

**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. :
----- X

Civil Action No. 10-CV-3488

DECLARATION
OF DONNA A. LEWIS

Donna A. Lewis, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an Attorney Advisor in the Office of General Counsel at the Department of Homeland Security (“DHS”). My responsibilities include the coordination of responses to Freedom of Information Act (FOIA) requests made of DHS headquarters components, and the programs they conduct, once those requests become the subject of contested litigation. I am personally familiar with DHS’ procedures for responding to FOIA requests and with the FOIA request at issue in the instant litigation.

2. I present this declaration in support of the Government’s opposition to Plaintiffs’ motion for preliminary injunction. The statements I make in this declaration are based on my personal knowledge and my review of relevant documents and information provided to me by DHS employees in the course of their official duties.

3. 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 in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. In accordance with the requirements set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), this declaration provides an explanation of the basis for withholding portions of documents pursuant to FOIA Exemptions (b)(2)(high), (b)(5), and (b)(6)).

5. On January 17, 2011, the Office of General Counsel for DHS, via the United States Attorney's Office for the Southern District of New York, provided 317 documents for release to the plaintiffs.

6. Of these, portions of the first 196 documents (DHS0001-DHS000196) were withheld pursuant to Exemptions (b)(2)(high), (b)(5), and (b)(6) of the FOIA. The remaining 122 documents (DHS000196-DHS000317) were withheld in full pursuant to Exemptions (b)(2)(high), (b)(5), and (b)(6) of the FOIA. In applying exemptions, DHS disclosed all non-exempt material that was reasonably segregable from exempt material.

7. FOIA Exemption 2 high: Exemption 2 high, 5 U.S.C. §§ 552(b)(2) high, protects disclosure of internal matters of a far more substantial nature than (b)(2) low. The disclosure exemption is extended to internal and personnel matters, including law enforcement manuals, to the extent that disclosure would risk the circumvention of a statute or agency regulation or of an agency's law enforcement activities.

8. DHS applied Exemption 2 high to secured URL addresses and employee tasking reviews. The release of this information potentially could provide a blueprint to individuals seeking to breach agency firewalls and allow an individual to gain access to information on the internet protocol address or domain name where a particular electronic resource is located. Hyperlinks could enable an individual to reverse engineer a path into agency systems.

9. FOIA Exemption 5: Exemption 5, 5 U.S.C. § 522(b)(5), allows for the withholding of intra-agency documents that are normally privileged in the civil discovery

context. ICE has asserted this exemption to protect documents containing information that is protected by the deliberative process privilege and the attorney client privilege.

10. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within interagency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

11. DHS applied this exemption to withhold portions of email discussions and draft documents. The information withheld contains a record of the pre-decisional deliberations of agency employees. Disclosure of pre-decisional agency deliberations would cause harm to the agency by inhibiting the free flow of information between agency personnel and would damage the integrity of the decision making process. In addition, disclosure of information exchanged between ICE employees and our federal, state, and local partners could compromise the working relationships between these agencies. Much of the law enforcement process depends on cooperation at the Federal, State, and local levels and damaging these relationships could result in a deleterious impact on the ability of the agencies to carry out law enforcement and national security operations.

12. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

13. DHS applied this exemption to withhold portions of email discussions.

14. FOIA Exemption 6: Exemption 6, 5 U.S.C. § 552(b)(6), authorizes the withholding of personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Documents that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical,” or “similar files” under Exemption 6. When applying this exemption, the agency must balance the individual’s personal privacy interest against the public need for purposes of shedding light on the agency’s performance of its statutory duties.

15. DHS applied Exemption 6 to withhold third party names, phone numbers, and email addresses of individuals appearing in agency records. ICE has concluded that the personal privacy interests of the individual employees outweigh the public’s need to know employee names, telephone numbers, and email addresses.

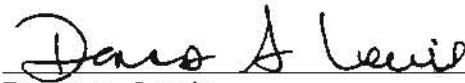
16. When withholding information pursuant to these Exemptions, DHS balances the privacy interests of the individuals mentioned in the documents against any public interest in disclosure. Each piece of information was examined to determine the degree and nature of the privacy interest of any individual whose name or other identifying information appears in these records. The public interest in disclosure of the information is determined by whether or not the information in question would inform the plaintiff or the general public about DHS’s performance of its mission to enforce Federal civil and criminal statutes, and/or how DHS actually conducts its internal operations and investigations.

17. In each instance where these Exemptions were applied, it was determined that individual privacy interests were not outweighed by any public interest in disclosure. To reveal the names and/or identifying information of third party individuals in the context of these records

could reasonably be expected to cause embarrassment and humiliation, and thus constitutes a clearly unwarranted invasion of personal privacy. Based upon the traditional recognition of strong privacy interests in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is appropriate. Moreover, the third parties identified in these records have not provided consent to the release of their personally identifying information.

V. 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 14th day of January, 2011

A handwritten signature in black ink, appearing to read "Donna A. Lewis", is written over a horizontal line.

Donna A. Lewis
Attorney Advisor
Legal Counsel Division
Office of the General Counsel
U.S. Department of Homeland Security