

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DETENTION WATCH NETWORK and  
CENTER FOR CONSTITUTIONAL RIGHTS,

Plaintiffs,

v.

UNITED STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT and UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY,

Defendants.

14 Civ. 583 (LGS)

**SUPPLEMENTAL DECLARATION OF FERNANDO PINEIRO IN SUPPORT OF  
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT'S  
CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Freedom of Information Act ("FOIA") Officer at the U.S. Immigration and Customs Enforcement ("ICE") FOIA Office. The purpose of this declaration is to supplement the statements made in my declaration of December 22, 2015, submitted with the Government's motion papers in the above-captioned case.<sup>1</sup> The statements contained in this declaration are based on my personal knowledge, which includes knowledge acquired through agency files reviewed, and information provided to me by other ICE employees, in the course of my official duties.

2. As stated in my earlier declaration, FOIA Exemption 7(E) protects from disclosure records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose

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<sup>1</sup> This supplemental declaration uses capitalized terms defined in my initial declaration.

guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Release of the staffing plans at issue in this case would disclose techniques and/or procedures for law enforcement investigations or prosecutions.

3. Under the immigration laws, certain individuals are subject to detention in ICE detention facilities (whether operated by ICE or by ICE contractors) to enforce federal law. Such detention is essential to the enforcement of federal immigration law. These detention facilities are places of involuntary confinement intended to detain certain aliens, including aliens with: prior felony convictions; a history or pattern of engaging in assaultive behavior; a documented history of violent conduct such as murder, rape, assault, intimidation involving a weapon, or arson; gang affiliations; a suspicion or a conviction for drug trafficking; a documented or reasonable suspicion of making terrorist threats; or a conviction for engaging in terrorist activity or crimes.

4. ICE uses and relies at all times on the staffing plans provided by the detention facilities (again, whether operated by ICE or an ICE contractor) to determine the precise details concerning the amount and posting of personnel at detention facilities to ensure the security, safety and integrity of the detention facilities, and to assist ICE in carrying out its law enforcement mission through the detention of certain aliens. The staffing plans are used by ICE to determine the appropriate staffing and security levels at the detention facilities in order to ensure the effective implementation of ICE's detention standards, and thus maintain safe and secure conditions of confinement for the detainees, as well as a safe working environment for the detention staff.

5. ICE uses the information contained in the staffing plans to make law enforcement operational decisions related to the posting of staff within the facilities to maintain security and to coordinate detainee transportation. ICE continually reviews and revises the staffing plans (or

works with its contractors to revise them) in order to ensure that the staffing levels at each detention facility are adequate given the fluctuation in detainee populations. This helps ICE react to an ever-changing environment in order to maintain the safe and orderly custody of detainees.

6. The staffing plans at issue are thus compiled for law enforcement purposes because ICE uses the information in these documents to determine the specific number of personnel needed during each shift to be able to support ICE's detention operations, which include ensuring the safety of detainees and staff alike and securing the detention facilities (both ICE- and contractor-operated) from internal and external threats.

7. Disclosure of the staffing plans would disclose a law enforcement procedure, to wit, how ICE implements detention facility security standards for the use and allocation of personnel at detention facilities.

8. Each specific staffing plan addresses the specific security needs of each detention facility, as no two facilities are identical. Facilities differ with regard to the number of individuals housed in the facility, the size and layout of the facility, and the level of criminality of the individuals detained in the facility. The disclosure of a detention facility's staffing plan would make that facility more vulnerable to security breaches, but would not necessarily endanger other facilities. Thus, one could not reasonably conclude that because no harm occurred following the disclosure of a particular detention facility's staffing plan, no harm would occur if the staffing plans of other detention facilities were also disclosed.

9. The staffing plans serve more than a purely administrative purpose because ICE relies on these documents to achieve its law enforcement mission which includes arresting and removing individuals who violate federal immigration law. ICE must accomplish this mission in a manner

which allows arrested persons an opportunity to exercise their procedural rights, which in many cases include hearings before immigration judges, interviews with asylum officers, and appeals to the Board of Immigration Appeals. The staffing plans that ICE requires and collects from the private detention facilities are intimately related to ICE's law enforcement mission, as they allow the detention facilities to work with ICE to determine the specific number of personnel needed to operate the facility consistent with the applicable detention standards and how and where such persons are to be posted within the facility to ensure the safety of the detention facility and thus ensure that detainees do not escape and will appear at their immigration hearings. In addition, ICE continually relies on these plans to guarantee that detention facilities have the correct number of staff members on duty at any given time to prevent detainee-on-detainee assaults, ensure that detainees have access to medical care, ensure that attorneys and staff members are able to visit detainees, and meet other requirements in a safe and secure manner. Moreover, unlike other contract documents, ICE continues to rely on the specific details contained in the staffing plans after they are collected from the private contractors to formulate effective detention facility emergency plans.

10. The public disclosure of staffing plans would compromise the security of the detention facility, as well as that of the detainees and personnel therein, as knowledge of the specific allocation of personnel within the detention facility would allow potential bad actors and groups to effectively disrupt a facility by knowing the specific locations and shifts where the detention facility has minimal personnel, and is thus more vulnerable. The release of the staffing plans would compromise the safety and security of the detainees, facility staff, and the facility. For example, the staffing plans would provide outsiders with insight into how the facility controls and conducts security, movement and transportation of detainees, maintenance, visitation,

distribution and monitoring of mail (including mailroom operation), and other vital functions of the facility. Knowledge of the facility's staff matrix would be very useful for someone intending to: (1) harm a detainee; (2) harm a facility staff member; (3) escape from the facility; or (4) gain unauthorized access into the facility.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Signed this 26th day of February 2016 in Washington, D.C.



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Fernando Pineiro Jr., Deputy FOIA Officer  
Freedom of Information Act Office  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement