

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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NATIONAL DAY LABORER ORGANIZING :
NETWORK, et al., :

Plaintiffs, :

- v - :

UNITED STATES IMMIGRATION AND CUSTOMS :
ENFORCEMENT, et al., :

Defendants. :

Civil Action No. 10-CV-3488
(SAS)

DECLARATION
OF CATRINA
PAVLIK-KEENAN

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Catrina Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Director of the Freedom of Information Act Office at United States Immigration and Customs Enforcement (“ICE”) (the “ICE FOIA Office”). I have been the Director of the ICE FOIA Office since that office was created on December 18, 2006. Prior to holding this position, I worked for approximately four years in the FOIA office at the Transportation Security Administration — first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. In total, I have 18 years of experience processing FOIA requests.

2. The ICE FOIA Office is responsible for the receipt, processing, and response to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE.

3. As the Director of the ICE FOIA Office, I am the individual primarily responsible for the oversight of how ICE processes FOIA and Privacy Act requests. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. In connection with my official duties, I am familiar

with ICE's procedures for responding to requests for information pursuant to the FOIA and the Privacy Act. I am familiar with ICE's processing of the FOIA request that plaintiffs in the above-captioned action—the National Day Laborer Organizing Network, Center for Constitutional Rights, and Immigration Justice Clinic of the Benjamin N. Cardozo School of Law—submitted on February 3, 2010. The ICE FOIA Office assigned FOIA case number 2010FOIA2674 to this request.

4. I make this declaration in support of ICE's motion for partial summary judgment in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. This declaration documents the justification for ICE establishing a "cut-off" date of April 30, 2010 for any records to be considered responsive to the plaintiffs' FOIA request.

II. ADMINISTRATIVE PROCESSING OF PLAINTIFFS' FOIA REQUEST

6. The ICE FOIA Office received Plaintiff's FOIA request, dated February 3, 2010, on February 19, 2010.

7. On February 19, 2010, the ICE FOIA Office initiated a search for records within the ICE Office of Enforcement and Removal Operations ("ERO"), to include the Secure Communities program office within ERO, the ICE Office of Policy, the ICE Office of Public Affairs ("OPA"), the ICE Office of Training and Development ("OTD"), the ICE Office of the Assistant Secretary ("OAS"), the ICE Office of Professional Responsibility ("OPR"), and the ICE Office of Congressional Relations ("OCR"). The FOIA Office instructed each program to conduct a search for records that would be responsive to Plaintiff's FOIA request and provide any potentially responsive records to

the FOIA Office. The search was tasked to each office via the ICE Office of Executive Secretariat Information Management System (“OESIMS”). OESIMS is the system utilized by ICE to manage the receipt, tracking, and response to internal and external inquiries as well as internally generated tasks.

8. In a letter dated February 23, 2010, the ICE FOIA Office acknowledged receipt of Plaintiff’s FOIA request and notified the Plaintiff that ICE was denying their request for expedited processing. Further, that letter advised Plaintiffs that they had not met their burden in establishing their entitlement to a fee waiver and notified them that ICE was denying their request for a waiver of fees.

9. On February 24, 2010, the ICE FOIA Office contacted each of the program offices tasked with conducting a search for records and instructed each office to provide an estimate of the number of hours required to search for records and an estimate of the number of pages that may be produced during the search.

10. On or about March 1, 2010, the Secure Communities program management office turned over to the ICE FOIA office four CD-Roms of potentially responsive material. The discs included information on budget, training materials, statistical reports, and other material.

11. In a letter dated March 18, 2010, the DHS Privacy Office sent a preliminary fee estimate to the Plaintiffs on behalf of certain DHS components that had received the FOIA request.

12. Plaintiffs allege that they appealed ICE’s denial of their requests for a fee waiver and expedited processing in a letter dated March 15, 2010; however, ICE has no record of receiving this appeal.

13. In a letter dated April 21, 2010, Plaintiffs informed DHS that they were unwilling to pay half of the estimated fees from the March 18, 2010 letter while their appeal was pending. This letter was not received by the DHS Privacy Office until April 29, 2010. See, Plaintiffs' April 21, 2010 letter attached as Exhibit A.

14. Plaintiffs filed the instant litigation on April 27, 2010.

15. Pursuant to the DHS FOIA regulations, 6 C.F.R. Chapter 1 § 5.4(a), "in determining which records are responsive to a request, a component will ordinarily include only records in its possession as of the date the component begins its search for them."

16. Although ICE commenced its search for records on February 19, 2010, as described in paragraph 7, out of an abundance of caution, ICE established a search cut-off date of April 30, 2010, which corresponds to the date ICE received notice of Plaintiffs' complaint in the instant litigation.

17. Following the filing of Plaintiffs' complaint, ICE, through DOJ representation, commenced communications with Plaintiffs in an effort to work with Plaintiffs to narrow the scope of Plaintiffs' request.

18. Plaintiffs' request has the potential to implicate more than one million records within ICE. The agency has estimated that it would require thousands of man hours to search for possibly responsive records and initial cost estimates are in the hundreds of thousands of dollars.

19. It is the agency's policy to attempt to negotiate with requesters like Plaintiffs to more accurately define the types and nature of the records being sought. ICE attempts to work with requesters to help pinpoint the specific information the requesters are seeking in the most efficient way.

20. In addition to the potential cost savings to the agency, this process is also intended to help requesters receive the information they are seeking in the most expeditious way and lower the fees such requesters may be responsible to pay.

21. During the pendency of such negotiations, the agency has nonetheless continued to follow a policy of making proactive disclosures by posting documents that are determined to be of public interest on the ICE FOIA Electronic Reading Room.

22. ICE made a number of such proactive disclosures on the ICE FOIA Reading Room from the material provided by the Secure Communities program management office as a result of searches conducted in response to Plaintiffs' FOIA request. These documents were posted in May and June 2010 and include Secure Communities Program Presentations on the differences between Secure Communities and 287(g), National Association of Counties briefings, budget and finance material, as well as training and briefing material. (See, http://www.ice.gov/doclib/foia/secure_communities/securecommunitiespresentations.pdf)

23. ICE has continued to update the Reading Room with documents about Secure Communities and regularly posts newly generated documents. To date, ICE has posted 84 documents pertaining to Secure Communities to the Reading Room.

24. ICE, in conjunction with the other defendant agencies, initiated the negotiation process through DOJ in an initial meeting with Plaintiffs on June 9, 2010.

25. I have been advised that the USAO suggested to Plaintiffs that Plaintiffs consider narrowing their request by specifying issues related to Secure Communities for which Plaintiffs sought information.

26. This proposal is consistent with ICE's position that the request is overbroad in scope and unworkable as written.

27. Plaintiffs declined to narrow their request as a result of the June 9, 2010 meeting.

28. At a subsequent meeting on June 25, 2010, Plaintiffs submitted the "Rapid Production List" (RPL) to the DOJ attorneys. In their submission, Plaintiffs specifically declined to narrow any of their prior requests, but noted to ICE that the RPL consisted of a list of their "priority items" that were of particular importance.

29. In an addendum to the RPL, Plaintiffs requested production of documents that were specifically mentioned in material that was proactively posted by ICE to its FOIA Reading Room since the initiation of Plaintiffs' litigation.

30. As a gesture of good faith, by letter dated July 9, 2010, ICE agreed to conduct additional targeted searches and produce documents from the RPL.

31. On July 20, 2010, ICE agency counsel traveled to the Law Enforcement Support Center (LESC), in Burlington, VT, in order to gather information in anticipation of a meeting with Plaintiffs to discuss the scope of Plaintiffs data and statistics request (Section 3 of Plaintiffs' FOIA request).

32. On July 27, 2010, ICE agency counsel again traveled from Washington D.C. to New York, NY to meet with Plaintiffs in an effort to narrow the data and statistic portion of the FOIA request. I have been advised that the parties met for more than two hours and ICE agency counsel offered information and explanations to Plaintiffs concerning ICE's regularly generated statistics on Secure Communities.

33. At the July 27, 2010 meeting, Plaintiffs presented agency counsel with a five-page list of "Critical Data Categories" which, in the view of the agency, substantially expanded the scope of Plaintiffs' data and statistics requests. These are the same "Critical Data Categories", which Plaintiffs seek to use as the basis for their current proposal on sampling of A-files

(presented to the Court via letter dated January 20, 2011). They requested numerous data points “disaggregated” over multiple jurisdictions.

34. ICE produced documents responsive to the RPL on August 3, 2010 (926 pages), September 8, 2010 (761 pages), October 22, 2010 (19 pages), and December 6, 2010 (283 pages).

35. ICE evaluated the “Critical Data Documents and Categories” and advised Plaintiffs via letter dated September 16, 2010 from the USAO, that many of the requested statistics were unavailable because the agency did not collect the requested data, and further advised that the agency would be required to write programs and create new documents to extract many of the remaining data categories. Plaintiffs were advised that there would be a fee associated with the production of the requested data.

36. On or about September 21, 2010, ICE, through the USAO, received the Plaintiffs’ “Proposed Settlement Structure”. The “Proposed Settlement Structure” made no concession on the documents requested in the FOIA request, but did agree to accept several of Defendants’ original suggestions on limiting the scope of the FOIA request, such as agreeing to accept documents only from the originating agency, and agreeing to negotiate the selection of custodians and search terms for the production of email.

37. On or about October 1, 2010, Plaintiffs sent an additional letter regarding the remainder of the RPL. Plaintiffs offered to include the remainder of the RPL into the rest of the FOIA request should the Defendants accept Plaintiffs’ “Proposed Settlement Structure”.

38. On or about October 11, 2010, Plaintiffs sent an email to ICE, via the USAO, advising that due to comments made by DHS Secretary in a October 6, 2010 news conference, that the “opt-out” documents from section 2 of the RPL that are the focus of the Court’s

December 9, 2010 order were of utmost importance to Plaintiffs. Plaintiffs demanded that the documents be produced by October 22, 2010.

39. ICE responded on October 18, 2010 via the USAO, that it could not give a date certain by which the documents would be produced, based mostly on the fact that the vast majority of the responsive documents were believed to be emails. Due to the ongoing nature of the parties' negotiations on the issue of email custodians and search terms, ICE believed that it lacked sufficient information to conduct a search until the parties agreed on the number and identity of custodians and the precise search terms to be employed.

40. On October 19, 2010, Plaintiffs submitted to the USAO a list of proposed search terms for email searches. The list consisted of six pages of terms and included the specific combinations of search queries that Plaintiffs were seeking. The proposed search queries would have resulted in thousands of separate search queries. The list of proposed search terms was not limited to terms to be employed in a search for opt-out records, but included terms to be used generally throughout the remainder of Plaintiffs requests.

41. The parties continued to negotiate the issue of the opt-out records as well as the remainder of Plaintiffs' FOIA request until October 28, 2010 when Plaintiffs filed their motion for preliminary injunction.

42. On December 6, 2010, ICE provided 283 pages of opt-out records to Plaintiffs.

43. On January 17, 2010, ICE provided over 12,000 pages of opt-out records to Plaintiffs pursuant to the Court's December 9, 2010 order.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 26 day of January, 2011

A handwritten signature in cursive script that reads "Catrina Pavlik-Keenan". The signature is written in black ink and is positioned above a horizontal line.

Catrina Pavlik-Keenan

Freedom of Information Act Officer

Freedom of Information Act Office

U.S. Immigration and Customs Enforcement

U.S. Department of Homeland Security