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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

18 ISAAC KIGONDU KINITI, et al.,
 19 Plaintiffs,
 20 v.
 21 JULIE L. MYERS, et al.,
 22 Defendants.

Case No. 3:05-cv-1013-DMS-PCL
**DECLARATION OF DEPUTY
 ASSISTANT DIRECTOR FOR
 DETENTION MANAGEMENT
 TIMOTHY L. PERRY IN SUPPORT
 OF DEFENDANTS' MOTION TO
 DISMISS**

24 In accordance with 28 U.S.C. §1746, I, Timothy L. Perry, Deputy Assistant Director for
 25 Detention Management, Office of Detention and Removal Operations (DRO), United States
 26 Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS or the
 27 Department), make the following declaration under penalty of perjury.

- 1 1. I am the Deputy Assistant Director (the DAD) for the Detention Management
2 Division within ICE's Office of Detention and Removal Operations (DRO). I have
3 served in this capacity since January of 2005. Prior to my current position, I served
4 as a Supervisory Detention and Deportation Officer assigned to the Headquarters
5 office of DRO, in Washington, D.C.
- 6 2. As the DAD for the Detention Management Division, I am responsible for managing
7 the ICE detention program from a national level. Consequently, my job duties
8 include developing agency policy, reviewing, planning and implementing facility
9 capacity, developing and executing the detention budget, and participating in the
10 oversight of ICE's national detention standards compliance program.
- 11 3. I make the following statements based upon my personal knowledge, access to
12 official ICE and (former) Immigration and Naturalization Service (INS) records and
13 files, and information made available to me in my capacity as the DAD for the
14 Detention Management Division.

15 I. INTRODUCTION

- 16
- 17 4. In November of 2005, DHS unveiled its Secure Border Initiative (SBI) in an effort
18 to address the continual influx of illegal immigrants across the borders and to
19 improve the effective enforcement of U.S. immigration laws nationwide. ICE was
20 in turn assigned a key role in this new program, having historically backed its
21 detention and removal efforts with significant resources. As the office responsible
22 for ensuring the departure of all removable aliens from the U.S. through the fair and
23 effective enforcement of our immigration laws, DRO was tasked with the
24 responsibility of ending its former "catch and release" practice.
- 25 5. Under the old "catch and release" program, significant numbers of aliens who were
26 apprehended at or near the border were issued a Notice to Appear (Form I-862) in
27 immigration court. After their hearings, those aliens were then released on their
28 own recognizance and/or on bail. As a result of this practice, however, many of the

1 illegal aliens who were apprehended, charged, and then released, later failed to
2 appear in immigration court as they were required. Instead, they simply disappeared
3 from the immigration system altogether. Consequently, aliens who were willing to
4 subject themselves to the dangers of illegal immigration, especially by entering
5 through our nation's borders, proved to benefit substantially under the Department's
6 old approach.

7 6. In response, DRO began developing new policies and procedures that facilitated the
8 catch and *removal* of illegal aliens from the United States. Thus, by redirecting its
9 efforts under SBI, the Department improved its efforts to decrease the volume of
10 illegal immigration at the border. This shift in policy creates a strong disincentive
11 for illegal aliens to cross the border.

12 7. Prior to these policy changes, the number of aliens detained in the United States has
13 been steadily increasing over the course of the last several years. By ending "catch
14 and release" and re-directing its efforts towards removal, the Agency's need for
15 additional bed space across the country increased substantially. By way of example,
16 in FY 2006, under the new 100% detention policy, ICE detained 281,567 aliens.
17 This figure spawned a huge increase in detention requirements, considering that in
18 2005 ICE was only detaining approximately 34% of its apprehended non-Mexican
19 alien population.

20 8. Given these and other challenges inherent to the implementation of SBI, ICE
21 continued and increased its efforts to secure adequate bed space in detention
22 facilities throughout the country in order to house aliens prior to their removal from
23 the United States.

24 9. Using its own facilities, in addition to those secured through either contractual
25 arrangement with private companies or by its participation in intergovernmental
26 service agreements (IGSAs) with other States, territories or political subdivisions,
27 ICE has been able to provide its detainee populations with additional, appropriate
28 detention space and/or related services until such time as their removal or release

1 can be effected. Such services, include, but are not limited to, the provision of
2 clothing, food, medical services, visitation services, recreational space, and security.

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4 **II. DETENTION POLICY**

5 10. ICE’s detention program currently has a funded capacity of approximately 27,500
6 beds nationwide.¹

7 11. In order to respond to constant fluctuations in U.S. immigration levels and related
8 pressures stemming from policy changes, over the last several years, ICE has been
9 working to increase its funded capacity at detention facilities across the country.

10 12. In fact, approximately 64% of ICE detainees are being housed in 400 local and state
11 IGSA facilities and less than 20% are detained in 7 Contract Detention Facilities
12 (CDFs) nationwide. Other immigration detainees are housed in either Government-
13 owned Service Processing Centers (SPCs) or within Federal Bureau of Prisons
14 (BOP) facilities. Id.

15 13. The San Diego Correctional Facility (SDCF or the Facility), located in Otay Mesa,
16 California, is one of those seven CDFs. This Facility contains 6 units, each of
17 which consists of three pods and has between 64-68 beds in each pod . The only
18 exception to this is Unit A, which has 2 pods with 32 beds in each (for a total of 64
19 beds) and two other pods with 68 beds each. One of these six units (Unit B) has
20 been designated for the U.S. Marshals Service and another for San Diego County.
21 A seventh unit (Unit L), is also being maintained as the Facility’s medical unit,
22 which provides 41 additional beds for the care and service of medically-unstable or
23 unhealthy ICE detainees.

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27 ¹The term “funded capacity” refers to the number of beds ICE pays for at a given facility
28 and is based on the agreement made between ICE and the corporation or state or local
government, either by contract, IGSA, etc.

III. SDCF's "CAPACITY" AND ISSUES OF "OVERCROWDING"

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14. As plaintiffs allege in their Second Amended Complaint (see ¶¶ 47-49), recent issues of "overcrowding" were caused by the loss of 200 beds in Unit J of the facility, which required CCA to have to quickly find a way to relocate these detainees. I have no reasonable expectation that such an instance will occur again.

15. Consequently, the resulting number of available beds for ICE detainees at SDCF is approximately 840.

16. Plaintiffs allege that SDCF's "capacity" for ICE detainees is 800. See Second Amended Complaint at ¶ 47 (explaining that ICE detainees are held in A, C, D and K pods, each with a "design capacity" of 200 detainees.)

17. Even if defendants used plaintiffs' numbers regarding SDCF's capacity², since January 28, 2007, ICE has not detained more than 692 immigration detainees per day at SDCF. Since January 28, 2007, SDCF has housed a fluctuating population of immigration detainees ranging between 595 and 692 ICE detainees per day.

18. Thus, since January 28, 2007, SDCF has been operating below capacity, even as defined by plaintiffs' standards, and is not "overcrowded."

19. Moreover, because the Facility has housed less than its capacity for immigration detainees since January 28, 2007, the practice of "triple-celling" no longer occurs.

20. Every immigration detainee is assigned to a bunk bed at SDCF, and SDCF is not currently providing detainees with detached mattresses or "boats" as they have been referred to by plaintiffs. The Facility has refrained from using "boats" since January 28, 2007, and no ICE detainees have been forced to sleep on the floor at SDCF.

² Defendants dispute plaintiffs' calculations of capacity, and believe the number is actually higher than plaintiffs claim.

1 21. Given current levels, I do not have any reasonable expectation that the Facility will
2 use "boats" to house additional ICE detainees, or that population levels will increase
3 to require "triple-celling," or that population levels will significantly increase
4 operation above current levels and "overcrowd" the Facility.

5 22. In the entire Facility, as of May 1, 2007, there were only 11 immigration detainees
6 who are assigned to bunk beds which are located in day rooms; as of May 3, 2007,
7 no immigration detainees were assigned to bunk beds located in day rooms. The day
8 room assignments are temporary and dynamic, and done for the purposes of
9 ensuring a safe and secure environment. Most detainees who are originally assigned
10 to a bunk in a day room are later moved into cells with no more than a total of 2
11 detainees.

12 23. The detainees assigned to sleep in the day room(s) are not and have not been
13 provided with "makeshift" beds. Rather, the beds provided in the day rooms are the
14 same bunk beds used by detainees in cells. Like the cell beds, these beds are also
15 bolted into the floor, again in the interest of ensuring safety and security among the
16 ICE detainee population.

17 24. In light of the amenities and space available at SDCF, I have no reasonable
18 expectation that the Facility will be required to begin using "makeshift" beds.

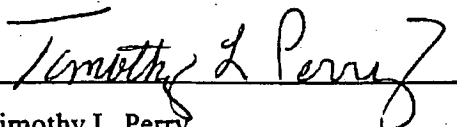
19 25. Since January 28, 2007, no immigration detainees have been held in a holding cell
20 for longer than 12 hours prior to their transportation to another facility, and I have
21 no reasonable expectation, given current ICE detainee population levels, that the
22 immigration detainees would be held in holding cells for longer than 12 hours at
23 SDCF.

24 26. Furthermore, since January 28, 2007, while SDCF's immigration units have been
25 operating below their capacity, no immigration pod, administrative segregation unit
26 or ICE holding cell has exceeded capacity. I have no reasonable expectation, given
27 current population levels, that any immigration pod, administrative segregation unit
28 or ICE holding cell will exceed capacity.

**Declaration of Deputy Assistant Director for Detention Management Timothy L. Perry in Support of
Defendants' Motion to Dismiss**

1 I declare under penalty of perjury that the foregoing is true and correct to the best of my
2 knowledge and belief.

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4 Executed on this 4th day of May, 2007.

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9 Timothy L. Perry

10 United States Department of Homeland Security
11 United States Immigration and Customs Enforcement
12 Office of Detention and Removal Operations

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