Baltimore Area of Responsibility	141	143
Boston Area of Responsibility	457	355
Buffalo Area of Responsibility	267	352
Chicago Area of Responsibility	606	681
Dallas Area of Responsibility	377	358
Denver Area of Responsibility	281	283
Detroit Area of Responsibility	301	408
El Paso Area of Responsibility	616	1,085
HQ Area of Responsibility	1	0
Houston Area of Responsibility	1,016	1,083
Los Angeles Area of Responsibility	757	1,424
Miami Area of Responsibility	1,094	1,070
New Orleans Area of Responsibility	868	1,189
New York City Area of Responsibility	437	363
Newark Area of Responsibility	456	403
Philadelphia Area of Responsibility	527	623
Phoenix Area of Responsibility	1,354	1,508
Salt Lake City Area of Responsibility	221	275
San Antonio Area of Responsibility	1,815	2,280
San Diego Area of Responsibility	498	633
San Francisco Area of Responsibility	382	312
Seattle Area of Responsibility	435	798
St. Paul Area of Responsibility	312	460
Washington Area of Responsibility	374	397
<b>TOTAL</b>	<b>14,755</b>	<b>18,228</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det



## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	January	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,186	1,601
Baltimore Area of Responsibility	153	171
Boston Area of Responsibility	466	383
Buffalo Area of Responsibility	245	345
Chicago Area of Responsibility	579	664
Dallas Area of Responsibility	443	329
Denver Area of Responsibility	269	226
Detroit Area of Responsibility	329	385
El Paso Area of Responsibility	673	1,238
HQ Area of Responsibility	1	0
Houston Area of Responsibility	999	1,001
Los Angeles Area of Responsibility	873	1,416
Miami Area of Responsibility	1,027	974
New Orleans Area of Responsibility	861	1,215
New York City Area of Responsibility	414	386
Newark Area of Responsibility	487	484
Philadelphia Area of Responsibility	467	618
Phoenix Area of Responsibility	1,218	1,429
Salt Lake City Area of Responsibility	202	241
San Antonio Area of Responsibility	1,787	2,204
San Diego Area of Responsibility	539	586
San Francisco Area of Responsibility	444	373
Seattle Area of Responsibility	433	845
St. Paul Area of Responsibility	322	392
Washington Area of Responsibility	383	455
<b>TOTAL</b>	<b>14,800</b>	<b>17,961</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	February	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,343	1,452
Baltimore Area of Responsibility	177	174
Boston Area of Responsibility	482	389
Buffalo Area of Responsibility	290	303
Chicago Area of Responsibility	607	769
Dallas Area of Responsibility	450	357
Denver Area of Responsibility	265	235
Detroit Area of Responsibility	365	401
El Paso Area of Responsibility	551	1,248
HQ Area of Responsibility	3	0
Houston Area of Responsibility	956	847
Los Angeles Area of Responsibility	866	1,277
Miami Area of Responsibility	1,056	1,087
New Orleans Area of Responsibility	810	1,090
New York City Area of Responsibility	419	422
Newark Area of Responsibility	502	466
Philadelphia Area of Responsibility	443	565
Phoenix Area of Responsibility	1,348	1,433
Salt Lake City Area of Responsibility	193	273
San Antonio Area of Responsibility	1,745	1,895
San Diego Area of Responsibility	508	577
San Francisco Area of Responsibility	422	360
Seattle Area of Responsibility	452	619
St. Paul Area of Responsibility	334	417
Washington Area of Responsibility	496	498
<b>TOTAL</b>	<b>15,083</b>	<b>17,154</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	March	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,189	1,628
Baltimore Area of Responsibility	160	171
Boston Area of Responsibility	475	359
Buffalo Area of Responsibility	286	343
Chicago Area of Responsibility	634	715
Dallas Area of Responsibility	429	405
Denver Area of Responsibility	295	242
Detroit Area of Responsibility	395	389
El Paso Area of Responsibility	548	1,130
HQ Area of Responsibility	4	0
Houston Area of Responsibility	872	697
Los Angeles Area of Responsibility	868	1,190
Miami Area of Responsibility	1,110	1,095
New Orleans Area of Responsibility	882	1,016
New York City Area of Responsibility	433	425
Newark Area of Responsibility	470	456
Philadelphia Area of Responsibility	425	588
Phoenix Area of Responsibility	1,283	1,408
Salt Lake City Area of Responsibility	257	302
San Antonio Area of Responsibility	1,908	2,027
San Diego Area of Responsibility	472	560
San Francisco Area of Responsibility	357	357
Seattle Area of Responsibility	405	542
St. Paul Area of Responsibility	356	436
Washington Area of Responsibility	562	536
<b>TOTAL</b>	<b>15,075</b>	<b>17,017</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	April	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,313	1,579
Baltimore Area of Responsibility	167	162
Boston Area of Responsibility	514	351
Buffalo Area of Responsibility	286	309
Chicago Area of Responsibility	647	707
Dallas Area of Responsibility	500	411
Denver Area of Responsibility	251	249
Detroit Area of Responsibility	326	408
El Paso Area of Responsibility	560	1,136
HQ Area of Responsibility	1	0
Houston Area of Responsibility	991	753
Los Angeles Area of Responsibility	938	1,187
Miami Area of Responsibility	1,144	1,071
New Orleans Area of Responsibility	868	1,076
New York City Area of Responsibility	458	370
Newark Area of Responsibility	475	450
Philadelphia Area of Responsibility	523	635
Phoenix Area of Responsibility	1,258	1,365
Salt Lake City Area of Responsibility	207	261
San Antonio Area of Responsibility	2,234	2,107
San Diego Area of Responsibility	463	553
San Francisco Area of Responsibility	342	314
Seattle Area of Responsibility	397	578
St. Paul Area of Responsibility	303	371
Washington Area of Responsibility	510	491
<b>TOTAL</b>	<b>15,676</b>	<b>16,894</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	May	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,272	1,487
Baltimore Area of Responsibility	191	168
Boston Area of Responsibility	466	333
Buffalo Area of Responsibility	308	294
Chicago Area of Responsibility	599	789
Dallas Area of Responsibility	411	363
Denver Area of Responsibility	258	267
Detroit Area of Responsibility	328	358
El Paso Area of Responsibility	684	1,021
HQ Area of Responsibility	0	0
Houston Area of Responsibility	1,013	732
Los Angeles Area of Responsibility	904	1,092
Miami Area of Responsibility	1,103	1,060
New Orleans Area of Responsibility	808	1,110
New York City Area of Responsibility	458	389
Newark Area of Responsibility	453	457
Philadelphia Area of Responsibility	481	599
Phoenix Area of Responsibility	1,201	1,491
Salt Lake City Area of Responsibility	233	231
San Antonio Area of Responsibility	2,935	2,025
San Diego Area of Responsibility	473	529
San Francisco Area of Responsibility	325	296
Seattle Area of Responsibility	348	567
St. Paul Area of Responsibility	343	362
Washington Area of Responsibility	443	538
<b>TOTAL</b>	<b>16,038</b>	<b>16,558</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	June	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,596	1,262
Baltimore Area of Responsibility	212	133
Boston Area of Responsibility	629	212
Buffalo Area of Responsibility	414	148
Chicago Area of Responsibility	728	640
Dallas Area of Responsibility	611	296
Denver Area of Responsibility	294	226
Detroit Area of Responsibility	440	227
El Paso Area of Responsibility	712	725
HQ Area of Responsibility	1	0
Houston Area of Responsibility	1,287	699
Los Angeles Area of Responsibility	1,061	766
Miami Area of Responsibility	1,448	753
New Orleans Area of Responsibility	1,041	981
New York City Area of Responsibility	548	286
Newark Area of Responsibility	597	374
Philadelphia Area of Responsibility	606	416
Phoenix Area of Responsibility	1,741	939
Salt Lake City Area of Responsibility	279	186
San Antonio Area of Responsibility	3,395	808
San Diego Area of Responsibility	800	222
San Francisco Area of Responsibility	327	209
Seattle Area of Responsibility	490	524
St. Paul Area of Responsibility	444	268
Washington Area of Responsibility	570	477
<b>TOTAL</b>	<b>20,271</b>	<b>11,777</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	July	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,534	1,157
Baltimore Area of Responsibility	183	118
Boston Area of Responsibility	613	220
Buffalo Area of Responsibility	438	119
Chicago Area of Responsibility	719	625
Dallas Area of Responsibility	522	267
Denver Area of Responsibility	296	220
Detroit Area of Responsibility	393	199
El Paso Area of Responsibility	969	684
HQ Area of Responsibility	2	0
Houston Area of Responsibility	1,425	543
Los Angeles Area of Responsibility	1,072	942
Miami Area of Responsibility	1,359	697
New Orleans Area of Responsibility	1,413	1,154
New York City Area of Responsibility	486	301
Newark Area of Responsibility	584	338
Philadelphia Area of Responsibility	606	430
Phoenix Area of Responsibility	1,756	888
Salt Lake City Area of Responsibility	253	188
San Antonio Area of Responsibility	3,394	701
San Diego Area of Responsibility	760	265
San Francisco Area of Responsibility	336	211
Seattle Area of Responsibility	494	619
St. Paul Area of Responsibility	425	305
Washington Area of Responsibility	469	517
<b>TOTAL</b>	<b>20,501</b>	<b>11,708</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	August	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,322	1,233
Baltimore Area of Responsibility	166	98
Boston Area of Responsibility	589	203
Buffalo Area of Responsibility	462	131
Chicago Area of Responsibility	738	678
Dallas Area of Responsibility	607	261
Denver Area of Responsibility	267	206
Detroit Area of Responsibility	357	246
El Paso Area of Responsibility	739	757
HQ Area of Responsibility	3	0
Houston Area of Responsibility	1,342	711
Los Angeles Area of Responsibility	995	1,231
Miami Area of Responsibility	1,442	792
New Orleans Area of Responsibility	1,319	1,036
New York City Area of Responsibility	406	339
Newark Area of Responsibility	666	385
Philadelphia Area of Responsibility	587	465
Phoenix Area of Responsibility	1,556	1,110
Salt Lake City Area of Responsibility	250	196
San Antonio Area of Responsibility	3,588	706
San Diego Area of Responsibility	774	264
San Francisco Area of Responsibility	321	301
Seattle Area of Responsibility	535	736
St. Paul Area of Responsibility	399	372
Washington Area of Responsibility	404	462
<b>TOTAL</b>	<b>19,834</b>	<b>12,919</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities

Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det



## ERO LES Statistical Tracking Unit

### FOIA #12-05180 FY11 Mandatory and Non-Mandatory Detention

Fiscal Year Month	September	
	Mandatory	Non-Mandatory
Atlanta Area of Responsibility	1,267	1,200
Baltimore Area of Responsibility	202	133
Boston Area of Responsibility	602	180
Buffalo Area of Responsibility	399	129
Chicago Area of Responsibility	670	612
Dallas Area of Responsibility	587	286
Denver Area of Responsibility	291	200
Detroit Area of Responsibility	409	212
El Paso Area of Responsibility	690	680
HQ Area of Responsibility	0	0
Houston Area of Responsibility	1,361	761
Los Angeles Area of Responsibility	913	1,281
Miami Area of Responsibility	1,380	784
New Orleans Area of Responsibility	1,244	932
New York City Area of Responsibility	515	376
Newark Area of Responsibility	576	313
Philadelphia Area of Responsibility	600	455
Phoenix Area of Responsibility	1,460	1,053
Salt Lake City Area of Responsibility	278	174
San Antonio Area of Responsibility	3,571	593
San Diego Area of Responsibility	742	264
San Francisco Area of Responsibility	325	215
Seattle Area of Responsibility	461	653
St. Paul Area of Responsibility	367	378
Washington Area of Responsibility	389	421
<b>TOTAL</b>	<b>19,299</b>	<b>12,285</b>

FY11 data is historical and remains static

Detention data excludes ORR, MIRP and USM facilities


Queries run on the following dates were used for each of the FY months listed: 1. October 10/5/2010, 2. November 10/25/2010, 3. December 11/29/2010, 4. January 1/03/2011, 5. February 1/31/2011, 6. March 2/28/2011, 7. April 4/4/2011, 8. May 5/2/2011, 9. June 5/30/2011, 10. July 7/4/2011, 11. August 8/1/2011, 12. September 8/29/2011

Mandatory Detention filters were made based on Mandatory\_Det

# EXHIBIT C

 Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

**Lorena Fernandez**

**From:** Michael Tan **Sent:** Wed 11/14/2012 2:39 PM  
**To:** Lorena Fernandez  
**Cc:**  
**Subject:** FW: question regarding "mandatory" detention  
**Attachments:**  Mandatory Detention Reporting Methodology DRAFT 2011-05-10.xlsx(13KB)

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**From:** Strait, Andrew R [mailto:arstrait@ice.dhs.gov]  
**Sent:** Tue 1/10/2012 2:59 PM  
**To:** Michael Tan  
**Subject:** FW: question regarding "mandatory" detention

Michael,

The methodology for being counted as any EGIGYIsŽY? within the reporting data includes all aliens that meet any of the below mandatory detention criteria.

1. Final Order ? Aliens with final orders of removal
2. INA 236 (c) ? Aliens charged with INA 212 or 237
3. Expedited Removal ? Aliens processed under Expedited Removal case category. Aligns to INA section 235.
4. Mandatory Case Category ? Aliens with a current Case Category that is subject to Mandatory Detention

The specific INA charges and case categories connected with each criteria are detailed in the attached excel spreadsheet. This should provide the level of detail you are looking for.

Thanks

Andrew

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**Andrew Lorenzen-Strait**

Senior Advisor

Office of Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

202.732.4262 - Direct

202.465.0217 - BlackBerry

202.431.4761 - Cell

[Andrew.Strait@dhs.gov](mailto:Andrew.Strait@dhs.gov)

---

**From:** Michael Tan [mailto:mtan@aclu.org]  
**Sent:** Monday, January 09, 2012 05:34 PM  
**To:** Andrew.Strait@dhs.gov <Andrew.Strait@dhs.gov>  
**Subject:** question regarding "mandatory" detention

Dear Andrew,

I hope all is well. My name is Michael Tan, and I'm an attorney here at the ACLU Immigrants' Rights Project. I have a quick follow-up question regarding a response to a FOIA request we recently received from ICE regarding the mandatory detention population. I'm reaching out to you because the ICE FOIA office referred us to the Office of Public Affairs, and Gillian Christensen let me know in turn that you would be the best person to talk to.

As you'll see from the attached materials, we requested a range of information regarding the number of individuals ICE holds in mandatory detention under INA 236 (c). In response, ICE sent us a "snapshot" of the detention population on October 1, 2011, organized by area of responsibility and whether the individual was subject to "non-mandatory" or "mandatory detention." My question is this: does "mandatory" refer exclusively to individuals held under INA 236(c), or does it include other statutory provisions? If so, what are those additional provisions --- INA 235 and INA 241? Relatedly, does "non-mandatory" then refer to individuals detained pursuant to INA 236(a)?

Thanks in advance for the clarification.

All the best,

Michael

----

Michael Tan

Skadden Fellow / Attorney

ACLU Immigrants' Rights Project

125 Broad St., 18th floor

New York, NY 10004-2400

ph: (212) 284-7303

fax: (212) 549-2654

*This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply E-mail that this message has been inadvertently transmitted to you and delete this E-mail from your system.*

# ICE Enforcement and Removal Operations

## Mandatory Detention Reporting Methodology

DRAFT 5/10/2011

The mandatory detention reporting methodology includes all aliens that meet any of the below mandatory detention criteria.

1. Final Order ? Aliens with final orders of removal
2. INA 236 (c) ? Aliens charged with INA 212 or 237
3. Expedited Removal ? Aliens processed under Expedited Removal case category. Aligns to INA section 235.
4. Mandatory Case Category ? Aliens with a current Case Category that is subject to Mandatory Detention

### 1. Final Order ? Aliens with final orders of removal

Final order is based on whether the detainee has a final order in the most recent Removal Case information.

### 2. INA 236 (c) ? Aliens charged with INA 212 or 237

INA Charge	INA Description
237a2Ai	CONVICTION OF ONE CRIME INVOLVING MORAL TURPITUDE
237a2Aii	CONVICTION OF TWO CRIMES INVOLVING MORAL TURPITUDE
237a2Aiii	AGGRAVATED FELONY
237a2Bi	CONTROLLED SUBSTANCE CONVICTION
237a2C	FIREARMS CONVICTION
237a2Bii	DRUG ABUSERS AND ADDICTS
237a2Di	ESPIONAGE, SABOTAGE, OR TREASON CONVICTION
237a2Dii	THREATS AGAINST PRESIDENT
237a2Diii	VIOLATION OF MILITARY SELECTIVE SERVICE ACT OR TRADING WITH THE ENEMY ACT
237a2Div	VIOLATION OF 215 OR 278 OF ACT
237a4B	TERRORIST ACTIVITY
212a2C	CONTROLLED SUBSTANCE TRAFFICKERS
212a2B	MULTIPLE CONVICTIONS WITH AGGREGATE SENTENCE OF FIVE YEARS
212a2Di	PROSTITUTION WITHIN 10 YEARS OF APPLICATION FOR ADMISSION
212a2Aii	CONVICTION OR COMMISSION OF A CRIME INVOLVING MORAL TURPITUDE
212a2Aiii	CONTROLLED SUBSTANCE CONVICTION
212a2Dii	PROCURED OR IMPORTED PROSTITUTION
212a2Diii	UNLAWFUL COMMERCIALIZED VICE
212a2E	EXERCISE OF CRIMINAL IMMUNITY
212a2G	FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM
212a2H	SIGNIFICANT TRAFFICKERS IN PERSONS
212a2I	MONEY LAUNDERING
212a3Bii	ENGAGED IN TERRORIST ACTIVITY
212a3Biii	LIKELY TO ENGAGE IN TERRORIST ACTIVITY
212a3Biiii	INCITED TERRORIST ACTIVITY
212a3BiV	REPRESENTATIVE OF FOREIGN TERRORIST ORGANIZATION
212a3BiV	MEMBER OF FOREIGN TERRORIST ORGANIZATION
212a3BiV	MEMBER OF A TERRORIST ORGANIZATION
212a3BiV	ENDORSE OR ESPOUSE TERRORIST ACTIVITIES
212a3BiV	RECEIVED MILITARY-TYPE TRAINING FROM A TERRORIST ORGANIZATION
212a3BiX	SPOUSE OR CHILD OF AN ALIEN DEEMED INADMISSIBLE UNDER (212)(a)(3)(B)

### 3. Expedited Removal ? Aliens processed under Expedited Removal case category. Aligns to INA section 235.

Case Category	Case Category Description
8F	Expedited Removal
8G	Expedited Removal - Credible Fear Referral
8H	Expedited Removal - Status Claim Referral
8I	Expedited Removal - Absconder

### 4. Mandatory Case Category ? Aliens with a current Case Category that is subject to Mandatory Detention

Case Category	Case Category Description
3	Administratively Final Order
10	Visa Waiver Deportation/Removal
11	Administrative Deportation/Removal
12	Judicial Deportation/Removal
16	Reinstated Final Order
8C	Excludable/Inadmissible - Administrative Final Order Issued
8E	Excludable/Inadmissible - Absconder

# EXHIBIT D

**FY2011 -- Total Number of Detainees Under INA 236(c) in Newark and New York ICE Areas of Responsibility**

<b>FY11 Month</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>
Newark AOR - Number of Detainees Under INA 236(c)	202	191	180	172	164	155	149	153	266	228	261	244
New York City AOR - Number of Detainees Under INA 236(c)	237	259	235	213	212	191	193	196	253	206	202	222
Combined Total	439	450	415	385	376	346	342	349	519	434	463	466



**FY2011 -- Total Number of Detainees Under INA 236(c) in New York ICE Areas of Responsibility**

<b>FY11 Month</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>
Number of Detainees Under INA 236(c)	237	259	235	213	212	191	193	196	253	206	202	222
Number of Detainees with No Charge Information	51	42	44	45	48	58	58	52	69	53	41	56

<b>FY11 OCTOBER</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	33
New York City Area of Responsibility	212a2AiII	31
New York City Area of Responsibility	237a2Ai	11
New York City Area of Responsibility	237a2Aii	48
New York City Area of Responsibility	237a2Aiii	43
New York City Area of Responsibility	237a2Bi	60
New York City Area of Responsibility	237a2C	11
<b>Total:</b>		<b>237</b>

<b>FY11 November</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	39
New York City Area of Responsibility	212a2AiII	30
New York City Area of Responsibility	237a2Ai	11
New York City Area of Responsibility	237a2Aii	51
New York City Area of Responsibility	237a2Aiii	45
New York City Area of Responsibility	237a2Bi	72
New York City Area of Responsibility	237a2C	11
<b>Total:</b>		<b>259</b>

<b>FY11 December</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	33
New York City Area of Responsibility	212a2AiII	23
New York City Area of Responsibility	237a2Ai	12
New York City Area of Responsibility	237a2Aii	47
New York City Area of Responsibility	237a2Aiii	39
New York City Area of Responsibility	237a2Bi	72
New York City Area of Responsibility	237a2C	9
<b>Total:</b>		<b>235</b>

<b>FY11 JANUARY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	28
New York City Area of Responsibility	212a2AiII	17
New York City Area of Responsibility	237a2Ai	12
New York City Area of Responsibility	237a2Aii	38
New York City Area of Responsibility	237a2Aiii	45
New York City Area of Responsibility	237a2Bi	65
New York City Area of Responsibility	237a2C	8
<b>Total:</b>		<b>213</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in New York ICE Areas of Responsibility**

<b>FY11 FEBRUARY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	25
New York City Area of Responsibility	212a2AiII	17
New York City Area of Responsibility	237a2Ai	19
New York City Area of Responsibility	237a2Aii	40
New York City Area of Responsibility	237a2Aiii	43
New York City Area of Responsibility	237a2Bi	59
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	8
<b>Total:</b>		<b>212</b>

<b>FY11 MARCH</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	20
New York City Area of Responsibility	212a2AiII	16
New York City Area of Responsibility	237a2Ai	15
New York City Area of Responsibility	237a2Aii	37
New York City Area of Responsibility	237a2Aiii	40
New York City Area of Responsibility	237a2Bi	55
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	7
<b>Total:</b>		<b>191</b>

<b>FY11 APRIL</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	22
New York City Area of Responsibility	212a2AiII	14
New York City Area of Responsibility	237a2Ai	13
New York City Area of Responsibility	237a2Aii	36
New York City Area of Responsibility	237a2Aiii	38
New York City Area of Responsibility	237a2Bi	59
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	10
<b>Total:</b>		<b>193</b>

<b>FY11 MAY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	22
New York City Area of Responsibility	212a2AiII	17
New York City Area of Responsibility	237a2Ai	9
New York City Area of Responsibility	237a2Aii	39
New York City Area of Responsibility	237a2Aiii	37
New York City Area of Responsibility	237a2Bi	59
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	12
<b>Total:</b>		<b>196</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in New York ICE Areas of Responsibility**

<b>FY11 JUNE</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	28
New York City Area of Responsibility	212a2AiII	24
New York City Area of Responsibility	237a2Ai	13
New York City Area of Responsibility	237a2Aii	43
New York City Area of Responsibility	237a2Aiii	63
New York City Area of Responsibility	237a2Bi	67
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	14
<b>Total:</b>		<b>253</b>

<b>FY11 JULY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	20
New York City Area of Responsibility	212a2AiII	17
New York City Area of Responsibility	237a2Ai	10
New York City Area of Responsibility	237a2Aii	42
New York City Area of Responsibility	237a2Aiii	48
New York City Area of Responsibility	237a2Bi	58
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	10
<b>Total:</b>		<b>206</b>

<b>FY11 AUGUST</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	20
New York City Area of Responsibility	212a2AiII	18
New York City Area of Responsibility	237a2Ai	13
New York City Area of Responsibility	237a2Aii	42
New York City Area of Responsibility	237a2Aiii	47
New York City Area of Responsibility	237a2Bi	50
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	11
<b>Total:</b>		<b>202</b>

<b>FY11 SEPTEMBER</b>	<b>INA Charge Section</b>	<b># Detainees</b>
New York City Area of Responsibility	212a2AiI	24
New York City Area of Responsibility	212a2AiII	19
New York City Area of Responsibility	237a2Ai	12
New York City Area of Responsibility	237a2Aii	40
New York City Area of Responsibility	237a2Aiii	57
New York City Area of Responsibility	237a2Bi	57
New York City Area of Responsibility	237a2Bii	1
New York City Area of Responsibility	237a2C	12
<b>Total:</b>		<b>222</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in Newark ICE Areas of Responsibility**

<b>FY11 Month</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>June</b>	<b>July</b>	<b>Aug</b>	<b>Sept</b>
Number of Detainees Under INA 236(c)	202	191	180	172	164	155	149	153	266	228	261	244
Number of Detainees with No Charge Information	68	45	56	61	75	84	73	72	70	83	86	66

<b>FY11 OCTOBER</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	12
Newark Area of Responsibility	237a2Aii	24
Newark Area of Responsibility	237a2Aiii	74
Newark Area of Responsibility	237a2Bi	43
Newark Area of Responsibility	237a2C	7
Newark Area of Responsibility	212a2C	2
Newark Area of Responsibility	212a2AiI	26
Newark Area of Responsibility	212a2AiII	14
<b>Total:</b>		<b>202</b>

<b>FY11 November</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	11
Newark Area of Responsibility	237a2Aii	24
Newark Area of Responsibility	237a2Aiii	66
Newark Area of Responsibility	237a2Bi	43
Newark Area of Responsibility	237a2C	5
Newark Area of Responsibility	212a2C	1
Newark Area of Responsibility	212a2AiI	26
Newark Area of Responsibility	212a2AiII	15
<b>Total:</b>		<b>191</b>

<b>FY11 DECEMBER</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	13
Newark Area of Responsibility	237a2Aii	21
Newark Area of Responsibility	237a2Aiii	61
Newark Area of Responsibility	237a2Bi	41
Newark Area of Responsibility	237a2C	6
Newark Area of Responsibility	212a2C	2
Newark Area of Responsibility	212a2AiI	26
Newark Area of Responsibility	212a2AiII	10
<b>Total:</b>		<b>180</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in Newark ICE Areas of Responsibility**

<b>FY11 JANUARY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	11
Newark Area of Responsibility	237a2Aii	17
Newark Area of Responsibility	237a2Aiii	66
Newark Area of Responsibility	237a2Bi	41
Newark Area of Responsibility	237a2C	5
Newark Area of Responsibility	212a2C	2
Newark Area of Responsibility	212a2AiI	22
Newark Area of Responsibility	212a2AiII	8
<b>Total:</b>		<b>172</b>

<b>FY11 FEBRUARY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	8
Newark Area of Responsibility	237a2Aii	19
Newark Area of Responsibility	237a2Aiii	64
Newark Area of Responsibility	237a2Bi	36
Newark Area of Responsibility	237a2C	6
Newark Area of Responsibility	212a2C	2
Newark Area of Responsibility	212a2AiI	22
Newark Area of Responsibility	212a2AiII	7
<b>Total</b>		<b>164</b>

<b>FY11 MARCH</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	10
Newark Area of Responsibility	237a2Aii	16
Newark Area of Responsibility	237a2Aiii	55
Newark Area of Responsibility	237a2Bi	34
Newark Area of Responsibility	237a2C	5
Newark Area of Responsibility	212a2C	3
Newark Area of Responsibility	212a2AiI	25
Newark Area of Responsibility	212a2AiII	7
<b>Total:</b>		<b>155</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in Newark ICE Areas of Responsibility**

<b>FY11 APRIL</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	11
Newark Area of Responsibility	237a2Aii	15
Newark Area of Responsibility	237a2Aiii	53
Newark Area of Responsibility	237a2Bi	35
Newark Area of Responsibility	237a2C	3
Newark Area of Responsibility	212a2C	1
Newark Area of Responsibility	212a2B	1
Newark Area of Responsibility	212a2AiI	25
Newark Area of Responsibility	212a2AiII	5
<b>Total:</b>		<b>149</b>

<b>FY11 MAY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	13
Newark Area of Responsibility	237a2Aii	14
Newark Area of Responsibility	237a2Aiii	60
Newark Area of Responsibility	237a2Bi	36
Newark Area of Responsibility	237a2C	3
Newark Area of Responsibility	212a2C	1
Newark Area of Responsibility	212a2AiI	21
Newark Area of Responsibility	212a2AiII	5
<b>Total:</b>		<b>153</b>

<b>FY11 JUNE</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	26
Newark Area of Responsibility	237a2Aii	26
Newark Area of Responsibility	237a2Aiii	90
Newark Area of Responsibility	237a2Bi	64
Newark Area of Responsibility	237a2C	7
Newark Area of Responsibility	212a2AiI	40
Newark Area of Responsibility	212a2AiII	10
Newark Area of Responsibility	212a2B	1
Newark Area of Responsibility	212a2C	2
<b>Total:</b>		<b>266</b>

**FY2011 -- Total Number of Detainees Under INA 236(c) in Newark ICE Areas of Responsibility**

<b>FY11 JULY</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	20
Newark Area of Responsibility	237a2Aii	25
Newark Area of Responsibility	237a2Aiii	77
Newark Area of Responsibility	237a2Bi	56
Newark Area of Responsibility	237a2C	5
Newark Area of Responsibility	212a2AiI	31
Newark Area of Responsibility	212a2AiII	9
Newark Area of Responsibility	212a2B	1
Newark Area of Responsibility	212a2C	4
<b>Total:</b>		<b>228</b>

<b>FY11 AUGUST</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	16
Newark Area of Responsibility	237a2Aii	29
Newark Area of Responsibility	237a2Aiii	94
Newark Area of Responsibility	237a2Bi	64
Newark Area of Responsibility	237a2C	5
Newark Area of Responsibility	212a2AiI	34
Newark Area of Responsibility	212a2AiII	13
Newark Area of Responsibility	212a2C	6
<b>Total:</b>		<b>261</b>

<b>FY11 SEPTEMBER</b>	<b>INA Charge Section</b>	<b># Detainees</b>
Newark Area of Responsibility	237a2Ai	16
Newark Area of Responsibility	237a2Aii	33
Newark Area of Responsibility	237a2Aiii	83
Newark Area of Responsibility	237a2Bi	63
Newark Area of Responsibility	237a2C	3
Newark Area of Responsibility	212a2AiI	30
Newark Area of Responsibility	212a2AiII	8
Newark Area of Responsibility	212a2C	8
<b>Total:</b>		<b>244</b>

# EXHIBIT E



U.S. Department of Homeland Security

Notice of Custody Determination

Sheldon Felix FRANCOIS AKA: FRANCOIS, SHELDON F; FRANCOIS, SHELDON ; FRANCOIS, MSHELDON ; FRANCIOS, SHELDON ... (SEE I-831)

Event No: RIK1208000034

File No: A043 581 793

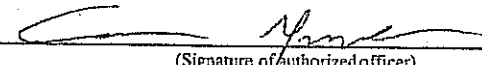
Date: 08/06/2012

1022 HENDRIX STREET  
BROOKLYN, NEW YORK 11207

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that pending a final determination by the immigration judge in your case, and in the event you are ordered removed from the United States, until you are taken into custody for removal, you shall be:

- detained in the custody of the Department of Homeland Security.
- released under bond in the amount of \$ \_\_\_\_\_
- released on your own recognizance.

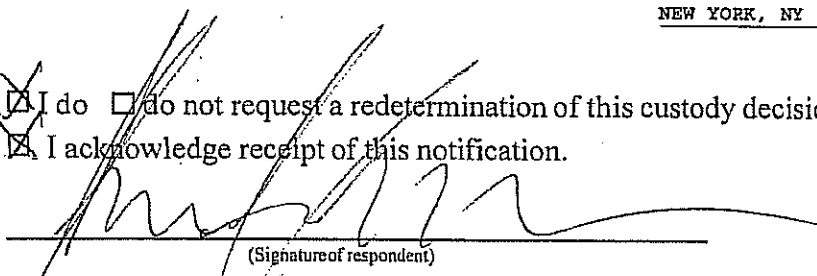
- You may request a review of this determination by an immigration judge.
- You may not request a review of this determination by an immigration judge because the Immigration and Nationality Act prohibits your release from custody.

  
(Signature of authorized officer)

**SUPERVISORY DEPORTATION OFFICER**  
(Title of authorized officer)

NEW YORK, NY  
(Office location)

- I do  do not request a redetermination of this custody decision by an immigration judge.
- I acknowledge receipt of this notification.

  
(Signature of respondent)

\_\_\_\_\_  
(Date)

**RESULT OF CUSTODY REDETERMINATION**

On \_\_\_\_\_, custody status/conditions for release were reconsidered by:

- Immigration Judge       DHS Official       Board of Immigration Appeals

The results of the redetermination/reconsideration are:

- No change - Original determination upheld.       Release - Order of Recognizance
- Detain in custody of this Service.       Release - Personal Recognizance
- Bond amount reset to \_\_\_\_\_       Other: \_\_\_\_\_

\_\_\_\_\_  
(Signature of officer)

# EXHIBIT F

Confidential

1 because I'm not a hundred percent sure what you're 9:49:53AM  
2 talking about. But we'll figure it out.  
3 You're employed now by DHS; is that correct?  
4 A. I sure am.  
5 Q. How long have you been employed by DHS? 9:50:03AM  
6 A. I was employed with INS when DHS became  
7 established in 2003.  
8 Q. How long were you employed by INS?  
9 A. Since 1988.  
10 Q. What is your current title? 9:50:12AM  
11 A. I am Assistant Field Office Director here in  
12 L.A.  
13 Q. How long have you been the AFOD?  
14 A. I came here, I think, in April 2007.  
15 Q. What was your position before that? 9:50:36AM  
16 A. Before that I was the unit chief over the  
17 Fugitive Operation Support Center in Burlington,  
18 Vermont.  
19 Q. How long did you hold that?  
20 A. From two thousand -- probably 2006 until I 9:50:52AM  
21 came here to Lancaster, April 2007.  
22 Q. A little over a year?  
23 A. No. I came here in 2009. Did I say '7?  
24 Q. Yeah. So you were about three years working  
25 as the Fugitive Operations unit chief in Vermont. 9:51:14AM

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1 A. Yes.

2 Q. And to prepare for this deposition you  
3 familiarized yourself with the positions of -- the  
4 positions of and the information available to  
5 Immigrations and Customs Enforcement and Department of  
6 Homeland Security in order to be able to testify about  
7 those topics; is that correct?

8 A. I would say, yes, I did familiarize myself.

9 MR. ATKINSON: We just want to make one  
10 notation on the record: That we had originally  
11 designated Mr. Lee with respect to eight and nine just  
12 to speak for the department with respect to  
13 notification provided to persons eligible for such  
14 hearings, but we understand the scope went beyond that  
15 and -- which is fine.

16 MR. ARULANANTHAM: Then to that end actually,  
17 let me just clean this up and ask that one question  
18 then.

19 Q. Once a detainee has been determined to be  
20 subject to mandatory detention under 236(c), are they  
21 given notice of that?

22 A. Yes.

23 Q. How?

24 A. It's on the custody determination.

25 Q. On the sheet it says what?

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1           A.    It's a checked box that says you've been  
2 determined to be mandatory detention. I don't think  
3 it specifically says 236(c), but --

4           Q.    Is the detainee informed of any ability to  
5 seek redetermination of that determination?

6           A.    On 236(c)? No.

7           MR. ARULANANTHAM: Can we go off the record  
8 for one second?

9           MR. ATKINSON: Sure.

10                   (Discussion held off the record.)

11 BY MR. ARULANANTHAM:

12           Q.    Does the detainee have the opportunity to  
13 argue to ICE that he's not subject to mandatory  
14 detention?

15           A.    Does he have the opportunity to?

16           Q.    Yes.

17           A.    He can argue that to the officer that's  
18 writing him up. I don't know -- on the custody  
19 determination if we're going to place them in 236(c)  
20 mandatory detention because we believe the crime  
21 places them there, there's a check box on there that  
22 says they're mandatory detention. And there are  
23 little check boxes on the form if you guys have a copy  
24 of one. And if they're not 236(c), it has on there  
25 that you have a right to, you know, an immigration

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1 hearing with an IJ, Department of Homeland Security.

2 On that particular one if we determine  
3 they're 236(c), it says they cannot have a bond  
4 hearing.

5 Q. You said the detainee can argue with the  
6 officer who's writing him up?

7 A. Yeah.

8 Q. Is there an interview? Or how does that  
9 happen?

10 A. There's an interview done between the  
11 detainee and the arresting officer, even if it's at a  
12 detention facility, and we have 287(g) there, and  
13 there's discussion about, you know, what are your  
14 crimes; and then they'll be verified and they'll  
15 discuss their -- why they're being charged and then  
16 they'll sign their notice to appear and their custody  
17 determination.

18 So definitely you're talking to the detainee  
19 in a large majority of the cases. There are instances  
20 where you may not. An NTA may be written up without  
21 talking to the detainee.

22 Q. This is the same decision -- the process that  
23 you're talking about now when the officer is talking  
24 to the detainee -- that's the same time when the  
25 officer is deciding whether the person is going to be

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1 Q. In fact, at Mira Loma you have approximately  
2 800 beds that are not currently filled; is that  
3 correct?

4 A. That's correct.

5 MR. ARULANANTHAM: Objection to form.

6 MR. ATKINSON: Did you get his answer?

7 THE REPORTER: Yes.

8 MR. ATKINSON: Okay.

9 No further questions.

10 MR. ARULANANTHAM: I have one question. Do  
11 you have any?

12 MR. KAUFMAN: No.

13

14 EXAMINATION (CONTINUING)

15 BY MR. ARULANANTHAM:

16 Q. Earlier when we spoke about a notice for  
17 detainees subject to mandatory detention, you said  
18 that the Notice of Custody Determination form says on  
19 it that you cannot get a review by an Immigration  
20 Judge if you're subject to mandatory detention; is  
21 that correct?

22 A. Yes.

23 MR. ARULANANTHAM: Nothing else.

24 MR. ATKINSON: We're going to read and sign  
25 the deposition.

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