

# Exhibit A



National Day Laborer Organizing Network  
Red Nacional de Jornaleros

675 S. Park View St., Ste B  
Los Angeles, CA 90057

www.ndlon.org

Tel. (213) 380-2783  
Fax (213) 353-1344



February 3, 2010

Freedom of Information Act Request  
U.S. Immigration and Customs Enforcement  
800 North Capitol St., NW, Room 585  
Washington, DC 20536-5009  
Attn: Catrina Pavlik-Keenan, FOIA Director

National Records Center (NRC)  
Freedom of Information Act division  
P.O. Box 648010  
Lee's Summit, MO 64064-5570

**Re: Freedom of Information Act Request**

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the National Day Laborer Organizing Network ("NDLON"), the Center for Constitutional Rights ("CCR"), and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic") (collectively "the Requesters") for information regarding the U.S. Immigration and Customs Enforcement agency ("ICE") program Secure Communities ("Secure Communities"). We ask that you please direct this request to all appropriate offices and departments within the agency, including, but not limited to, the Office of Public Affairs, the Office of Detention Policy and Planning, the Office of Detention Oversight, and the Office of State/Local Coordination.

**Purpose of Request**

The purpose of this request is to obtain information for the public about the Secure Communities program and its impact on the relationship between local law enforcement and immigration enforcement in local communities. This information will enable the public to monitor the impact of the program. ICE announced the Secure Communities program in March 2008 as a program to facilitate the automatic sharing of fingerprints between federal immigration authorities and local and state enforcement agencies.<sup>1</sup> Secure Communities' purported objective is to "target" individuals who have committed crimes and "prioritize" removal of the most dangerous criminals. ICE has since implemented Secure Communities in over 95 jurisdictions

<sup>1</sup> The program introduces automatic interoperability between FBI and immigration databases.

and plans to expand it nationwide by 2013.<sup>2</sup> In spite of this unprecedented large-scale cooperation between federal immigration authorities and state and local agencies, ICE has promulgated no regulations and released minimal information about the program's operation.

The sometimes contradictory materials that ICE has released leave significant gaps in the public's understanding of the program's purpose, procedures, and potential impact on local communities.<sup>3</sup> Information unavailable to the public includes, but is not limited to, ICE's policies, procedures, and training materials related to Secure Communities and the subsequent detention and removal of individuals identified by Secure Communities, agreements between ICE and state or local entities, and the projected fiscal impact of Secure Communities. No information clarifies whether ICE takes action to protect citizens from erroneous detention and removal, to identify and protect vulnerable groups, or prevent racial profiling in local communities. The minimal data released from jurisdictions where Secure Communities has been implemented indicates that ICE has not effectively prioritized the most dangerous criminals. It is also unclear the extent to which individuals identified by the Secure Communities process are experiencing due process violations and other abuses when they are swept through ICE's costly, dangerous, and inefficient detention and removal system.

#### **A. Definitions**

- 1) **Secure Communities Jurisdiction(s)**. In this request, the term "Secure Communities Jurisdiction(s)" is defined as all jurisdictions where Secure Communities has been implemented.
- 2) **Potential Secure Communities Jurisdiction(s)**. In this request, the term "Potential Secure Communities Jurisdiction(s)" is defined as all jurisdictions where ICE is negotiating the implementation of Secure Communities or is in the process of finalizing an agreement.
- 3) **Designated Jurisdiction(s)**. In this request, the term "Designated Jurisdiction(s)" refers to the following jurisdictions:
  - Florida, all jurisdictions
  - Washington, D.C.
  - Harris County, TX
  - San Diego County, CA
  - Los Angeles County, CA
  - Maricopa County, AZ
  - Philadelphia County, PA
  - Wake County, NC
- 4) **Secure Communities Query**. In this request, the term "Secure Communities Query" is defined as a Criminal Answer Required ("CAR"), Criminal Print Identification ("CPI") File Maintenance Query, or any other mechanism by which a Law Enforcement Agency

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<sup>2</sup> David Sherfinski, *ICE plans expansion of immigration database program*, WASHINGTON EXAMINER, Jan. 28, 2010, available at <http://www.washingtonexaminer.com/local/ICE-plans-expansion-of-immigration-database-program-82809177.html#ixzz0ePOriSz2>.

<sup>3</sup> See Secure Communities Standard Operating Procedures, §§ 2.1.1 – 2.1.4, available at [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

submits a fingerprint query to be run through the Secure Communities' system to be checked against FBI and any DHS databases.<sup>4</sup>

- 5) **Secure Communities Match.** In this request, the term "Secure Communities Match" is defined as an interoperability hit following a Criminal Answer Required ("CAR") or Criminal Print Identification ("CPI") File Maintenance Query including, but not limited to, any instance in which a Secure Communities Query matches an individual to a record in any DHS database.
- 6) **Immigration Detainer.** In this request the term "Immigration Detainer" refers to the Form I-247, Immigration Detainer - Notice of Action (attached at Tab B) or any other similar request by ICE to detain an individual in state or local custody upon their release.
- 7) **ICE Field Offices.** In this request the term "ICE Field Offices" refers to all ICE Field Offices, including, but not limited to, ICE Sub-Field Offices, and any other ICE office involved in immigration enforcement.<sup>5</sup>
- 8) **Law Enforcement Agency.** In this request the term "Law Enforcement Agency" includes, but is not limited to, any state, city, county, or local police agency, department of corrections, sheriff's office, jail, or other holding facility.
- 9) **Vulnerable Groups.** In this request the term Vulnerable Groups includes, but is not limited to, such groups as minor children, the elderly, pregnant or breastfeeding woman, individuals with chronic or acute medical or mental health conditions, victims of human trafficking or other crimes, individuals with T, U, or S visas or pending visa applications, individuals who express a fear of persecution if removed, and individuals with dependent minor children in the United States.
- 10) **Record(s).** In this request the term "Record(s)" includes, but is not limited to, all Records or communications preserved in electronic or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

## **B. Acronyms**<sup>6</sup>

Department of Justice	DOJ
Federal Bureau of Investigation	FBI
Criminal Justice Information Services	CJIS
Integrated Automated Fingerprint Identification System	IAFIS
Department of Homeland Security	DHS
Immigration and Customs Enforcement	ICE
United States Visitor and Immigrant Status Indicator Technology	US-VISIT
Automated Biometric Identification System	IDENT
State Identification Bureau	SIB

<sup>4</sup> Secure Communities Standard Operating Procedures, §§ 2.1.1 – 2.1.4, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

<sup>5</sup> Jacqueline Stevens, *America's Secret ICE Castles*, THE NATION, Dec. 16, 2009, *available at* <http://www.thenation.com/doc/20100104/stevens>; List of Immigration and Customs Enforcement Subfield Offices, attached at Tab C.

<sup>6</sup>See also Appendix B, attached at Tab D.

Memorandum of Agreement	MOA
Local Law Enforcement Agency	Local LEA
National Fingerprint File	NFF
Criminal Ten-Print Submission (Answer Required)	CAR transaction
National Crime Information Center	NCIC
Automatic Immigration Alien Query	IAQ
ICE Law Enforcement Support Center	LESC
Immigration Alien Response	IAR
IDENT Data response	IDR

### **C. Request for Information**

#### **1) Policies, Procedures and Objectives**

Any and all Records, received, maintained, or created by any government agency or subdivision, related to the policies, procedures or objectives of Secure Communities, including documents created prior to March 28, 2008. Such Records include but are not limited to:

- a. **Overview Documents:** policies, operating procedures, rules, internal policy guidance, training materials and legal opinions or memoranda referencing Secure Communities or discussing the mandate, goals, objectives, function responsibility, purpose, implementation, deployment strategy of Secure Communities and any procedures for state or local jurisdictions to opt-out of Secure Communities.
- b. **State and Local Agreements:** agreements, including Memoranda of Agreement, Memoranda of Understanding, and drafts of agreements between ICE and any partner, including State Identification Bureaus (“SIBs”), local Law Enforcement Agencies (“local LEAs”) or other state or local agencies related to Secure Communities.
- c. **Secure Community’s Inquiry & Response Procedures:** any and all Records related to policies and procedures governing the initiation of Secure Communities Queries in Secure Communities Jurisdictions and policies and procedures governing ICE’s responses to Secure Communities Queries, including, but not limited to:
  - i. Any Record containing guidance or procedures governing when local LEAs may generate a Secure Communities Query, including any Records providing for mandatory Secure Communities Queries or discretionary Secure Communities Queries.
  - ii. Any Record related to any past, current, or future practice of automatic generation of a Secure Communities Query (“automated IAQ processing”) when “unknown” or “other than the United States” is entered as an individual’s place of birth.<sup>7</sup>
  - iii. Any Records that contain lists or otherwise identify any databases checked as a result of a Secure Communities Query, including, but not limited to, all national, state and local databases.

<sup>7</sup> Secure Communities Standard Operating Procedures, § 2.2.7, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

- iv. Any Records containing standard notices or computer screen shots generated in response to a Secure Communities Query.
- d. **Detainer Procedures:** any and all Records containing guidance, procedures, or standards governing the issuance or lifting of Form I-247, Immigration Detainer - Notice of Action (“Immigration Detainer”), by the Law Enforcement Support Center (“LESC”), the Criminal Alien Program (“CAP”), or ICE Field Offices on individuals who are subject to a Secure Communities Query, including any Records related to the Secure Communities “risk-based approach”<sup>8</sup> or the “Secure Communities’ levels and offense categories” by National Crime Information Center (“NCIC”) Code.<sup>9</sup>
- e. **State Training or Explanatory Materials:** any and all Records containing training, briefing, guidance, procedures, rules, or other informational materials developed for local LEAs, SIBs, or other state or local entities.
- f. **Relationship Between Secure Communities and Other ICE Enforcement Programs:** any and all Records indicating the interface or relationship between Secure Communities and other ICE programs, including but not limited to the Criminal Alien Program (“CAP”), 287(g) arrangements, and other ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“ICE ACCESS”).
- g. **Racial Profiling Policy:**
  - i. Any and all Records related to ICE monitoring or plans to monitor Secure Communities Jurisdictions for racial or ethnic profiling or other due process violations;<sup>10</sup>
  - ii. Any and all Records related to local LEAs’ racial profiling or anti-racial profiling policies or procedures from Secure Communities Jurisdictions or Proposed Secure Communities Jurisdictions;
  - iii. Any and all Records evaluating, reviewing, compiling or otherwise discussing compliance with racial profiling or anti-racial profiling policies and procedures, including, but not limited to, Section 1.0 of the Secure Communities Standard Operating Procedures.
- h. **Vulnerable Groups:** Any and all Records containing policy or procedures concerning the treatment of Vulnerable Groups targeted by Secure Communities, including, but not limited to, the issuance of Immigration Detainers, parole, or other exercise of prosecutorial discretion.

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<sup>8</sup> Secure Communities Fact Sheet, U.S. Department of Homeland Security, Immigration and Customs Enforcement, September 1, 2009, *available at* [www.ice.gov/secure\\_communities](http://www.ice.gov/secure_communities), attached at Tab E.

<sup>9</sup> Secure Communities Standard Operating Procedures, Appendix A, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

<sup>10</sup> Secure Communities Standard Operating Procedures, Introduction, § 1.0, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A (stating that “[u]se of IDENT/IAFIS for the purpose of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity”).

## 2) Data & Statistical Information

Any and all Records, excluding Records from individual Alien files, containing data or statistics prepared, compiled, or maintained by ICE or any agency or subdivision thereof related to or pertaining to Secure Communities or to Secure Communities Jurisdictions beginning the last full fiscal year prior to the implementation of Secure Communities in each jurisdiction through the present (except as otherwise specified). Such Records should include, but not be limited to:

- a. **Criminal Answer Required (“CAR”) and Criminal Print Identification (“CPI”) File Maintenance Messages:** Records that contain data or statistical information on CARs and CPI File Maintenance Messages originating in each Secure Communities Jurisdiction and cumulatively (including Records that contain data or statistical information on any and all fingerprints transmitted through interoperability), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain statistics or data drawn from such CARs and CPIs, including any analysis or breakdown thereof.
- b. **Automatic Immigration Alien Queries (“IAQs”):** Records that contain data or statistical information on IAQs triggered by inquiries from each Secure Communities Jurisdiction (including Records that contain data or statistical information on any and all matches or hits in IDENT), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IAQs, including any analysis or breakdown thereof.
- c. **Immigrant Alien Responses (“IARs”) and IDENT Data Responses (“IDRs”):** Records that contain data or statistical information on IARs and IDRs triggered by Secure Communities Queries from each Secure Communities Jurisdiction, from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IARs and IDRs, including any analysis or breakdown thereof.
- d. **Form I-247, Immigration Detainers (Immigration Detainers):**
  - i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;

- iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities Detainers:** Records that contain data or statistical information on the number of Immigration Detainers lodged on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such Immigration Detainer forms, including any analysis or breakdown thereof.
- e. **Form I-213, Record of Deportable/Inadmissible Alien:**
- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities I-213s:** Records that contain data or statistical information on the number of Forms I-213 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such I-213 forms, including any analysis or breakdown thereof.
- f. **Form I-286, Notice of Custody Determinations:**
- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;



- ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number Forms I-286 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-286 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities I-286:** Records that contain data or statistical information on the number of Forms I-286 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such I-286 forms, including any analysis or breakdown thereof.
- g. **Form I-862, Notice to Appears (NTA):**
  - i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities I-862:** Records that contain data or statistical information on the number of Forms I-862 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;

- vi. Any Records that contain data drawn from any such I-862 forms including any analysis or breakdown thereof.

**h. Criminal Records in Secure Communities Jurisdictions:**

- i. **Pre-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals identified through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Post-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, since the implementation of Secure Communities;
- iii. Any Records that contain any analysis or breakdown of the aforementioned data and statistical information on criminal history, records, or pending charges.

**i. Offense Level Determinations:**

Any records that contain data or statistical information disaggregated by any categorization of criminal history or other risk-based assessment including, but not limited to, the “Secure Communities’ levels and offense categories”<sup>11</sup> for the following periods:

- i. **Pre-Secure Communities:** Dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively; and
- ii. **Post-Secure Communities:** Since the implementation of Secure Communities.

This request includes any such record pertaining to whether or not detainers were lodged, whether or not Notices to Appear were issued, and whether or not individuals were ordered removed and/or actually removed.

**j. Removals:**

Any records that contain data or statistical information on removals of individuals in Secure Communities jurisdictions, including:

- i. **Pre-Secure Communities:** Any removal resulting from apprehensions through the CAP dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Post-Secure Communities:** Any removal of individuals who are subject to a Secure Communities Query since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;
- iii. **Post-Secure Communities through CAP:** Any removal resulting from apprehensions through the CAP following the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively.

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<sup>11</sup> See Secure Communities Standard Operating Procedures, Appendix A, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

k. **United States Citizens:**

Any records that contain data or statistical information or any discussion or information whatsoever pertaining to United States Citizens:

- i. Identified through Secure Communities Matches;
- ii. Subjected to Immigration Detainers after being subject to a Secure Communities Query;
- iii. Detained by ICE after being subject to a Secure Communities Query;
- iv. Removed by ICE after being subject to a Secure Communities Query.

l. **Demographic Data**

Any records that contain data or statistical information on race, ethnicity, sex, age, or place of birth of:

- i. Subjects of Detainers
  - 1. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - 2. **Post-Secure Communities:** Individuals subject to detainers after being subject to a Secure Communities Query since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;
- ii. Subjects of Secure Communities Queries;
- iii. Subjects of Secure Communities Matches.

m. **Vulnerable Groups**

Any and all Records containing data or statistical information on Vulnerable Groups for:

- iv. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- v. **Post-Secure Communities:** Individuals subject to Secure Communities Queries since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;

3) **Individual Records**

The following Records pertaining to individuals subject to Secure Communities Queries or ICE detainers in Designated Jurisdictions from October 2007 through the present:

- i. Criminal Answer Required (CAR) and Criminal Print Identification (CPI) File Maintenance Messages;
- ii. Automatic Immigration Alien Queries (IAQs);
- iii. Immigrant Alien Responses (IAR) and IDENT Data Responses (IDR);

- iv. Form I-247, Immigration Detainer – Notice of Action (Immigration Detainer);
- v. Form I-213, Record of Deportable/Inadmissible Alien;
- vi. Form I-215c, Record of Sworn Statement in Affidavit Form;
- vii. Form I-200, Warrant for Arrest of Alien;
- viii. Stipulated Request for Final Order of Removal and Waiver of Hearing;<sup>12</sup>
- ix. Written Notice of Reinstatement of Removal;<sup>13</sup>
- x. Administrative Voluntary Departure;
- xi. Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent)
- xii. Form I-205, Warrant of Removal
- xiii. Form I-286, Notice of Custody Determination;
- xiv. Form I-862, Notice to Appear (NTA);
- xv. Initial Notice if Hearing in Removal Proceedings;
- xvi. Immigration Judge Bond Redetermination Order, EOIR Form 1;
- xvii. Notice of Entry of Appearance as Attorney or Representative before the Immigration Court, Form EOIR-28 or USCIS Form G-28;
- xviii. Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals, Form EOIR-27
- xix. Immigration Judge Orders: ordering individual removed, terminating proceedings, or granting relief;
- xx. Any other Records that contain any of the following information:
  - i. **Demographic Information:**
    - 1. The criminal history of, and the current charges against, the individual;
    - 2. The individual's age, race, gender, nationality, place of birth or status as a member of a Vulnerable Group.

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<sup>12</sup> See Stipulated Request for Final Order of Removal and Waiver of Hearing, <http://www.scribd.com/doc/22093836/EOIR-Stipulated-Request-for-Removal-Order-and-Waiver-of-Hearing>

<sup>13</sup> See 8 C.F.R. § 1241.8(b)

ii. **Immigration Detainers:**

1. Whether the Immigration Detainer was lodged on individuals who are subject to a Secure Communities Query;
2. Whether the Immigration Detainer was issued by the LESC, the CAP, a local ICE field office, a 287(g) officer, or some other entity;
3. How the determination to lodge an Immigration Detainer was made, including reference to any policy guidelines or “risk-based” assessment, such as guidance based on criminal history or factors such as age, gender, medical or mental health conditions, or dependent minor children;
4. For any individual identified following a Secure Communities Query for whom an Immigration Detainer was not lodged or was subsequently lifted and the reasons for that determination, including reference to any policy guidelines or “risk-based” assessment.

iii. **ICE Custody Determinations:**

1. Any notice or communication from the local or state facility with custody of the individual subject to an ICE detainer to ICE indicating when the individual is to be released from criminal custody or when ICE can and/or must assume custody;
2. The date and time the individual subject to the detainer was taken into ICE custody;
3. Whether and when the individual posted bond, if any;
4. What factors ICE considered in deciding whether or not to issue bond, how much bond to issue, whether to release someone on their own recognizance, whether to put someone on supervised release or intensive supervised release, whether to grant someone parole or prosecutorial discretion, or any other custody determination, including, for example, any worksheet or checklists utilized for any of the above determinations and reference to any policy guidelines or “risk-based” assessment, including, but not limited to, determinations based on:
  - I. Any categorization of criminal history or other risk-based assessment including, but not limited to, the “Secure Communities’ levels and offense categories”,<sup>14</sup>
  - II. Age or gender;
  - III. Medical or mental health conditions;
  - IV. Eligibility for T, U, S visas, or VAWA adjustment;
  - V. Eligibility for asylum, withholding or protection under the Convention Against Torture;
  - VI. Eligibility for other forms of relief from removal;
  - VII. Length of permanent residence in the United States and community ties; or
  - VIII. The existence of minor children dependent on the individual or other family members in the United States;

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<sup>14</sup> See Secure Communities Standard Operating Procedures, Appendix A, *available at* [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf), attached at Tab A.

5. Whether the individual's criminal case(s) were resolved at the time ICE assumed custody.

iv. **Immigration Charging Document:**

1. When a Notice to Appear is not issued after ICE assumes custody, whether the non-issuance is due to:
  - I. The existence of a prior deportation, exclusion, or removal order;
  - II. The existence of a stipulated order of removal;
  - III. The issuance of a Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order, pursuant to the expedited removal statute;
  - IV. The issuance of a Final Administrative Order of Removal;
  - V. The issuance of a Form I-860, Notice and Order of Expedited Removal, pursuant to the expedited removal statute;
  - VI. ICE's determination that the individual is a United States citizen;
  - VII. ICE's determination that the individual is not removable;
  - VIII. ICE's exercise of prosecutorial discretion; or
  - IX. Any other factor.
2. The date and time that ICE:
  - I. Executed the Notice to Appear;
  - II. Served the Notice to Appear on the individual;
  - III. Filed the Notice to Appear with the Executive Office for Immigration Review.

v. **Immigration Bonds:**

1. Whether and when the individual requested a bond hearing;
2. Whether and when a bond hearing was held;
3. Whether and when an individual requested a redetermination of custody decision;
4. Whether and when a custody redetermination hearing was scheduled;
5. Whether and when a custody redetermination hearing was held;
6. Whether and when the individual requested a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing;
7. Whether and when a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing was held;
8. The amount of the bond set by the Immigration Judge, if any;
9. Whether the individual appealed the bond determination;
10. Whether and when the individual posted bond, if any.

vi. **Removal Proceedings:**

1. If resolved, the final outcome of the individual's removal case;
2. If pending, the current status of the individual's removal case;
3. The date the individual's removal case was resolved;
4. Whether the individual was represented by counsel in the removal proceeding at any time.

vii. **Detention:**

1. When the individual was first detained by ICE;
2. If released, the date the individual was released from custody (or removed);
3. Each location and facility where the individual was detained and the dates of detention at each such facility.

4) **Fiscal Impact of Secure Communities**

- a. **Fiscal Impact on State and Local Secure Communities Jurisdictions and Potential Secure Communities Jurisdictions:** Any and all Records related to the fiscal impact or the actual, estimated, or projected cost on state and local Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions arising from or related to Secure Communities or to individuals subject to Immigration Detainers following a Secure Communities Query, including, but not limited to, costs, reimbursements, monetary agreements, and monetary incentives, including increased costs of detention.
- b. **Intergovernmental Service Agreements:** Any and all Records related to proposed, contemplated, existing, or prior Intergovernmental Service Agreements for detention facilities with Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions.
- c. **Contracts with Private Entities:** Any and all Records related to proposed, contemplated, existing, or prior contracts or communications with private companies or other private entities related to the development or implementation of Secure Communities.
- d. **Federal Costs of Secure Communities:** Any and all Records related to actual, estimated, or projected costs of the Secure Communities program to the federal government, including, but not limited to, Department of Homeland Security appropriations, and costs of increased detention and removal operations to ICE, EOIR, and United States Attorneys' Offices, and to the federal courts.

5) **Communications**

- a. **Any and all Records containing communications related to Secure Communities by, to, or between any of the following:**
  - i. **ICE:** ICE or any agent, officer, employee, or subdivision thereof;
  - ii. **DHS:** DHS or any agent, officer, employee, or subdivision thereof;
  - iii. **DOJ:** DOJ or any agent, officer, employee, or subdivision thereof, including, but not limited to EOIR, FBI, and FBI CJIS;

- iv. **State and Local Jurisdictions:** Secure Communities Jurisdictions, Proposed Secure Communities Jurisdictions, and any other state and local jurisdictions, including, but not limited to, any local or state LEAs, SIBs and Attorney Generals' offices;
- v. **The White House:** The White House, the President of the United States, his staff and advisors;
- vi. **United States Congress:** United States Congress, including, but not limited to, letters or emails to Senators or Representatives or staff members thereof, congressional committees, congressional briefings documents, congressional testimony, any other information provided to a member or employee of Congress, and any documents used in preparation of the aforementioned materials. Including but not limited to:
  - 1. Congressional inquiries regarding Secretary Napolitano's statements regarding Secure Communities in the week following the Criminal Alien Program presentation (November 2009);
  - 2. Information regarding ICE Assistant Secretary John T. Morton's meeting with the Congressional Hispanic Caucus on October 21, 2009;
  - 3. Briefings for Congress on 287(g) announcement on July 15, 2009;
  - 4. Briefing for Senate staff in September 2009 on fugitive operations and other issues related to Secure Communities; and,
  - 5. Briefing for Department of Justice Civil Rights Division in 2009.
- vii. **Non-Governmental Organizations (NGOs):** including emails, letters, or other documents distributed to NGOs or any documents used in preparation of such materials or in preparation for meetings with NGOs.

**b. Public Statements**

- i. **Press Releases:** Any and all Records related to or containing press releases or public internet postings that mention the phrase "Secure Communities" and any and all Records used in the preparation thereof;
  - ii. **Statements to Reporters or Media Outlets:** Any and all Records related to or containing statements by ICE or any official, officer, or employee thereof to a reporter or media outlet, including any opinion pieces or letters to the editor drafted for newspapers or internet media outlets and any Records used in the preparation thereof.
- c. Speeches:** Any and all Records related to speeches, statements, and presentations by ICE or any official, officer, or employee thereof, mentioning Secure Communities and any Records or drafts used in the preparation thereof.



**d. Secure Communities Public Relations Approach:**

Any and all Records related ICE's Secure Communities messaging, media, or communications approach. Including but not limited to:

- i. Any and all Records related to the development of the program's title, media approach, website, and public relations approach;
- ii. Any and all Records related to any media, communications, or consulting firm that assisted in the development or implementation of ICE's Secure Communities messaging, media, or communications approach, including any contract or agreement with such firm.

**6) Secure Communities Program Assessment Records**

- a. Any and all Records developed or used by ICE or DHS to evaluate, review, or monitor effectiveness or outcomes of Secure Communities.
- b. Any records containing assessments of the Secure Communities program, whether related to national assessments, assessments of specific Secure Communities Jurisdictions, related to any time period, or any interface or relation with any other ICE programs, divisions or initiatives.
- c. Secure Communities Stakeholder's Questionnaire:
  - i. Any and all Records related to the Form 70-008, ICE Secure Communities Stakeholder's ID Assessment Questionnaire (Stakeholder Questionnaire), OMB No. 1653-NEW, including earlier versions of the questionnaire, memoranda, communications, data gathered, or analysis of such data or questionnaire responses;<sup>15</sup>
  - ii. Any and all Records containing comments to the Stakeholder Questionnaire;
  - iii. Any Records containing follow-up communications related to the Stakeholder Questionnaire or other efforts to solicit community input;
  - iv. Any Records containing implementation, analysis, rejection, or other processing of the Stakeholder Questionnaire.

**7) Secure Communities Complaint Mechanisms and Oversight**

- a. Any and all Records related to a complaint mechanism or redress procedure for an individual, such as a United States citizen, erroneously subject to an Immigration Detainer following a Secure Communities Query or other Secure Communities related complaints.

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<sup>15</sup> Immigration and Customs Enforcement Secure Communities Stakeholders ID Assessment Questionnaire

- b. Any and all Records relating to oversight, monitoring, evaluation and supervision of federal, state, and local actors involved in Secure Communities, including, but not limited to, local LEAs, SIBs, and ICE Field Offices.
- c. Any and all Records related to complaints or grievances filed by community members, detained individuals, non-governmental organizations, Congressional representatives, ICE or DHS working groups, state or local entities or employees, federal entities or employees, including those filed with ICE, DHS, SIBs, DHS' Office of Civil Rights and Civil Liberties, the DHS Office of the Inspector General, ICE Office of Professional Responsibility, the United States Attorney General or the Department of Justice, state or local authorities or civil rights bureaus, or the United States Congress or any member or committee thereof.

If you deny any part of this request, please cite each specific reason or exemption to FOIA that you believe justifies your refusal to release the information, and notify us of appeal procedures available to us under the law. The Requesters expect release of all segregable portions of otherwise exempt material. 5 U.S.C. § 552(b). The Requesters reserve the right to appeal a decision to withhold information or a denial of fee waivers. 5 U.S.C. § 552(a)(6)(A)(i).

#### **D. The Requesters**

*The National Day Laborer Organizing Network ("NDLON")* is a non-profit organization founded in 2001 whose mission is to improve the lives of day laborers in the United States. Toward this end, NDLON seeks to strengthen, connect and expand the work of its member organizations in order to become more effective and strategic in building leadership, advancing low-wage worker and immigrant rights, and developing successful models for organizing immigrant contingent/temporary workers.<sup>16</sup>

*The Center for Constitutional Rights ("CCR")* is a not-for-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse docket includes litigation and advocacy around immigration detention, post-9/11 detention policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. CCR has published reports on various aspects of detention and the criminal justice system in the United States. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, [www.ccrjustice.org](http://www.ccrjustice.org), which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to

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<sup>16</sup> NDLON has routinely been granted fee waivers in the past. *See e.g.*, Freedom of Information Act to Customs and Border Protection, March 18, 2009, Case Number 2009F7375.

CCR's work. CCR staff members often serve as sources for journalist and media outlets on immigration, policing and detention policies.

*The Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic")* was founded in 2008 to provide quality *pro bono* legal representation to indigent immigrants facing deportation. Under the supervision of experienced practitioners, law students in the Clinic represent individuals facing deportation and community-based organizations in public advocacy, media, and litigation projects. In just over one year of existence, the Clinic has already established itself as a leader in the dissemination of critically important information about immigration enforcement operations to the public. In February 2009, the Clinic issued a press release and released previously unavailable secret memoranda and data related to ICE home raid operations to the press, resulting in widespread national media coverage. In July 2009, the Clinic published the first public study of ICE's home raid operations, playing a critical role in informing the public of widespread constitutional violations and other abuses, again attracting significant national media attention.<sup>17</sup>

#### **E. Fee Waiver**

The Requesters are entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requesters'] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is a prerequisite for members of the local community organizations to meaningfully evaluate immigration enforcement actions and their potential detrimental effects.

The public has an interest in knowing about the manner in which the federal government involves state and local entities in the enforcement of federal immigration law. Secure Communities is a new program of which the public has limited information. There is almost no data in the public domain about the implementation of Secure Communities or whether and how ICE adheres to its congressionally sanctioned objectives to target and prioritize "dangerous criminal aliens."<sup>18</sup> The information that is available is vague and seems to indicate that ICE is not executing its enforcement priorities.<sup>19</sup> The Records sought in this request will inform the

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<sup>17</sup> See Constitution On ICE: A Report on Immigration Home Raid Operations, Cardozo Immigration Justice Clinic, available at [http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC\\_ICE-Home-Raid-Report%20Updated.pdf](http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICE-Home-Raid-Report%20Updated.pdf)

<sup>18</sup> U.S. Congress, FY2010 Conference Summary: Homeland Security Appropriations, October 7, 2009 (providing funding to "improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable.")

<sup>19</sup> See U.S. Immigration and Customs Enforcement, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce That the Secure Communities Initiative Identified More Than 110,000 Criminal Aliens*

public of the scope and effect of the Secure Communities program on community policing and safety, racial profiling, and Constitutional or due process violations in immigration detention. The public has a strong interest in knowing when and how an individual arrested by local police might be subject to federal immigration database checks and swept into the immigration detention and removal system. Moreover, local communities need the requested information about how Secure Communities functions in order to determine whether their interests will be served by the introduction of the program.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, the Requesters seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requesters agree to pay for the first 100 pages of duplication. *See* 6 C.F.R. § 5.11(d). The Requesters agree to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requesters request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

#### **F. Expedited Processing**

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 28 C.F.R. § 16.5(d)(1)(iv), and also when there exists "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence, 28 C.F.R. § 16.5(d)(1)(ii).

There is an urgent need to inform the public of the Secure Communities program. 28 C.F.R. § 16.5(d)(1)(iv). The Fiscal Year 2010 appropriations bill for DHS allocates \$200 billion to Secure Communities. To date, the program has been implemented in over 95 jurisdictions in eleven states. By 2013, ICE intends to operate the program in all 3,100 county and local jails across the country. In spite of this widespread fiscal and community impact, ICE has promulgated no regulations or agency guidelines regarding the operation of the program. ICE has not released the memorandums of agreement that it has entered into with local entities or disclosed precisely how Secure Communities will be implemented on a local level. As ICE continues to introduce Secure Communities in jurisdictions across the country, the public has an urgent need to understand the scope of the program.

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*in its First Year*, Nov. 12, 2009 (citing that 110,000 "criminal aliens" have been identified, but indicating that some of these "criminal" aliens had only been *charged* but not *convicted* of crimes);

Given the vast implications of the program and the public uncertainty surrounding its implementation, Secure Communities is a "matter of widespread and exceptional media interest."<sup>20</sup> Correspondingly, the media has raised serious questions about the Secure Communities program related to the "government's integrity which affect public confidence," including concerns that Secure Communities will serve as a dragnet instead of a mechanism to target dangerous criminal individuals, and will hinder community policing and lead to racial profiling.<sup>21</sup>

### G. Certification

The Requesters certify that the above information is true and correct to the best of the Requesters' knowledge. See 6 C.F.R. § 5.5(d)(3).

If you have any questions regarding the processing of this request, you may contact Bridget Kessler at (212) 790-0213 or Peter Markowitz at (212) 790-0340. Thank you for your kind consideration.

Please furnish all applicable Records to:

Bridget Kessler  
Clinical Teaching Fellow  
Cardozo School of Law  
Immigration Justice Clinic  
55 Fifth Avenue  
New York, NY 10003

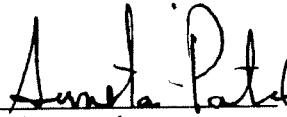
Sincerely,



Bridget Kessler  
Clinical Teaching Fellow  
Cardozo School of Law  
Immigration Justice Clinic  
55 Fifth Avenue  
New York, NY 10003  
Phone: (212) 790-0213

<sup>20</sup> Julia Preston New York Times, *U.S. Identifies 111,000 Immigrants With Criminal Records*, Nov. 13, 2009; New York Times, Editorial, *Wrong Paths to Immigration Reform*, Oct. 12, 2009; Jose M. Serrano, New York State senator, Letter to Editor, New York Times, *Threat to Immigrants*, Oct. 16, 2009; The Real Cost of Prisons Weblog, *Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens*, Jan. 19, 2009; N.C. Aizenman, Washington Post, *D.C. to help U.S. identify illegal immigrants in jail Federal program checks fingerprints of local crime suspects*, Nov. 13, 2009; *More Questions Than Answers About the Secure Communities Program*, Mar. 2009; See Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009;

<sup>21</sup> See Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009 (noting the concern that Secure Communities raises questions about local police authorities' ability to build strong, trusting relationship with their communities).



Sunita Patel  
Staff Attorney  
Center for Constitutional Rights  
666 Broadway, 6<sup>th</sup> Floor  
New York, NY 10012  
Phone: (212)614-6439

On behalf of the Requesters

# Exhibit B



U.S. Department of Justice

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

March 2, 2010

MS. BRIDGET KESSLER  
CARDOZO SCHOOL OF LAW  
IMMIGRATION JUSTICE CLINIC  
55 FIFTH AVENUE  
NEW YORK, NY 10003

FOIPA Request No.: 1143784- 000  
Subject: SECURE COMMUNITIES PROGRAM

Dear Ms. Kessler:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI received by this office February 4, 2010. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant 28 U.S.C. § 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☒ We are searching the indices to our Central Records System for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FBI. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your request for expedited processing has been granted. Your request for a fee waiver is being considered and you will be advised as to its status at a later date. Your patience is appreciated.

Very truly yours,

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



# Exhibit C



U.S. Immigration  
and Customs  
Enforcement

February 23, 2010

Ms. Bridgette J. Kessler  
Clinical Teaching Fellow  
Cardoza School of Law  
55 Fifth Avenue  
New York, NY 10003

**RE: FOIA Case Number 2010FOIA2674**

Dear Ms. Kessler:

This letter responds to your request for a waiver of fees in the processing of your Freedom of Information Act (FOIA) request dated Feb 3, 2010. You have requested any and all records, received, maintained, or created by any government agency or subdivision related to the policies, procedures or objectives of Secure Communities, including documents created prior to March 28, 2008 Immigration and Customs Enforcement (ICE) evaluates fee waiver requests under the legal standard set forth above and the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, as incorporated into the Department of Homeland Security's Freedom of Information Act regulations<sup>1</sup>. These regulations set forth six factors to examine in determining whether the applicable legal standard for fee waiver has been met. I have considered the following factors in my evaluation of your request for a fee waiver: (1) whether the subject of the requested records concerns "the operations or activities of the government"; (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor of a narrow segment of interested persons; (4) whether the contribution to public understanding of government operations or activities will be "significant"; (5) whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure that disclosure is primarily in the commercial interest of the requestor.

Upon review of your request and a careful consideration of the factors listed above, I have determined to deny your request for a fee waiver.

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<sup>1</sup> 6 CFR § 5.11(k).

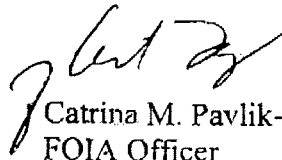
Immigration and Customs Enforcement (ICE) evaluates requests for expedited processing based upon the legal standards set forth in the Electronic Freedom of Information Act Amendments of 1996 as incorporated into the Department of Homeland Security's Freedom of Information Act regulations<sup>2</sup>. These regulations establish two factors to examine in determining whether the applicable legal standard for expedited processing has been met. We have considered the following factors in our evaluation of your request for expedited processing: (1) whether the lack of an expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; and (2) if there is an urgency to inform the public about an actual or alleged federal government activity, if the request is made by a person primarily engaged in disseminating information.

Upon review of your request and a careful consideration of the factors listed above, I have determined to deny your request for expedited processing.

The undersigned is the person responsible for this determination. You may appeal this finding by writing to the Associate General Counsel (General Law), Department of Homeland Security, FOIA Appeals, Washington, DC 20528, within 60 days from the date of this determination. It should contain any information and state, to the extent possible, the reasons why you believe the initial determination should be reversed and the envelope in which the appeal is mailed in should be prominently marked "FOIA Appeal." The Privacy Office's determination will be administratively final.

If you have any questions pertaining to your request, please contact the FOIA Office at (202) 732-0300.

Sincerely,



Catrina M. Pavlik-Keenan  
FOIA Officer

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<sup>2</sup> 6 CFR § 5.5(d).

# Fax

To: Ms. Kessler From: Schiavone  
Fax: 212-790-0256 Pages: 2  
Phone: Date: 3-9-10  
Re: 2010-FOIA 2674 CC:  
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Please contact the ICE FOIA Office at 202-732-0300 if there are problems with this transmission.

# Exhibit D



# Homeland Security

March 5, 2010

Ms. Bridget Kessler  
Clinical Teaching Fellow  
Cardozo School of Law  
Immigration Justice Clinic  
55 Fifth Avenue  
New York, NY 10003

Re: **DHS/OS/PRIV 10-0385**

Dear Ms. Kessler:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated February 3, 2010 and received in this office on February 12, 2010, seeking information on behalf of the National Day Laborer Organizing Network ("NDLON"), the Center for Constitutional Rights ("CCR"), and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic") (collectively "the Requesters") for information regarding the U.S. Immigration and Customs Enforcement agency ("ICE") program Secure Communities ("Secure Communities") including, but not limited to the following:

- (1) **Policies, Procedures and Objectives:** Any and all Records, received, maintained, or created by any government agency or subdivision, related to the policies, procedures or objectives of Secure Communities, including documents created prior to March 28, 2008. Such records include but are not limited to:
  - a. **Overview Documents:** policies, operating procedures, rules, internal policy guidance, training materials and legal opinions or memoranda referencing Secure Communities or discussing the mandate, goals, objectives, function responsibility, purpose, implementation, deployment strategy of Secure Communities and any procedures for state or local jurisdictions to opt-out of Secure Communities.
  - b. **State and Local Agreements:** agreements, including Memoranda of Agreement, Memoranda of Understanding, and drafts of agreements between ICE and any partner, including State Identification Bureaus ("SIBs"), local Law Enforcement Agencies ("local LEAs") or other state or local agencies related to Secure Communities.
  - c. **Secure Community's Inquiry & Response Procedures:** any and all Records related to policies and procedures governing the initiation of Secure Communities Queries in Secure Communities Jurisdictions and policies and procedures governing ICE's responses to Secure Communities Queries, including, but not limited to:
    - i. Any Record containing guidance or procedures governing when local LEAs may generate a Secure Communities Query, including any Records providing for mandatory Secure Communities Queries or discretionary Secure Communities Queries.

- ii. Any Record related to any past, current, or future practice of automatic generation of a Secure Communities Query (“automated IAQ processing”) when “unknown” or “other than the United States” is entered as an individual’s place of birth.
  - iii. Any Records that contain lists or otherwise identify any databases checked as a result of a Secure Communities Query, including, but not limited to, all national, state and local databases.
  - iv. Any Records containing standard notices or computer screen shots generated in response to a Secure Communities Query.
- d. **Detainer Procedures:** any and all Records containing guidance, procedures, or standards governing the issuance or lifting of Form I-247, Immigration Detainer-Notice of Action (“Immigration Detainer”), by the Law Enforcement Support Center (“LESC”), the Criminal Alien Program (“CAP”), or ICE Field Offices on individuals who are subject to a Secure Communities Query, including any Records related to the Secure Communities “risk-based approach” or the “Secure Communities’ levels and offense categories” by National Crime Information Center (“NCIC”) Code.
- e. **State Training or Explanatory Materials:** any and all Records containing training, briefing, guidance, procedures, rules, or other informational materials developed for local LEAs, SIBs, or other state or local entities.
- f. **Relationship Between Secure Communities and Other ICE Enforcement Programs:** any and all Records indicating the interface or relationship between Secure Communities and other ICE programs, including but not limited to the Criminal Alien Program (“CAP”), 287(g) arrangements, and other ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“ICE ACCESS”).
- g. **Racial Profiling Policy:**
  - i. Any and all Records related to ICE monitoring or plans to monitor Secure Communities Jurisdictions for racial or ethnic profiling or other due process violations;
  - ii. Any and all Records related to local LEAs’ racial profiling or anti-racial profiling policies or procedures from Secure Communities Jurisdictions or Proposed Secure Communities Jurisdictions;
  - iii. Any and all Records evaluating, reviewing, compiling or otherwise discussing compliance with racial profiling, or anti-racial profiling policies and procedures, including, but not limited to, Section 1.0 of the Secure Communities Standard Operating Procedures.
- h. **Vulnerable Groups:** Any and all Records containing policy or procedures concerning the treatment of Vulnerable Groups targeted by Secure Communities, including, but not limited to, the issuance of Immigration Detainers, parole, or other exercise of prosecutorial discretion.

## 2) Data & Statistical Information

Any and all Records, excluding Records from individual Alien files, containing data or statistics prepared, compiled, or maintained by ICE or any agency or subdivision thereof related to or pertaining to Secure Communities or to Secure Communities Jurisdictions beginning the last full fiscal year prior to the implementation of Secure Communities in each jurisdiction through the present (except as otherwise specified). Such Records should include, but not limited to:

- a. **Criminal Answer Required (“CAR”) and Criminal Print Identification (“CPI”) File Maintenance Messages:** Records that contain data or statistical information on CARs and CPI File Maintenance Messages originating in each Secure Communities Jurisdiction and cumulatively (including Records that contain data or statistical information on of any and all fingerprints transmitted through interoperability), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain statistics or data drawn from such CARs and CPIs, including any analysis or breakdown thereof.
- b. **Automatic Immigration Alien Queries (“IAQs”):** Records that contain data or statistical information on IAQs triggered by inquiries from each Secure Communities Jurisdiction (including Records that contain data or statistical information on any and all matches or hits in IDENT), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IAQs, including any analysis or breakdown thereof.
- c. **Immigrant Alien Responses (“IARs”) and IDENT Data Responses (“IDRs”):** Records that contain data or statistical information on IARs and IDRs triggered by Secure Communities Queries from each Secure Communities Jurisdiction, from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IARs and IDRs, including any analysis or breakdown thereof.
- d. **Form I-247, Immigration Detainers (Immigration Detainers):**
  - i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities Detainers:** Records that contain data or statistical information on the number of Immigration Detainers lodged on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such Immigration Detainer forms, including any analysis or breakdown thereof.



e. **Form I-213, Record of Deportable/Inadmissible Alien:**

- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- iii. **Post Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
- iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
- v. **Secure Communities I-213s:** Records that contain data or statistical information on the number of Forms I-213 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
- vi. Any Records that contain data drawn from any such I-213 forms, including any analysis or breakdown thereof.

f. **Form I-286, Notice of Custody Determinations:**

- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number Forms I-286 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
- iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-286 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;

- v. **Secure Communities I-286:** Records that contain data or statistical information on the number of Forms I-286 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such I-286 forms, including any analysis or breakdown thereof.
- g. **Form I-862, Notice to Appears (NTA):**
  - i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - v. **Secure Communities I-862:** Records that contain data or statistical information on the number of Forms I-862 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
  - vi. Any Records that contain data drawn from any such I-862 forms including any analysis or breakdown thereof.
- h. **Criminal Records in Secure Communities Jurisdictions:**
  - i. **Pre-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals indentified through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
  - ii. **Post-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, since the implementation of Secure Communities;
  - iii. Any Records that contain any analysis or breakdown of the aforementioned data and statistical information on criminal history, records, or pending charges.

i. **Offense Level Determinations:**

Any records that contain data or statistical information disaggregated by any categorization of criminal history or other risk-based assessment including, but not limited to, the “Secure Communities’ levels and offense categories” for the following periods:

- i. **Pre-Secure Communities:** Dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively; and
- ii. **Post-Secure Communities:** Since the implementation of Secure Communities.

This request includes any such records pertaining to whether or not detainees were lodged, whether or not Notices to Appear were issued, and whether or not individuals were ordered removed and/or actually removed.

j. **Removals:**

Any records that contain data or statistical information on removals of individuals in Secure Communities jurisdictions, including:

- i. **Pre-Secure Communities:** Any removal resulting from apprehensions through the CAP dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Post-Secure Communities:** Any removal of individuals who are subject to a Secure Communities Query since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;
- iii. **Post-Secure Communities through CAP:** Any removal resulting from apprehensions through the CAP following the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively.

k. **United States Citizens:**

Any records that contain data or statistical information or any discussion or information whatsoever pertaining to United States Citizens:

- i. Identified through Secure Communities Matches;
- ii. Subjected to Immigration Detainers after being subject to a Secure Communities Query;
- iii. Detained by ICE after being subject to a Secure Communities Query;
- iv. Removed by ICE after being subject to a Secure Communities Query.

l. **Demographic Data**

Any records that contain data or statistical information on race, ethnicity, sex, age, or place of birth of:

- i. Subjects of Detainers
  - 1. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure

Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;

2. **Post-Secure Communities:** Individuals subject to detainers after being subject to a Secure Communities Query since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;

- ii. Subjects of Secure Communities Queries;
- iii. Subjects of Secure Communities Matches.

m. **Vulnerable Groups**

Any and all Records containing data or statistical information on Vulnerable Groups for:

- iv. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- v. **Post-Secure Communities:** Individuals subject to Secure Communities Queries since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;

3) **Individual Records**

The following Records pertaining to individuals subject to Secure Communities Queries or ICE detainers in Designated Jurisdictions from October 2007 through the present:

- i. Criminal Answer Required (CAR) and Criminal Print Identification (CPI) File Maintenance Messages;
- ii. Automatic Immigration Alien Queries (IAQs);
- iii. Immigrant Alien Responses (IAR) and IDENT Data Responses (IDR);
- iv. Form I-247, Immigration Detainer – Notice of Action (Immigration Detainer);
- v. Form I-213, Record of Deportable/Inadmissible Alien;
- vi. Form I-215c, Record of Sworn Statement in Affidavit Form;
- vii. Form I-200, Warrant for Arrest of Alien;
- viii. Stipulated Request for Final Order of Removal and Waiver of Hearing;
- ix. Written Notice of Reinstatement of Removal;
- x. Administrative Voluntary Departure;
- xi. Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent)
- xii. Form I-205, Warrant of Removal
- xiii. Form I-286, Notice of Custody Determination;
- xiv. Form I-862, Notice to Appear (NTA);
- xv. Initial Notice of Hearing in Removal Proceedings;
- xvi. Immigration Judge Bond Redetermination Order, EOIR Form 1;

- xvii. Notice of Entry of Appearance as Attorney or Representative before the Immigration Court, Form EOIR-28 or USCIS Form G-28;
- xviii. Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals, Form EOIR-27
- xix. Immigration Judge Orders: ordering individual removed, terminating proceedings, or granting relief;
- xx. Any other Records that contain any of the following information:
  - i. **Demographic Information:**
    - 1. The criminal history of, and the current charges against, the individual;
    - 2. The individual's age, race, gender, nationality, place of birth or status as a member of a Vulnerable Group.
  - ii. **Immigration Detainers:**
    - 1. Whether the Immigration Detainer was lodged on individuals who are subject to a Secure Communities Query;
    - 2. Whether the Immigration Detainer was issued by the LESC, the CAP, a local ICE field office, a 287(g) officer, or some other entity;
    - 3. How the determination to lodge an Immigration Detainer was made, including reference to any policy guidelines or "risk-based" assessment, such as guidance based on criminal history or factors such as age, gender, medical or mental health conditions, or dependent minor children;
    - 4. For any individual identified following a Secure Communities Query for whom an Immigration Detainer was not lodged or was subsequently lifted and the reasons for that determination, including reference to any policy guidelines or "risk-based" assessment.
  - iii. **ICE Custody Determinations:**
    - 1. Any notice or communication from the local or state facility with custody of the individual subject to an ICE detainer to ICE indicating when the individual is to be released from criminal custody or when ICE can and/or must assume custody;
    - 2. The date and time the individual subject to the detainer was taken into ICE custody;
    - 3. Whether and when the individual posted bond, if any;
    - 4. What factors ICE considered in deciding whether or not to issue bond, how much bond to issue, whether to release someone on their own recognizance, whether to put someone on supervised release or intensive supervised release, whether to grant someone parole or prosecutorial discretion, or any other custody determination, including, for example, any worksheet or checklists utilized for any of the above determinations and reference to any policy guidelines or "risk-based" assessment, including, but not limited to, determinations based on:

- I. Any categorization of criminal history or other risk-based assessment including, but not limited to, the “Secure Communities’ levels and offense categories”,
  - II. Age or gender;
  - III. Medical or mental health conditions;
  - IV. Eligibility for T, U, S visas, or VAWA adjustment;
  - V. Eligibility for asylum, withholding or protection under the Convention Against Torture;
  - VI. Eligibility for other forms of relief from removal;
  - VII. Length of permanent residence in the United States and community ties; or
  - VIII. The existence of minor children dependent on the individual or other family members in the United States;
5. Whether the individual’s criminal case(s) were resolved at the time ICE assumed custody.

iv. **Immigration Charging Document:**

- 1. When a Notice to Appear is not issued after ICE assumes custody, whether the non-issuance is due to:
  - I. The existence of a prior deportation, exclusion, or removal order;
  - II. The existence of a stipulated order of removal;
  - III. The issuance of a Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order, pursuant to the expedited removal statute;
  - IV. The issuance of a Final Administrative Order of Removal;
  - V. The issuance of a Form I-860, Notice and Order of Expedited Removal, pursuant to the expedited removal statute;
  - VI. ICE’s determination that the individual is a United States citizen;
  - VII. ICE’s determination that the individual is not removable;
  - VIII. ICE’s exercise of prosecutorial discretion; or
  - IX. Any other factor.
- 2. The date and time that ICE:
  - I. Executed the Notice to Appear
  - II. Served the Notice to Appear on the individual;
  - III. Filed the Notice to Appear with the Executive Office for Immigration Review.

v. **Immigration Bonds:**

- 1. Whether and when the individual requested a bond hearing;
- 2. Whether and when a bond hearing was held;
- 3. Whether and when an individual requested a redetermination of custody decision;
- 4. Whether and when a custody redetermination hearing was scheduled;

5. Whether and when a custody redetermination hearing was held;
  6. Whether and when the individual requested a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing;
  7. Whether and when a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing was held;
  8. The amount of the bond set by the Immigration Judge, if any;
  9. Whether the individual appealed the bond determination;
  10. Whether and when the individual posted bond, if any.
- vi. **Removal Proceedings:**
1. If resolved, the final outcome of the individual's removal case;
  2. If pending, the current status of the individual's removal case;
  3. The date the individual's removal case was resolved;
  4. Whether the individual was represented by counsel in the removal proceeding at any time.
- vii. **Detention:**
1. When the individual was first detained by ICE;
  2. If released, the date the individual was released from custody (or removed);
  3. Each location and facility where the individual was detained and the dates of detention at each such facility.
- 4) **Fiscal Impact of Secure Communities:**
- a. **Fiscal Impact on State and Local Secure Communities Jurisdictions and Potential Secure Communities Jurisdictions:** Any and all Records related to the fiscal impact or the actual, estimated, or projected cost on state and local Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions arising from or related to Secure Communities or to individuals subject to Immigration Detainers following a Secure Communities Query, including, but not limited to, costs, reimbursements, monetary agreements, and monetary incentives, including increased costs of detention.
  - (b) **Intergovernmental Service Agreements:** Any and all Records related to proposed, contemplated, existing, or prior Intergovernmental Service Agreements for detention facilities with Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions.
  - (c) **Contracts with Private Entities:** Any and all Records related to proposed, contemplated, existing, or prior contracts or communications with private companies or other private entities related to the development or implementation of Secure Communities.
  - (d) **Federal Costs of Secure Communities:** Any and all Records related to actual, estimated, or projected costs of the Secure Communities program to the federal government, including, but not limited to, Department of Homeland Security appropriations, and costs of increased detention and removal operations to ICE, EOIR, and United States Attorneys' Offices, and to the federal courts.
- 5) **Communications**
- a. Any and all Records containing communications related to Secure Communities by, to, or between any of the following:
    - i. **ICE:** ICE or any agent, officer, employee, or subdivision thereof;

- ii. **DHS:** DHS or any agent, officer, employee, or subdivision thereof;
- iii. **DOJ:** DOJ or any agent, officer, employee, or subdivision thereof, including, but not limited to EOIR, FBI, and FBI CJIS;
- iv. **State and Local Jurisdictions:** Secure Communities Jurisdictions, Proposed Secure Communities Jurisdictions, and any other state and local jurisdictions, including, but not limited to, any local or state LEAs, SIBs and Attorney Generals' offices;
- v. **The White House:** The White House, the President of the United States, his staff and advisors;
- vi. **United States Congress:** United States Congress, including, but not limited to, letters or emails to Senators or Representatives or staff members thereof, congressional committees, congressional briefings documents, congressional testimony, any other information provided to a member or employee of Congress, and any documents used in preparation of the aforementioned materials. Including but not limited to:
  - 1. Congressional inquiries regarding Secretary Napolitano's statements regarding Secure Communities in the week following the Criminal Alien Program presentation (November 2009);
  - 2. Information regarding ICE Assistant Secretary John T. Morton's meeting with the Congressional Hispanic Caucus on October 21, 2009;
  - 3. Briefings for Congress on 287(g) announcement on July 15, 2009;
  - 4. Briefing for Senate staff in September 2009 on fugitive operations and other issues related to Secure Communities; and,
  - 5. Briefing for Department of Justice Civil Rights Division in 2009.
- vii. **Non-Governmental Organizations (NGOs):** including emails, letters, or other documents distributed to NGOs or any documents used in preparation of such materials or in preparation for meetings with NGOs.

**b. Public Statements**

- i. **Press Releases:** Any and all Records related to or containing press releases or public internet postings that mention the phrase "Secure Communities" and any and all Records used in the preparation thereof;
- ii. **Statements to Reporters or Media Outlets:** Any and all Records related to or containing statements by ICE or any official, officer, or employee thereof to a reporter or media outlet, including any opinion pieces or letters to the editor drafted for newspapers or internet media outlets and any Records used in the preparation thereof.

c. **Speeches:** Any and all Records related to speeches, statements, and presentations by ICE or any official, officer; or employee thereof, mentioning Secure Communities and any Records or drafts used in the preparation thereof.

**d. Secure Communities Public Relations Approach:**

Any and all Records related ICE's Secure Communities messaging, media, or communications approach. Including but not limited to:

- i. Any and all Records related to the development of the program's title, media approach, website, and public relations approach;



- ii. Any and all Records related to any media, communications, or consulting firm that assisted in the development or implementation of ICE's Secure Communities messaging, media, or communications approach, including any contract or agreement with such firm.

**6) Secure Communities Program Assessment Records**

- a. Any and all Records developed or used by ICE or DHS to evaluate, review, or monitor effectiveness or outcomes of Secure Communities.
- b. Any records containing assessments of the Secure Communities program, whether related to national assessments, assessments of specific Secure Communities Jurisdictions, related to any time period, or any interface or relation with any other ICE programs, divisions or initiatives.
- c. Secure Communities Stakeholder's Questionnaire:
  - i. Any and all Records related to the Form 70-008, ICE Secure Communities Stakeholder's ID Assessment Questionnaire (Stakeholder Questionnaire), OMB No. 1653-NEW, including earlier versions of the questionnaire, memoranda, communications, data gathered, or analysis of such data or questionnaire responses;
  - ii. Any and all Records containing comments to the Stakeholder Questionnaire;
  - iii. Any Records containing follow-up communications related to the Stakeholder Questionnaire or other efforts to solicit community input;
  - iv. Any Records containing implementation, analysis, rejection, or other processing of the Stakeholder Questionnaire.

**7) Secure Communities Complaint Mechanisms and Oversight**

- a. Any and all Records related to a complaint mechanism or redress procedure for an individual, such as a United States citizen, erroneously subject to an Immigration Detainer following a Secure Communities Query or other Secure Communities related complaints.
- b. Any and all Records relating to oversight, monitoring, evaluation and supervision of federal, state, and local actors involved in Secure Communities, including, but not limited to, local LEAs, SIBs, and ICE Field Offices.
- c. Any and all Records related to complaints or grievances filed by community members, detained individuals, non-governmental organizations, Congressional representatives, ICE or DHS working groups, state or local entities or employees, federal entities or employees, including those filed with ICE, DHS, SIBs, DHS' Office of Civil Rights and Civil Liberties, the DHS Office of the Inspector General, ICE Office of Professional Responsibility, the United States Attorney General or the Department of Justice, state or local authorities or civil rights bureaus, or the United States Congress or any member or committee thereof.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B).

As it relates to your request for expedited treatment, your request is denied. Under the DHS FOIA regulation, expedited processing of a FOIA request is warranted if the request involves "circumstances in

which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” 6 C.F.R. § 5.5(d)(1)(i), or “an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information,” 6 C.F.R. § 5.5(d)(1)(ii). Although you may be “primarily engaged in disseminating information,” your request for expedited processing is denied because the request did not meet the criteria for either category. Clearly, the lack of expedited treatment in this case will not pose an imminent threat to the life or physical safety of an individual, nor have you detailed with the requisite specificity why you feel there is an urgency to inform the public about the Secure Communities Program. The urgency to inform the public about actual or alleged government activity would need to exceed the public’s right to know about government activity generally. Your letter was conclusory in nature and did not present sufficient facts to justify a grant of expedited processing under the applicable standards.

As it relates to your fee waiver request, this portion of the request is also denied. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government;” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be “significant;” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under the FOIA of showing that the fee waiver requirements have been met. Based on my review of your February 3, 2010 request and for the reasons stated herein, I have determined that your fee waiver request is deficient because it did not adequately address factors 3-4 above. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

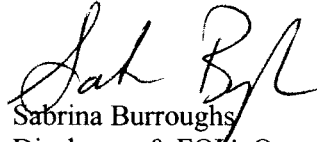
Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requestors. As a non-commercial requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. You stated in your request that you are willing to pay assessable fees up to \$200.00. You will be contacted before any further fees are accrued.

You have the right to appeal the determination to deny expedited processing and a waiver of fees of your request. Should you wish to do so, you must **send your appeal and a copy of this letter within 60 days of receipt of this letter** to: Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked “Freedom of Information Act Appeal.” Copies of the DHS regulations are available online at: [http://www.dhs.gov/xlibrary/assets/FOIA\\_FedReg\\_Notice.pdf](http://www.dhs.gov/xlibrary/assets/FOIA_FedReg_Notice.pdf); Internet, accessed February 23, 2010.

We have queried the appropriate components of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

If you need to contact this office again concerning your request, please refer to **DHS/OS/PRIV 10-0385**.  
This office can be reached at 866-431-0486.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sab B', is written over the printed name.

Sabrina Burroughs  
Disclosure & FOIA Operations Manager

# Exhibit E



U.S. Department of Justice

Office of Legal Counsel

BZ

Washington, D.C. 20530

April 16, 2010

Bridget Kessler  
Cardozo School of Law  
Immigration Justice Clinic  
55 Firth Avenue  
New York, NY 10003

Dear Ms. Kessler:

This is to acknowledge receipt of your Freedom of Information Act request dated February 3, 2010, in which you requested records relating to the U.S. Immigration and Customs Enforcement agency program Security Communities.

In your letter you requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity if made by a person primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii) (2009). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied because the primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard.

You have also requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 C.F.R. § 16.5(d)(1)(iv) (2009). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. *See id.* § 16.5(d)(2). The Director of Public Affairs has determined that the standard is not met because he does not believe the subject of your request pertains to a matter of "widespread and exceptional media interest." Accordingly, your request for expedited processing has been denied.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether or not fees will be assessed for this request.

If you have any questions or wish to discuss the processing of your request, you may contact Bette Farris on 202-514-2038.

If you are not satisfied with the denial of your request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, N.W., Washington, DC 20530, within sixty days of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Paul P. Colborn", with a stylized flourish at the end.

Paul P. Colborn  
Special Counsel  
Office of Legal Counsel

# Exhibit F



National Day Laborer Organizing Network

Red Nacional de Jornaleros

675 S. Park View St., Ste B  
Los Angeles, CA 90057

www.ndlon.org

Tel. (213) 380-2783  
Fax (213) 353-1344



centerforconstitutionalrights

CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

March 15, 2010

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
FOIA Appeals  
Washington, DC 20528

Re: **Freedom of Information Act Appeal of the Department of Homeland Security's  
Denial of Fee Waiver and Expedited Processing in FOIA Case  
DHS/OS/PRIV 10-0385**

To Whom It May Concern:

This is a Freedom of Information Act ("FOIA") appeal of the determination of the Department of Homeland Security ("DHS") to deny a fee waiver and expedited processing in connection with our FOIA request, with the reference number DHS/OS/PRIV 10-0385. 6 C.F.R. § 5.9(a). The request seeks information on behalf of the National Day Laborer Organizing Network ("NDLON"), the Center for Constitutional Rights ("CCR"), and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Immigration Justice Clinic") regarding the recently implemented DHS Immigration and Customs Enforcement ("ICE") Secure Communities Program. DHS denied our requests for a fee waiver and expedited processing in a letter dated March 5, 2010 (attached).

The requested information relates to a matter of significant public concern—the new, expansive and little-understood ICE immigration enforcement program called Secure Communities. The Secure Communities program enlists states and localities in the enforcement of federal immigration laws by requiring local authorities to conduct automatic searches of immigration databases. It was launched in March 2008 and has since been implemented in over 100 jurisdictions nationwide. ICE is set to expand the program to every jail in the country by 2013. The rapid deployment of Secure Communities means that by 2013, all individuals—including United States Citizens—who come in contact with local law enforcement officials may be subject to federal immigration database checks and, ultimately, deportation.

The request seeks critical information that will inform the public about the scope and impact of the Secure Communities program. The requested records pertain to policies, procedures and objectives, data and statistical information, and other information related to Secure Communities. The information will provide answers to important questions, such as, how



and when immigration database checks will be run by local authorities, whether sufficient protections are in place to assure that United States Citizens and lawful immigrants are not erroneously deported and that other abuses do not take place, whether the databases relied upon are accurate, and how ICE implements enforcement priorities. The information will also permit the public to assess whether the ICE detention and removal system has the capacity to absorb the large influx of individuals identified by Secure Communities, and whether Secure Communities has unintended negative consequences on local communities, such as increased rates of racial profiling and damage to community policing efforts. In short, the Requesters seek information to educate the public on a wide-scale immigration enforcement initiative that is on the verge of being put into operation in every community across the nation.

A fee waiver in this case is warranted. The FOIA statute requires agencies to grant a fee waiver or reduction if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). DHS has promulgated regulations setting forth various factors to be considered in determining whether the statutory criteria are met. 6 C.F.R § 5.11(k)(2). As set forth below, when applied to the facts of this case, all of the regulatory factors militate in favor of granting a fee waiver:

(1) *The subject of the request:* As acknowledged by your office in the March 5, 2010 response, the subject of the request here “concerns ‘the operations or activities of the government.’” 6 C.F.R § 5.11(k)(2)(i). The subject of the requested records concerns the “identifiable operations or activities of the federal government,” to wit: the Immigration of Customs Enforcement agency’s current and ongoing nationwide implementation of Secure Communities—a database-driven program to enforce federal immigration laws. *Id.*

(2) *The informative value of the information to be disclosed:* As acknowledged by your office in the March 5, 2010 response, the information requested will shed light on the manner in which ICE has implemented Secure Communities around the country and how ICE plans to operate the program in the future. The requesters have pledged to make any information obtained as the result of this FOIA request available to the public, including the press, at no fee. Accordingly, the information sought in the instant FOIA is very “‘likely to contribute’ to an understanding of government operations or activities.” 6 C.F.R § 5.11(k)(2)(ii).

(3) *The contribution to an understanding of the subject by the public likely to result from disclosure:* Requesters are exceptionally well-positioned to ensure that the information obtained will “contribute to ‘public understanding.’” 6 C.F.R § 5.11(k)(2)(iii). As a nationwide organization with local community-based partners throughout the country, the National Day Laborer Organizing Network has a unique capacity to disseminate information to diverse communities. Most recently, in cooperation with other organizations, NDLO sponsored a series of informational webinars about Secure Communities. These webinars were attended by over 600 concerned participants across the country. The Center for Constitutional Rights is also in an excellent position to

disseminate information about ICE enforcement programs. CCR publishes various newsletters, handbooks and other materials for public dissemination. In addition, CCR regularly issues press releases to supporters on a listserv of over 50,000 members and to the general public about matters such as immigration, policing and detention policies. Similarly, the Immigration Justice Clinic of the Cardozo School of Law has established itself as an expert in compiling, analyzing and disseminating information about immigration enforcement operations. In February, 2009, the Clinic published the first public study of ICE home raid operations, attracting significant media attention and informing the American public about widespread constitutional violations and other abuses.

(4) *The significance of the contribution to public understanding:* While there is widespread public interest in Secure Communities, there is virtually no information about it in the public domain. The little information available, including Standard Operating Procedures, a model (unsigned) Memorandum of Agreement, and limited data, is vague, incomplete and sometimes contradictory. Accordingly, obtaining clear documentation about Secure Communities, including policies and procedures, plans for future deployment, and specific information would “significantly” contribute to the public’s understanding of Secure Communities and how it fits within ICE’s broader immigration enforcement agenda. 6 C.F.R. § 5.11(k)(2)(iv).

(5) *The existence and magnitude of a commercial interest:* As acknowledged by your office in the March 5, 2010 response, the Requesters have absolutely no commercial interest that would be furthered by the requested disclosure. 6 C.F.R. § 5.11(k)(3)(i).

(6) *The primary interest in disclosure:* As impliedly acknowledged by your office in the March 5, 2010 response, this factor is not relevant since the Requesters have no commercial interest that would be furthered by the requested disclosure. 6 C.F.R. § 5.11(k)(3)(i).

Since all factors militate in favor of finding that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” 5 U.S.C. § 552(a)(4)(A)(iii), a full fee waiver should be granted. If no fee waiver is granted, we request all applicable fee reductions.

In this case, expedited processing also is warranted. Expedited processing should be granted if there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need is established when the requester is a “person primarily engaged in disseminating information,” and there is “an urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1).

- (1) *Requesters’ engagement in disseminating information.* As explained in the February 3, 2010 request, reiterated in subparagraph (3) above and acknowledged in DHS’ March 5, 2010 response, Requesters NDLOM, CCR, and the Clinic are “primarily engaged in

disseminating information” to the public, and have unique expertise in the subject matter of the requested information. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1).

- (2) *The urgency to inform the public:* There exists “an urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1). The need to inform the public about the new government program Secure Communities is urgent for a variety of reasons. First and foremost, there are many local communities where Secure Communities has yet to be implemented. These communities must understand how the program works and its potential cost and impact in order to make informed decisions about whether to participate. Second, individuals in communities where Secure Communities has been implemented have an urgent interest in knowing about the impact of the program on their communities thus far in order to determine whether it serves local interests to continue to participate in the program. Finally, U.S. taxpayers have an interest in understanding how ICE plans to spend substantial funds appropriated by Congress for Secure Communities, and detention and deportation operations in general.

Since there is “an urgency to inform the public about an actual or alleged federal government activity” by entities “primarily engaged in the dissemination of information,” 8 C.F.R. § 5.5(d)(1), expedited process should be granted.

For the aforementioned reasons, Requesters are entitled to expedited processing and a fee waiver in the processing of their FOIA request. Thank you for your kind consideration.

Sincerely,



Bridget Kessler  
Clinical Teaching Fellow  
Cardozo School of Law  
Immigration Justice Clinic  
55 Fifth Avenue  
New York, NY 10003  
Phone: (212) 790-0213

On behalf of the Requesters

# EXHIBIT G



National Day Laborer Organizing Network  
Red Nacional de Jornaleros

675 S. Park View St., Ste B  
Los Angeles, CA 90057

www.ndlon.org

Tel: (213) 380-2783  
Fax: (213) 353-1344



March 15, 2010

Associate General Counsel (General Law)  
U.S. Department of Homeland Security  
FOIA Appeals  
Washington, DC 20528

Re: **Freedom of Information Act Appeal of the Immigration and Customs Enforcement Agency's Denial of Fee Waiver and Expedited Processing on FOIA Request Case 2010FOIA2674**

To Whom It May Concern:

This is a Freedom of Information Act ("FOIA") appeal of the determination of the Immigration and Customs Enforcement Agency ("ICE") to deny a fee waiver and expedited processing in connection with the FOIA request, 2010FOIA2674 ("the request"). The request seeks information on behalf of the National Day Laborer Organizing Network ("NDLON"), the Center for Constitutional Rights ("CCR"), and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Immigration Justice Clinic") regarding the recently implemented Immigration and Customs Enforcement ("ICE") Secure Communities Program. ICE denied our requests for a fee waiver and expedited processing in a letter dated February 23, 2010, received by fax on March 9, 2010 (attached).

The requested information relates to a matter of significant public concern—the new, expansive and little-understood ICE immigration enforcement program Secure Communities. The Secure Communities program enlists states and localities in the enforcement of federal immigration laws by requiring local authorities to conduct automatic searches of immigration databases. It was launched in March 2008 and has since been implemented in over 100 jurisdictions nationwide. ICE is set to expand the program to every jail in the country by 2013. The rapid deployment of Secure Communities means that, by 2013, all individuals—including United States Citizens—who come in contact with local law enforcement may be subject to federal immigration database checks and, ultimately, deportation.

The request seeks critical information that will inform the public about the scope and impact of the Secure Communities program. In particular, the requested records pertain to policies, procedures and objectives, data and statistical information and other information related to Secure Communities. The information will provide the public with answers to important

questions, such as, how and when immigration database checks will be run by local authorities, whether sufficient protections are in place to assure that United States Citizens and lawful immigrants are not erroneously deported and that other abuses do not take place, whether the databases relied upon are accurate, and how ICE implements enforcement priorities. The information will also permit the public to assess whether the ICE detention and removal system has the capacity to absorb the large influx of individuals identified by Secure Communities, and whether Secure Communities has unintended negative consequences on local communities, such as increased rates of racial profiling and damage to community policing efforts. In short, the Requesters seek information to educate the public on a wide-scale immigration enforcement initiative that is on the verge of being put into operation in every community across the nation.

A fee waiver in this case is warranted. The FOIA statute requires agencies to grant a fee waiver or reduction if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). DHS has promulgated regulations setting forth various factors to be considered in determining whether the statutory criteria are met. 6 C.F.R § 5.11(k)(2). As set forth below, when applied to the facts of this case, all of the regulatory factors militate in favor of granting a fee waiver:

(1) *The subject of the request:* The subject of the instant request clearly “concerns ‘the operations or activities of the government.’” 6 C.F.R § 5.11(k)(2)(i). The subject of the requested records concerns the “identifiable operations or activities of the federal government,” to wit: the Immigration and Customs Enforcement agency’s current and ongoing nationwide implementation of Secure Communities—a database-driven program to enforce federal immigration laws. *Id.*

(2) *The informative value of the information to be disclosed:* The information requested will shed light on the manner in which ICE has implemented Secure Communities around the country and how ICE plans to operate the program in the future. The requesters have pledged to make any information obtained as the result of this FOIA request available to the public, including the press, at no fee. Accordingly, the information sought in the instant FOIA is very “‘likely to contribute’ to an understanding of government operations or activities.” 6 C.F.R § 5.11(k)(2)(ii).

(3) *The contribution to an understanding of the subject by the public likely to result from disclosure:* Requesters are exceptionally well-positioned to ensure that the information obtained will “contribute to ‘public understanding.’” 6 C.F.R § 5.11(k)(2)(iii). As a nationwide organization with local community-based partners throughout the country, the National Day Laborer Organizing Network has a unique capacity to disseminate information to diverse communities. Most recently, in cooperation with other organizations, NDLO has sponsored a series of informational webinars about Secure Communities. These webinars were attended by over 600 concerned participants across the country. The Center for Constitutional Rights is also in an excellent position to disseminate information about ICE enforcement programs. CCR publishes various newsletters, handbooks and other materials for public dissemination. In addition, CCR

regularly issues press releases to the general public and to supporters on a listserv of over 50,000 members about matters such as immigration, policing and detention policies. Similarly, the Immigration Justice Clinic of the Cardozo School of Law has established itself as an expert in compiling, analyzing and disseminating information about immigration enforcement operations. In February, 2009, the Immigration Justice Clinic published the first public study of ICE home raid operations, attracting significant media attention and informing the American public about widespread constitutional violations and other abuses.

(4) *The significance of the contribution to public understanding:* While there is widespread public interest in Secure Communities, there is virtually no information about it in the public domain. The little information available, including Standard Operating Procedures, a model (unsigned) Memorandum of Agreement, and limited data, is vague, incomplete and sometimes contradictory. Accordingly, obtaining clear documentation about Secure Communities, including policies and procedures, plans for future deployment, and specific information would “significantly” contribute to the public’s understanding of Secure Communities and how it fits within ICE’s broader immigration enforcement agenda. 6 C.F.R. § 5.11(k)(2)(iv).

(5) *The existence and magnitude of a commercial interest:* The Requesters have absolutely no commercial interest that would be furthered by the requested disclosure. 6 C.F.R. § 5.11(k)(3)(i).

(6) *The primary interest in disclosure:* This factor is not relevant since the Requesters have no commercial interest that would be furthered by the requested disclosure. 6 C.F.R. § 5.11(k)(3)(i).

Since all factors militate in favor of finding that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” 5 U.S.C. § 552(a)(4)(A)(iii), a full fee waiver should be granted. If no fee waiver is granted, we request all applicable fee reductions.

In this case, expedited processing also is warranted. Expedited processing should be granted if there is a “compelling need” for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need is established when the requester is a “person primarily engaged in disseminating information,” and there is “an urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1).

(1) *Requesters’ engagement in disseminating information.* As explained in the February 3, 2010 request and reiterated in subparagraph (3) above, Requesters NDLO, CCR, and the Clinic are “primarily engaged in disseminating information” to the public, and have unique expertise in the subject matter of the requested information. 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(d)(1).

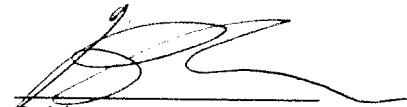
(2) *The urgency to inform the public:* There exists a “compelling need” or “an urgency to inform the public about an actual or alleged federal government activity.” 5 U.S.C. §

552(a)(6)(E)(i)(I); 8 C.F.R. § 5.5(d)(1). The need to inform the public about the new government program Secure Communities is urgent for a variety of reasons. First and foremost, there are many local communities where Secure Communities has yet to be implemented. These communities must understand how the program works and its potential cost and impact in order to make informed decisions about whether to participate. Second, individuals in communities where Secure Communities has been implemented have an urgent interest in knowing about the impact of the program on their communities thus far in order to determine whether it serves local interests to continue to participate in the program. Finally, U.S. taxpayers have an interest in understanding how ICE plans to spend substantial funds appropriated by Congress for Secure Communities, and detention and deportation operations in general.

Since there is “an urgency to inform the public about an actual or alleged federal government activity” by entities “primarily engaged in the dissemination of information,” 8 C.F.R. § 5.5(d)(1), expedited processing should be granted.

For the aforementioned reasons, Requesters are entitled to expedited processing and a fee waiver in the processing of their FOIA request. Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bridget Kessler', with a horizontal line drawn underneath it.

Bridget Kessler  
Clinical Teaching Fellow  
Cardozo School of Law  
Immigration Justice Clinic  
55 Fifth Avenue  
New York, NY 10003  
Phone: (212) 790-0213

On behalf of the Requesters



# Exhibit H



**UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT OF NEW YORK**

**86 Chambers Street, 3rd Floor ★ New York, New York 10007**

---

**From: CHRISTOPHER CONNOLLY, Assistant United States Attorney**

**Office Phone No.: (212) 637-2761**

**Fax Number: (212) 637-2786**

**No. pages (including cover sheet): - 3 -**

**Date sent: July 9, 2010**

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**"FOR OFFICIAL USE ONLY" U.S. ATTORNEY FACSIMILE COMMUNICATION**

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**To:           Bridget P. Kessler, Esq.  
              Peter L. Markowitz, Esq.  
              Fax: (212) 790-0256**

**Gitanjali S. Gutierrez, Esq.  
Sunita Patel, Esq.  
Fax: (212) 614-6499**

**Re:           National Day Laborer Organizing Network et al. v. United States  
              Immigration and Customs Enforcement Agency et al.  
              No. 10 Civ. 3488 (SAS)**



## U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

July 9, 2010

By Facsimile

Bridget P. Kessler  
Clinical Teaching Fellow  
Cardozo Immigration Justice Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue  
New York, New York 10003

Re: *National Day Laborer Organizing Network et al. v. United States Immigration and Customs Enforcement Agency et al.*, No. 10 Civ. 3488 (SAS)

Dear Ms. Kessler:

I write to memorialize the agreement reached on July 7, 2010 by the parties to the above-captioned matter.

Defendants agree to produce materials responsive to Plaintiffs' "Rapid Production List" dated June 25, 2010.<sup>1</sup> Defendants will produce the bulk of responsive, non-exempt materials by Friday, July 30. In the event that Defendants identify responsive, non-exempt materials that cannot be produced by July 30, they will provide Plaintiffs with a description of these materials and will propose an alternate date for production by Monday, July 26.

Plaintiffs, in turn, agree that each Defendant agency must only search for and produce responsive documents originating from that agency. This limitation will apply both to the Rapid Production List and to the remainder of Plaintiffs' Freedom of Information Act ("FOIA") request.

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<sup>1</sup> The parties agree that Defendants need not produce materials responsive to Section IV of the Rapid Production List, which requests "[r]ecords that contain a technical explanation of all databases controlled or used by defendants which may contain data enumerated in Sections 2 & 3 of [Plaintiffs' Freedom of Information Act] request...." Instead, the parties will address Section IV within the context of their ongoing discussions regarding the scope of Sections 2 and 3.

Bridget P. Kessler

July 9, 2010

page 2

Meanwhile, the parties will continue to work towards entering into a formal stipulation that narrows and clarifies the scope of Plaintiffs' FOIA request and sets forth a schedule for the production of responsive materials.

Please do not hesitate to contact me if you have any comments or questions regarding the agreement.

Sincerely,

PREET BHARARA

United States Attorney for the  
Southern District of New York  
*Attorney for Defendants*

By:



CHRISTOPHER CONNOLLY

Assistant United States Attorney

Telephone: 212.637.2761

Fax: 212.637.2786

E-mail: christopher.connolly@usdoj.gov

cc: Gitanjali S. Gutierrez, Esq. (by facsimile)  
Sunita Patel, Esq. (by facsimile)  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, New York 10012

# Exhibit I

*NDLON et al v. ICE et al*, 10-cv-3488

**Plaintiffs' Rapid Production List**

**I. Data and statistics**

- a. Copies of all regularly generated statistical reports on S-Comm (monthly reports, bi-weekly reports, regional, national, etc.)
- b. Copies of any cumulative statistics compiled on S-Comm at any juncture

**II. Opt-Out Records** - National policy memoranda, legal memoranda or communication relating to the ability of states or localities to opt-out or limit their participation in S-Comm

**III. Copies of executed agreements related to S-Comm**

- a. Agreements between ICE/DHS and FBI
- b. Agreements between DHS/FBI and local government or local law enforcement agencies

**IV. Records that contain a technical explanation of all databases controlled or used by defendants which may contain data enumerated in Sections 2 & 3 of the request, including records that contain,**

- a. a list of all databases that contain information about individuals that are identified by S-Comm
- b. a list of all databases that contain data and statistics that ICE monitors related to S-Comm
- c. a list of all the fields contained in each database (for example, pages from a manual that list the fields)
- d. any records that indicate how interoperability functions, including how responses are coded and routed, Originating Agency Identifier (ORI) coding, any other coding by geography or type, which databases are searched, and screen shots of Immigrant Alien Queries (IAQs) and Immigrant Alien Responses (IARs)

**V. DHS-OIG Documents Identified in Response to the FOIA Request but Referred to ICE for Direct Response**

**VI. Records Related to the Creation or Revision (including drafts, memoranda, correspondence, and communications) of Certain Enumerated Media Documents:**

- a. U.S. Department of Homeland Security, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce That Secure Communities Initiative Identified More than 111,000 Criminal Aliens in Its First Year*, November 12, 2009 (attached).
- b. U.S. Department of Homeland Security, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce that the Secure Communities Initiative Identified More than 111,000 Aliens Charged or Convicted of Crimes in its First Year*, also dated November 12, 2009 (attached).

- c. U.S. Department of Homeland Security, Immigration Customs Enforcement, *Get the Facts: Secure Communities Media Plan for April 26-30*, April 23, 2009 (attached).
- VII. All Reports & Memoranda Reporting on the Secure Communities Program to the Secretary of the Department of Homeland Security or to the Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement or to the White House.**
- VIII. Specific enumerated records related to Secure Communities and racial profiling:**
  - a. Records created in relation to the drafting of Section 1.0 of the Secure Communities Standard Operating Procedures (SOP) or Section VIII of the standard Secure Communities Memorandum of Agreement
  - b. Records containing ICE plans to monitor for racial profiling or other Constitutional violations in local jurisdictions pursuant to Section 1 of the SOP or Section VIII of the MOA
  - c. Records related to the evaluation of any state or jurisdiction pursuant to Section 1 of the SOP or Section VIII of the MOA
- IX. Records of ICE communications with the State of California, the State of Florida, or the State of Texas related to costs, reimbursements, monetary agreements, or monetary incentives related to Secure Communities**
- X. Specific enumerated documents referenced in ICE FOIA reading room documents (see appendix)**

# Exhibit J



STATEMENT OF INTENT

By the

---

(County/Local Law Enforcement Agency)

The \_\_\_\_\_ (title of chief law enforcement agency executive) of the \_\_\_\_\_ (county/local law enforcement agency) has read and understands the provisions contained in the accompanying ICE Secure Communities **Standard Operating Procedures (SOP)** and agrees to conform to the federal agency policies contained in the SOP. The law enforcement executive whose signature appears below acknowledges that the SOP may be amended as future circumstances demand and agrees to make reasonable efforts to ensure compliance with such amendments to the Secure Communities **SOP**.

Acknowledged by: \_\_\_\_\_

Title: \_\_\_\_\_

Full Agency Name: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit K

## Board of Supervisors



# COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063-1655  
WEB PAGE ADDRESS: <http://www.co.sanmateo.ca.us>

BOARD OF SUPERVISORS  
MARK CHURCH  
CAROLE GROOM  
RICHARD S. GORDON  
ROSE JACOBS GIBSON  
ADRIENNE TISSIER

DAVID S. BOESCH  
COUNTY MANAGER  
CLERK OF THE BOARD

(650) 363-4653  
FAX: (650) 599-1027

July 21, 2010

Assistant Secretary John Morton  
Immigration and Customs Enforcement  
500 12<sup>th</sup> St, SW  
Washington, DC 20536

*Re: Secure Communities*

Dear Assistant Secretary Morton:

On May 25, 2010, ICE implemented its Secure Communities program in San Mateo County. Under the program, fingerprints of persons booked into our County jails, which are forwarded to the California Department of Justice and to the FBI for criminal screening purposes, are now also shared with ICE, which uses the fingerprint data to identify persons held in local jails who may have outstanding immigration violations. This program, as you are likely aware, has proven to be controversial with many local communities, which are concerned with the adverse impact that this program will have on the efforts of local governments to develop and strengthen relationships with growing immigrant communities. Of particular concern is the belief that there is no method by which a local community can opt out of the Secure Communities program. Further, as a county faced with unprecedented fiscal challenges resulting from the recent economic crisis, we are concerned about the additional expense that the County will bear in housing persons who are placed on an immigration hold as a result of the program. I am writing on behalf of, and at the direction of, the San Mateo County Board of Supervisors to request the position of Immigration and Custom Enforcement on the question of whether counties have the ability to opt out of the Secure Communities program.

We are aware that the Secure Communities program is implemented in the State of California through a Memorandum of Agreement (MOA) entered into in May 2009. Our counsel has reviewed the MOA, and advises that its provisions do not require participation by local entities such as the County of San Mateo. We are also in receipt of a copy of a letter sent by ICE to the California Department of Justice, dated January 23, 2009, which contemplates that a signed Statement of Intent will be required from a county before the Secure Communities program is deployed in that county. These documents strongly suggest that counties should have the opportunity to opt out of the Secure Communities program, if that is their choice.

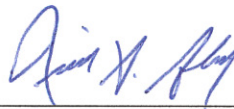
Unfortunately, uncertainty as to the position of ICE on the ability of local governments to opt out has led to confusion as to whether the authority to opt out exists, and it is for this reason that we write to seek clarification of the position of the agency.

We have also sent a letter to the Attorney General for the State of California, a copy of which is enclosed, requesting that he reverse a decision denying the request of the City and County of San Francisco to opt out of the Secure Communities program.

On behalf of the San Mateo County Board of Supervisors, I respectfully request that you advise as to the position of ICE on the authority of a local governmental entity to opt out of the Secure Communities program. If your position is that there is no ability to opt out, I request that you advise as to the authority that requires local governments to participate.

Thank you for your attention to this matter.

Very truly yours,

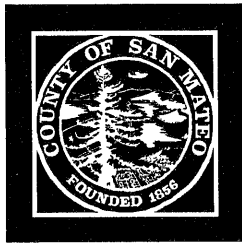
A handwritten signature in blue ink, appearing to read "Richard S. Gordon", is written over a horizontal line.

Richard S. Gordon, President  
San Mateo County Board of Supervisors

Enc.

MPM\CLW\al:sl

## Board of Supervisors



# COUNTY OF SAN MATEO

COUNTY GOVERNMENT CENTER • REDWOOD CITY • CALIFORNIA 94063-1655  
WEB PAGE ADDRESS: <http://www.co.sanmateo.ca.us>

BOARD OF SUPERVISORS  
MARK CHURCH  
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ADRIENNE TISSIER

DAVID S. BOESCH  
COUNTY MANAGER  
CLERK OF THE BOARD

(650) 363-4653

FAX: (650) 599-1027

July 21, 2010

Edmund G. Brown, Jr.  
Attorney General, State of California  
1300 "I" Street  
Sacramento, CA 95814-2919

*Re: Secure Communities*

Dear Attorney General Brown:

In May of this year, San Francisco Sheriff Michael Hennessey asked for your assistance in opting out of Secure Communities, the automated fingerprint screening program conducted by Immigration and Customs Enforcement (ICE). In your written response to Sheriff Hennessey, dated May 25, 2010, you stated your belief that the Secure Communities program "serves both public safety and the interest of justice" and, on that basis, you denied Sheriff Hennessey's request. In accordance with the deployment schedule implemented by your office in cooperation with ICE, the Secure Communities program became operative in San Mateo County on May 25, 2010. By this letter, the San Mateo County Board of Supervisors respectfully asks you to reconsider the position you took in your response to Sheriff Hennessey's request, and to allow individual counties to opt out of the ICE automated fingerprint screening program.

Our concerns with the Secure Communities Program are two-fold. First, and foremost, the program comes at the expense of, and threatens to undermine, relationships developed by County government with growing local immigrant populations which it both serves and depends on. Our County, and the cities in our County, depend heavily on community volunteers, including classroom helpers, youth athletic coaches, and child advocates, and the need is particularly acute in the case of immigrant populations as they seek to assimilate into the community at large. These community volunteers are routinely fingerprinted for purposes of screening out persons with disqualifying criminal backgrounds. While our Sheriff has stated that fingerprints taken of those participating in these important community programs are not forwarded to the ICE database, there is nonetheless skepticism among the affected population, and fear that if fingerprints are taken they will inevitably be run through the ICE database. A further concern is that on occasion, victims of crimes, especially crimes involving domestic violence, may be arrested by mistake because the perpetrator accuses the victim, and the

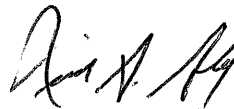
circumstances of the offense are not always plainly evident. While the victim is usually released quickly, fingerprints may have already been taken and sent to the State database, which then forwards the prints to ICE. All of these concerns contribute to a feeling of distrust of government, and have a chilling effect on the relationships between immigrant communities and the local government which serves these communities.

A second, and not insignificant, concern is the very real possibility that implementation of the program will result in greater costs to the County in instituting holds which may, or may not, ultimately result in detainees being transferred to a federal facility. As you are only too well aware, government at all levels are feeling the effects of an unprecedented financial crisis, which will get worse before it gets better. The Secure Communities program, while it might streamline and make more efficient operations at the State and federal level, will likely mean more cost to the County, requiring diversion of funds needed for other, critical programs.

We are aware that the Secure Communities program is implemented in this State through a Memorandum of Agreement (MOA). Our counsel has reviewed the MOA, and advises that its terms do not require participation by local entities. We are also in receipt of a copy of a letter sent by ICE to the State Department of Justice, dated January 23, 2010, which contemplates that a signed Statement of Intent will be required from a county before the Secure Communities program is deployed in that county. These documents strongly suggest that counties should have the opportunity to opt out of the Secure Communities program, if that is their choice.

At this point, we are not requesting that you allow San Mateo County to opt out of the Secure Communities program. For the reasons outlined above, however, we would ask that you reconsider your previous position and allow individual counties to opt out of the program if that is their choice, so that this County and others may weigh the benefits of participating in the program against the detriment it will cause.

Very truly yours,



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Richard S. Gordon, President  
San Mateo County Board of Supervisors

# Exhibit L

JOHN CONYERS, JR., Michigan  
CHAIRMAN

HOWARD L. BERMAN, California  
RICK BOUCHER, Virginia  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHEILA JACKSON LEE, Texas  
MAXINE WATERS, California  
WILLIAM D. DELAHUNT, Massachusetts  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
PEDRO R. PIERLUISI, Puerto Rico  
MIKE QUIGLEY, Illinois  
JUDY CHU, California  
TED DEUTCH, Florida  
LUIS V. GUTIERREZ, Illinois  
TAMMY BALDWIN, Wisconsin  
CHARLES A. GONZALEZ, Texas  
ANTHONY D. WEINER, New York  
ADAM B. SCHIFF, California  
LINDA T. SANCHEZ, California  
DANIEL B. MAFFEI, New York  
JARED POLIS, Colorado

ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

LAMAR S. SMITH, Texas  
RANKING MINORITY MEMBER

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HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
DANIEL E. LUNGREN, California  
DARRELL E. ISSA, California  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
THOMAS ROONEY, Florida  
GREGG HARPER, Mississippi

July 27, 2010

The Honorable Janet Napolitano  
Secretary of Homeland Security  
U.S. Department of Homeland Security  
Washington, D.C. 20528

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Secretary Napolitano and Attorney General Holder:

I am writing to follow up on recent conversations that I have had with each of you regarding the current deployment of ICE's Secure Communities program. As we discussed, Secure Communities is a voluntary program that relies upon the resources of both of your agencies in order to provide State, local, and federal law enforcement agencies with information related to the immigration status of persons booked into our nation's jails and prisons. I am aware that some local law enforcement agencies have expressed concern that participating in Secure Communities will present a barrier to their community policing efforts and will make it more difficult for them to implement a law enforcement strategy that meets their community's public safety needs.

There appears to be significant confusion about how local law enforcement agencies may "opt out" of participating in Secure Communities, such that fingerprints submitted by them to State Identification Bureaus (SIBs) in order to be checked by the Federal Bureau of Investigations (FBI) Criminal Justice Information Services Division (CJIS) Integrated Automated Fingerprint Identification System (IAFIS) will not also be checked against databases or identification systems maintained by the U.S. Department of Homeland Security for purposes of determining immigration status. Staff from the Subcommittee on Immigration, Citizenship, Border Security, Refugees, and International Law were briefed on this program by ICE and were informed that localities could opt out simply by making such a request to ICE. Subsequent conversations with ICE and FBI CJIS have added to the confusion by suggesting that this might not be so.

Please provide me with a clear explanation of how local law enforcement agencies may opt out of Secure Communities by having the fingerprints they collect and submit to the SIBs checked against criminal, but not immigration, databases.



Thank you in advance for your cooperation in this important matter.

Sincerely,

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

The Honorable Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship,  
Refugees, Border Security and International Law

# Exhibit M

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA

70 West Hedding Street, 9<sup>th</sup> Floor  
San Jose, California 95110-1770  
(408) 299-5900 / (408) 292-7240 (FAX)



Miguel Márquez  
COUNTY COUNSEL

Winifred Botha  
Orry P. Korb  
Lori E. Pegg  
ASSISTANT COUNTY COUNSEL

August 16, 2010

VIA FEDEX OVERNIGHT DELIVERY

David Venturella, Executive Director  
Office of Secure Communities  
U.S. Department of Homeland Security  
500 12th Street SW  
Washington, D.C. 20024

Dear Mr. Venturella:

I am writing to request clarification regarding the "Secure Communities" program. The Santa Clara County Board of Supervisors has asked me to provide them with an explanation of the way Secure Communities operates at the local level and the extent of the County's obligation to comply. I have found that much of the available information concerning this program is confusing and contradictory. I therefore request written clarification on the following questions.

**1. Is there a mechanism by which localities may "opt out?"**

The Secure Communities Standard Operating Procedures appear to describe Secure Communities as a program that is voluntary for counties. The cover page, for example, states that the Standard Operating Procedures are "[d]istributed for adoption by participating county and local law enforcement agencies[.]"<sup>1</sup> Yet nothing in the Standard Operating Procedures explains how counties elect to become "participating count[ies]," what the mechanism for "adoption" is, or whether they can opt out instead if they so choose.

Additionally, in the cover letter accompanying the 2009 Memorandum of Agreement between Immigration and Customs Enforcement ("ICE") and the California Department of Justice, you stated that "[d]eployment at the county and local level requires a signed Statement of Intent (SOI) by participating agencies that oversee booking locations to ensure those agencies understand and adhere to the principles set forth in the MOA and a set of Standard Operating

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<sup>1</sup> Immigration and Customs Enforcement, *Secure Communities (SC) Standard Operating Procedures (SOP)* (2009), available at [http://www.ice.gov/doclib/foia/secure\\_communities/securecommunitiesops93009.pdf](http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf) (hereinafter "Standard Operating Procedures").

Letter to D. Venturella  
Re: Secure Communities  
August 16, 2010  
Page 2 of 4

Procedures.”<sup>2</sup> I have been unable to find any further information about these Statements of Intent. No department in Santa Clara County has signed or been asked to sign one; nor, to my knowledge, has any other California municipality.

Recent statements your office has made to the press suggest that you do not view county participation as voluntary, and that once ICE has signed an MOA with the relevant state department of justice, a county’s only recourse if it wishes not to participate in the program is to seek an exemption from the state. Is that correct? Do you view the State of California as having the ability, under the 2009 MOA your office signed with the California Department of Justice, to exempt certain counties from the program? Have you allowed other localities or law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

I understand that ICE is offering counties one limited form of “opt out”: Counties may request not to receive “match messages” showing when an individual’s fingerprints have been matched with those in ICE’s IDENT database. My understanding is that these messages do not require or authorize counties to take any action with respect to the arrested individual. Assuming my understanding is correct, what is the purpose of receiving or not receiving these messages?

**2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and indemnification?**

The Standard Operating Procedures state that “[w]hen ICE determines an alien has been charged or convicted of a Level 1 offense that could result in removal, or when an alien who is already subject to removal is charged with a Level 1 offense, ICE will file an Immigration Detainer (Form I-247) at the time of booking with the local LEA that has custody of the alien.”<sup>3</sup> ICE has not made clear, however, whether localities are *required* or merely *requested* to comply with such detainers. The Standard Operating Procedures use a mixture of mandatory and voluntary language.<sup>4</sup> And the language of ICE’s Form I-247 states that “[f]ederal regulations (8 C.F.R. § 287.7) *require* you to detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays)” if ICE so requests.<sup>5</sup> Is it ICE’s position that localities are legally required to hold individuals pursuant to Form I-247, or are detainers merely requests with which a county could legally decline to comply?

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<sup>2</sup> Letter from David Venturella, U.S. Department of Homeland Security, to Linda Denly, Bureau of Criminal Identification and Information, California Department of Justice (Jan. 23, 2009), *available at* [http://www.ice.gov/doclib/foia/secure\\_communities-moa/r\\_california\\_4-10-09.pdf](http://www.ice.gov/doclib/foia/secure_communities-moa/r_california_4-10-09.pdf).

<sup>3</sup> Standard Operating Procedures at 5.

<sup>4</sup> *Id.* at 6 (“*Requested* Local LEA Cooperative Actions . . . ICE *requests* that the LEAs: 2.2.1 Abide by Immigration Detainer conditions: The local LEA *will abide* by the conditions stated in the Immigration Detainer, Form I-247.”) (emphases added).

<sup>5</sup> *Id.* at 11 (Form I-247, “Immigration Detainer—Notice of Action,” attached as Appendix C) (emphasis added).

It is also unclear who bears the costs related to detaining individuals at ICE's request. The federal regulation regarding detainers states that "[n]o detainer . . . shall incur any fiscal obligation on the part of the Department [of Homeland Security], until actual assumption of custody by the Department, except as provided in paragraph (d) of this section."<sup>6</sup> I see nothing in paragraph (d) clarifying what financial reimbursement the Department provides to local agencies, although the paragraph itself deals with the kind of temporary detention at issue in the Secure Communities program.<sup>7</sup> As you know, local governments are faced with increasing financial difficulties, and holding individuals pursuant to immigration detainers incurs costs and creates the risk of liability. Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Additionally, will ICE indemnify localities for any liability incurred because of that detention?

**3. Once Secure Communities is deployed in a locality, is the locality required to comply with other "local LEA cooperative actions"?**

As with detainers, the Standard Operating Procedures use a mixture of mandatory and voluntary language to describe other forms of local LEA cooperation.<sup>8</sup> Is it ICE's position that localities where Secure Communities is deployed are legally required to a) inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer; b) allow ICE agents and officers access to detainees to conduct interviews and serve documents; and/or c) assist ICE in acquiring information about detainees? If so, what is the legal basis for such requirements?

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<sup>6</sup> 8 C.F.R. § 287.7(e).

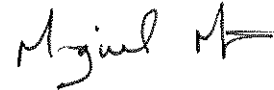
<sup>7</sup> *Id.* § 287.7(d) (providing for "[t]emporary detention at Department request").

<sup>8</sup> Standard Operating Procedures at 6 ("*Requested Local LEA Cooperative Actions . . . ICE requests that the LEAs: . . . 2.2.3 Inform ICE if subject is transferred or released: The local LEA will notify ICE when an alien's release or transfer to another location is imminent. . . . 2.2.4 Allow access to detainees: The local LEA will allow ICE Agents and Officers access to detainees . . . . 2.2.5 Assist ICE in acquiring information about detainees: The local LEA will locate and identify the booking and/or detention information on any alien against whom ICE has lodged a detainer.*") (emphases added).

Letter to D. Venturella  
Re: Secure Communities  
August 16, 2010  
Page 4 of 4

Your clarification on the above questions would be appreciated. Please do not hesitate to contact me at the address above. I look forward to hearing from you.

Very truly yours,



MIGUEL MÁRQUEZ  
County Counsel

c: Marc Rapp, Deputy Director of Secure Communities, U.S. Department of Homeland Security *(via email)*  
Hon. Zoe Lofgren, Chair, U.S. House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *(via email)*  
Honorable Board of Supervisors, County of Santa Clara  
Jeffrey V. Smith, County Executive, County of Santa Clara  
Laurie Smith, Sheriff, County of Santa Clara  
Edward Flores, Chief of Correction, County of Santa Clara

# Exhibit N

*Secretary*

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

September 7, 2010

The Honorable Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship, Refugees,  
Border Security, and International Law  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Lofgren:

Thank you for your July 27, 2010 letter in which you inquire how local law enforcement agencies can opt-out of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) Secure Communities program. I appreciate you sharing your concerns regarding this matter and giving me the opportunity to clarify the criminal history information sharing aspect of the Secure Communities program.

ICE is currently implementing the Secure Communities strategy, which is a comprehensive plan to identify and remove criminal aliens from the United States. Secure Communities has developed a deployment plan that includes a risk-based approach to activate an automated information-sharing capability to search for criminal and immigration history records from biometrics (fingerprints) submitted by local law enforcement agencies. This plan allows ICE to build the necessary infrastructure to process and prioritize leads generated by this capability. Today, local law enforcement agencies participating in the Secure Communities program submit fingerprints through the appropriate state identification bureau to the Federal Bureau of Investigation and then to ICE. ICE then determines and initiates appropriate immigration enforcement actions in accord with the agency's stated priorities.

A local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program, David Venturella, who can be reached at (202) 732-4519. The agency must also notify the appropriate state identification bureau by mail, facsimile, or e-mail. If a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens.



The Honorable Zoe Lofgren  
Page 2

Again thank you for your letter. I look forward to working with you on this and other homeland security issues. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", with a stylized flourish at the end.

Janet Napolitano

cc: The Honorable Eric H. Holder, Jr., Attorney General

# Exhibit O



**U.S. Immigration  
and Customs  
Enforcement**

Mr. Miguel Márquez  
County Counsel  
County of Santa Clara  
70 West Hedding Street, Ninth Floor  
San Jose, CA 95110-1770

Dear Mr. Márquez:

Thank you for your August 16, 2010, letter regarding U.S. Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I appreciate the opportunity to discuss ICE's immigration enforcement policies with you and to respond to your questions.

As an overview, Secure Communities is ICE's comprehensive strategy to improve and modernize the identification and removal of criminal aliens from the United States. As part of the strategy, ICE uses a federal biometric information sharing capability to more quickly and accurately identify aliens when they are booked into local law enforcement custody. ICE uses a risk-based approach that prioritizes immigration enforcement actions against criminal aliens based on the severity of their crimes, focusing first on criminal aliens convicted of serious crimes like murder, rape, drug trafficking, national security crimes, and other "aggravated felonies," as defined in § 101(a)(43) of the Immigration and Nationality Act (INA). Under this strategy, ICE maintains the authority to enforce immigration law. The activation of biometric information-sharing capability in new jurisdictions enables ICE to identify criminal aliens before they are released from law enforcement custody into our communities, which strengthens public safety. ICE works with state identification bureaus to develop deployment plans for activating the biometric information sharing capability in their jurisdictions. Your specific questions about Secure Communities are answered below.

**1. Is there a mechanism by which localities can opt out?**

As part of the Secure Communities activation process, ICE conducts outreach to local jurisdictions, which includes providing information about the biometric information sharing capability, explaining the benefits of this capability, explaining when the jurisdiction is scheduled for activation, and addressing any concerns the jurisdiction may have. If a jurisdiction does not wish to activate on the scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing by email, letter, or facsimile. Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date or removing the jurisdiction from the deployment plan.

**a) Can you provide information on the Statement of Intent referenced in the cover letter accompanying the 2009 MOA?**

ICE does not require local jurisdictions to sign Statements of Intent or any other document to participate in Secure Communities. The reference to the Statement of Intent in the cover letter to the MOA was an oversight. The MOA signed by the state of California makes no mention of a Statement of Intent, and ICE has advised the California Department of Justice that it will not be utilizing Statements of Intent.

**b) Do you view the State of California as having the ability to exempt certain counties from the program under the 2009 MOA signed by ICE and the California Department of Justice?**

ICE recognizes the California Department of Justice as the agency having the responsibility for the management and administration of the state's criminal data repositories, which includes development of and adherence to policies and procedures that govern their use and how information is shared with other state and federal agencies. Therefore, ICE defers to the California State Attorney General on how state, county, and local law enforcement agencies within the state of California will share biometric data under the MOA.

**c) Have you allowed other localities of law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?**

The Washington, D.C. Metropolitan Police Department is the only jurisdiction to date that has terminated its signed Memorandum of Agreement. As referenced by your letter, activated jurisdictions do not have to receive the "match responses" and Secure Communities, in coordination with the state identification bureaus and the FBI's Criminal Justice Information Services (CJIS) Division, has accommodated jurisdictions that requested not to receive that information.

**d) What is the purpose of receiving the "match messages"? Do they require or authorize counties to take action with respect to arrested individuals?**

The purpose of local law enforcement receiving a 'match message' is to provide any additional identity information about the subject, including aliases, from the DHS biometric database storing over 100 million records that may not have been available based only on a criminal history check. Additional identity information may further a law enforcement officer's open investigations and lead to improved officer safety. Receiving a 'match message' does not authorize or require any action by local law enforcement.

**2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and identification?**

- a) Is it ICE's position that localities are required to hold individuals pursuant to Form I-247 or are detainers merely requests with which a county could legally decline to comply?**

ICE views an immigration detainer as a request that a law enforcement agency maintain custody of an alien who may otherwise be released for up to 48 hours (excluding Saturdays, Sundays, and holidays). This provides ICE time to assume custody of the alien.

- b) Who bears the costs related to detaining individuals at ICE's request?**

Pursuant to 8 C.F.R. § 287.7(e), ICE is not responsible for incarceration costs of any individual against whom a detainer is lodged until "actual assumption of custody." The exception provided in section 287.7(e) stating that ICE shall not incur "fiscal obligation...except as provided in paragraph (d) of this section" only serves to authorize payment but does not require it. To the extent a payment is considered, it should only be made pursuant to a written agreement because, under INA § 103(a)(11), ICE pays detention costs when aliens are in its custody pursuant to "an agreement with a State or political subdivision of a State."

- c) Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Will ICE indemnify localities for any liability incurred because of that detention?**

ICE does not reimburse localities for detaining any individual until ICE has assumed actual custody of the individual. Further, ICE will not indemnify localities for any liability incurred because the Anti-Deficiency Act prohibits such indemnity agreements by federal agencies.

**3. Is it ICE's position that localities where Secure Communities is deployed are legally required to:**

- i. Inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer? If so, what is the legal basis for such a requirement?**

The notification to ICE of inmate transfer or release within thirty days is pursuant to ICE's request for that information. It is not a statutory requirement.

- ii. Allow ICE agents and officers access to detainees to conduct interviews and serve documents? If so, what is the legal basis for such a requirement?**

INA § 238, 8 U.S.C. 1228, provides for the availability of special removal proceedings at federal, state, and local correctional facilities for aliens convicted of certain criminal offenses. Such programs require ICE officers to conduct inmate interviews to determine alienage and any possibilities for relief or protection from removal. The statute does not require state or local jurisdictions to participate in such programs.

- iii. Assist ICE in acquiring information about detainees? If so, what is the legal basis for such a requirement?**

Assisting ICE in acquiring detainee information is not a legal requirement.

Thank you again for your letter. If you have any additional questions, please feel free to contact me at (202) 732-3900.

Sincerely yours,

A handwritten signature in black ink, reading "David F. Venturella". The signature is fluid and cursive, with the first name "David" and last name "Venturella" clearly legible.

David Venturella  
Assistant Director

# Exhibit P



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT

July 22, 2010

The Honorable Phil Mendelson, Chairman  
Committee on Public Safety and the Judiciary  
Council of the District of Columbia  
1350 Pennsylvania Avenue, NW, Suite 402  
Washington, DC 20004

Dear Councilmember Mendelson:

In response to your request at the Committee on Public Safety and the Judiciary's hearing on the *Secure Communities Act of 2010*, the Memorandum of Agreement (MOA) between the Metropolitan Police Department (MPD) and Secure Communities is attached. Please also note that, in light of the pending bill, on June 23, 2010, I notified the Secure Community program that I was terminating the MOA effective immediately (see attached).

However, I still urge the Committee to oppose this legislation. Before the Council unanimously proposed this bill, we had the opportunity – in collaboration with the community – to be a national leader in structuring our participation in Secure Communities in a just and prudent manner before it is activated nationwide. I was actively working with the community to craft a narrowly-tailored program that respects the many diverse communities of the District, while ensuring that the Department was using all reasonable tools to safeguard those who visit, work, and reside in the District of Columbia. I still believe we have an opportunity to implement this initiative in a manner consistent with both principles before it is federally mandated. Therefore I respectfully request that your Committee vote against this legislation and instead focus on the more challenging task of working on a solution that best protects the residents of and visitors to the District.

If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Cathy L. Lanier  
Chief of Police

cc: The Honorable Yvette Alexander  
The Honorable Muriel Bowser  
The Honorable Mary Cheh  
The Honorable Jack Evans



## **MEMORANDUM OF AGREEMENT**

### **BETWEEN**

#### **U.S. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT**

### **And**

#### **METROPOLITAN POLICE DEPARTMENT OF THE DISTRICT OF COLUMBIA**

### **I. PURPOSE**

The purpose of this Memorandum of Agreement (MOA) is to set forth the responsibilities of the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) and the District of Columbia Metropolitan Police Department (DCMPD) regarding implementation of the Secure Communities (SC) initiative related to biometric interoperability. SC is a comprehensive ICE initiative that focuses on the identification and removal of aliens who are convicted of a serious criminal offense and are subject to removal, including the utilization of advanced biometric and communications technology to share information among law enforcement agencies (LEAs) to identify, detain and remove from the United States aliens who have been convicted of a serious criminal offense and are subject to removal.

### **II. AUTHORITY**

Immigration and Nationality Act (INA) provisions regarding identification, detention, arrest and removal of aliens (8 USC §1226(c); 8 USC §1226(d); 8 USC §1226(e); 8 USC §1227(a) (2); and 8 USC §1228); the INA provision regarding liaison activities with internal security officers and data exchange (8 USC §1105); and FY 2008 DHS Appropriations Act (Pub. L. No. 110-161, 121 Stat. 1844, 2365 (2007)).

### **III. THE GOALS OF SECURE COMMUNITIES**

ICE is committed to improving community safety by transforming the manner in which the federal government cooperates with state and local LEAs to identify, detain and remove aliens convicted of a serious criminal offense. ICE utilizes advanced technology to improve information sharing among LEAs and will apply a risk-based methodology to focus resources.

To accomplish this goal, ICE leverages business and technical agreements between the DHS United States Visitor and Immigrant Status Indicator Technology (US-VISIT) Program's Automated Biometric Identification System (IDENT) and the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Division Integrated

Automated Fingerprint Identification System (IAFIS). The combined biometric and communications technology is known as IDENT/IAFIS Interoperability.

For the purpose of SC, the DCMPD will continue to operate pursuant to the FBI CJIS Division's established policies and agreements. This MOA does not affect DC's existing relationship with the FBI CJIS Division. Rather, the MOA builds on and enhances that relationship. The DCMPD will not be responsible for determining an individual's immigration status or whether a particular conviction renders an individual removable pursuant to the INA.

- A. The SC initiative focuses on three objectives:
  - i. Identify aliens in federal, state and local custody charged with or convicted of a serious criminal offense who are subject to removal and those aliens who have prior convictions for serious criminal offenses and are subject to removal who are currently at large;
  - ii. Prioritize enforcement actions to ensure apprehension and removal of aliens convicted of serious criminal offenses; and,
  - iii. Transform criminal alien enforcement processes and systems to achieve lasting results.
- B. ICE will employ a risk-based approach to identify aliens charged with or convicted of a serious criminal offense and incarcerated in jails and prisons throughout the United States who are eligible for removal based on the severity of their offenses. The risk basis for determining the threat to community safety relies on a three-level hierarchy of aggravated felonies and other serious offenses. Appendix A contains a description of the state and federal criminal offenses that comprise Levels 1, 2 and 3.
  - i. This approach will build on the ICE Criminal Alien Program (CAP), which is currently in use in all federal and state prisons.
  - ii. The SC risk-based approach classifies aliens convicted of a criminal offense into three levels, starting with those who present the greatest threat:

**Level 1:** Individuals who have been convicted of major drug offenses, national security crimes, and violent crimes such as murder, manslaughter, rape, robbery and kidnapping;

**Level 2:** Individuals who have been convicted of minor drug and property offenses such as burglary, larceny, fraud and money laundering; and

**Level 3:** Individuals who have been convicted of other offenses.

- iii. ICE is committed to identifying aliens convicted of serious criminal offenses who are subject to removal in all three category levels, with a priority assigned on the basis of risk to individuals convicted of Level 1 offenses. ICE continues to exercise discretion through its field offices in taking enforcement action in cases of aliens convicted of Level 2 and 3 offenses as each situation demands. At no time shall this MOA be construed to limit the discretion of ICE in managing detention resources.
- C. To facilitate the goals of SC, ICE is partnering with DHS components, including U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP) and the US-VISIT Program. ICE federal interagency partners include the Department of State, Department of Justice (DOJ), Bureau of Prisons, Executive Office for Immigration Review, Executive Office of United States Attorneys, U.S. Marshals Service and FBI CJIS Division. Appendix B contains acronyms and abbreviations frequently used in the SC initiative.

#### **IV. DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT (DCMPD) RESPONSIBILITIES**

- A. The DCMPD responsibility under this MOA begins when the LEA submits a Criminal Answer Required (CAR) request, as appropriate according to CJIS procedure, to the DCMPD. The DCMPD will then electronically send the fingerprints to the FBI CJIS Division. Receipt of the CAR will initiate a search of both IAFIS and US-VISIT IDENT. However, National Fingerprint File (NFF) states send fingerprints to the FBI CJIS Division only at the time of the initial arrest. Second or subsequent criminal bookings in the NFF states result in a Criminal Print Ident (CPI) file maintenance message to the FBI CJIS Division. In the case of a subsequent arrest for a National Fingerprint File (NFF) state, SIB will forward a CPI file maintenance message instead of a CAR to FBI CJIS Division. There is no change in IAFIS processing.
- B. If there is a match in IDENT, CJIS transmits the search results in a joint IDENT Data Response (IDR) and Immigration Alien Response (IAR) to the DCMPD. The DCMPD will in turn relay that response to the local LEA unless the DCMPD does not have the technical capability to do so. A “no match IDR” will be generated when a match is not found in IDENT.

#### **V. ICE RESPONSIBILITIES**

ICE will prioritize the processing of aliens convicted of Level 1 offenses. ICE will detain and seek to remove Level 1 offenders after the completion of the individual’s sentence. For those aliens who have prior Level 1 convictions that are discovered during the booking process, ICE will initiate steps to take such

individuals into custody for removal based on their prior Level 1 conviction(s) as well as current charges, once the charges have been adjudicated.

- A. Once fingerprint information is received by IAFIS, it will be cross-checked against the DHS US-VISIT IDENT system.
- B. Upon receipt of an Immigration Alien Query (IAQ) from the FBI CJIS Division that there has been a match with the subject's fingerprint in IDENT, ICE Law Enforcement Support Center (LESC) will conduct an immigration status determination.
- C. When an alien is identified as having prior Level 1 convictions and is subject to removal or is currently charged with a Level 1 offense and is subject to removal, ICE will take the alien into custody after completion of the individual's sentence or when released from local custody and will institute removal proceedings, as necessary.
- D. ICE will rely on establishing in the field a "24/7" IDENT/IAFIS Interoperability response capability and may utilize video conferencing (VTC) to streamline the process of identifying and removing aliens convicted of a serious criminal offense.

## **VI. PERIOD OF AGREEMENT**

This MOA shall be effective upon signing by both parties and will remain in effect until terminated by either party in accordance with the Section (below): MODIFICATIONS AND TERMINATION.

## **VII. DISPUTE RESOLUTION**

The parties agree that, should any disagreements arise as a result of this MOA, the first attempt at resolution shall occur at the program office level with the area(s) of disagreement reduced to writing and submitted to the appropriate program office point of contact (POC). If a resolution cannot be reached at this level, the disagreement will be raised to the agency level in accordance with component procedures.

## **VIII. MODIFICATIONS AND TERMINATION**

This MOA may be modified at any time by mutual written consent of both parties.

This MOA will remain in effect from the date of signing until it is terminated by either party. Either party, upon 30 days written notice to the other party, may terminate the MOA at any time. A termination notice shall be delivered personally or by certified or registered mail and termination shall take effect 30 days after receipt of such notice.

Either party, upon written or oral notice to the other party, may temporarily suspend activities under this MOA when resource constraints or competing priorities necessitate. Notice of termination or suspension by ICE shall be given to the SIB POC. Notice of termination or suspension by the SIB shall be given to the ICE POC. The temporary suspension of activities will take effect immediately upon receipt of such notice.

Use of IDENT/IAFIS for the purposes of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity. ICE reserves the right to take appropriate remedial action if necessary.

## **IX. COSTS AND EXPENDITURES**

Parties to this MOA are responsible for their own costs associated with carrying out activities under this MOA. Nothing in this MOA is intended to imply that either Congress or state or local legislatures will appropriate funding for activities under this MOA.

## **X. RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES**

SIB may, at its discretion, communicate the substance of this MOA to law enforcement professional organizations expressing an interest in the law enforcement activities to be engaged in under this MOA. It is ICE practice to provide a copy of this MOA to requesting media outlets only after both parties have signed the MOA. Local LEAs are authorized to do the same. However, the release of statistical information regarding the SC initiative will be coordinated with the ICE Public Affairs Office POC identified in Appendix D.

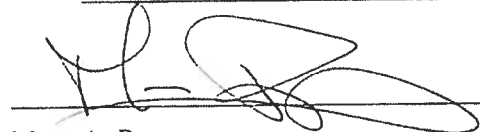
SIB hereby agrees, to the extent authorized by law, to coordinate with ICE regarding information to be released to the media regarding actions taken under this MOA. The POCs for ICE and the SIB for this purpose are identified in Appendix C.

## **XI. SUMMARY OF ICE AND DCMPD RESPONSIBILITIES**

This MOA does not, nor is it intended to, nor shall be construed to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

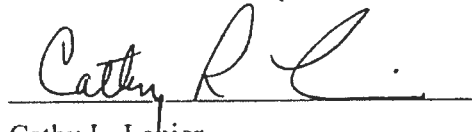
By signing this MOA, each party represents it is fully authorized to enter into this MOA and accepts the terms, responsibilities, obligations and limitations of this MOA.

Date: 11-6-2009

A handwritten signature in black ink, appearing to be 'M. Rapp', written over a horizontal line.

Marc A. Rapp  
Acting Director, Secure Communities  
Immigration and Customs Enforcement

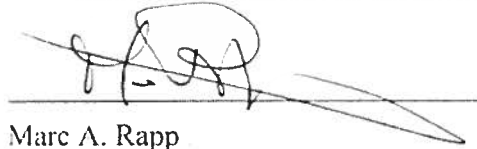
Date: 11-5-09

A handwritten signature in black ink, appearing to be 'Cathy L. Lahier', written over a horizontal line.

Cathy L. Lahier  
Chief, Metropolitan Police Department  
of the District of Columbia

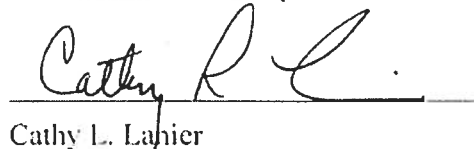
By signing this MOA, each party represents it is fully authorized to enter into this MOA and accepts the terms, responsibilities, obligations and limitations of this MOA.

Date: 11.6.2009

A handwritten signature in black ink, appearing to read 'M. Rapp', written over a horizontal line.

Marc A. Rapp  
Acting Director, Secure Communities  
Immigration and Customs Enforcement

Date: 11-5-09

A handwritten signature in black ink, appearing to read 'Cathy L. Lahier', written over a horizontal line.

Cathy L. Lahier  
Chief, Metropolitan Police Department  
of the District of Columbia

## APPENDIX A

### *Secure Communities Levels and Offense Categories by NCIC Code*

Level 1 Crimes (NCIC Code)	Level 2 Crimes (NCIC Code)	Level 3 Crimes (NCIC Code)
National Security* (0101-0199, 1602, 5204-5299)	Arson (2001-2099)	Military (0201, 2099)
Homicide (0901-0999)	Burglary (2201-2299)	Immigration (0301-0399)
Kidnapping (1001-1099)	Larceny (2301-2399)	Extortion (2102-2199)
Sexual Assault (1101-1199)	Stolen Vehicles (2401-2411, 2499)	Damage Property (2901-2903)
Robbery (1201-1299)	Forgery (2501-2599)	Family Offenses (3801, 3804-3899)
Aggravated Assault (1301-1399)	Fraud (2601-2699)	Gambling (3901-3999)
Threats (1601)	Embezzlement (2701-2799)	Commercialized Sex Offenses (4001-4099)
Extortion –Threat to Injure Person (2101)	Stolen Property (2801-2899)	Liquor (4101-4199)
Sex Offenses (3601-3699)	Damage Property w/Explosive (2904-2906)	Obstructing the Police (4802-4899)
Cruelty Toward Child, Wife (3802, 3803)	Traffic Offenses (5402-5499)	Bribery (5101-5199)
Resisting an Officer (4801)	Smuggling (5801-5899)	Health and Safety (5501-5599)
Weapon (5201-5203)	Money Laundering (6300)	Civil Rights (5699)
Hit and Run (5401)	Property Crimes (7199)	Invasion of Privacy (5701-5799)
Drugs (Sentence >1 year)	Drugs (Sentence < 1 year)	Elections Laws (5999)
		Conservation (6201-6299)
		Public Order Crimes (7399)

**\*National Security** violations include the NCIC coded offenses of Sabotage, Sedition, Espionage and Treason (0101-0199); Terrorist Threats (1602); and Weapons, Arson/Incendiary Devices and Bombing offenses (5204-5299).



## APPENDIX B

### *Acronyms and Abbreviations*

Acronym/Abbreviation	Definition
CAP	Criminal Alien Program
CAR	Criminal Answer Required
CJIS	Criminal Justice Information Services
CPI	Criminal Print Identification
DHS	Department of Homeland Security
DOJ	Department of Justice
DRO	Detention and Removal Operations
FAQ	Frequently Asked Questions
FBI	Federal Bureau of Investigation
IAFIS	Integrated Automated Fingerprint Identification System
IAQ	Immigration Alien Query
IAR	Immigration Alien Response
ICE	Immigration and Customs Enforcement
IDENT	US-VISIT Automated Biometric Identification System
IDR	IDENT Data Response
LEA	Law Enforcement Agency
LESC	Law Enforcement Support Center
MOA	Memorandum of Agreement
OI	Office of Investigations
ORI	Originating Agency Identifier
POC	Point of Contact
SC	Secure Communities
SIB	State Identification Bureau
SOP	Standard Operating Procedures
US-VISIT	United States Visitor and Immigrant Status Indicator Technology

## **APPENDIX C**

### ***Points of Contact***

The ICE and SIB points of contact for purposes of implementation of this MOA are:

**For the SIB:**

Mrs. Linda Bateman  
Manager  
Fingerprint Analysis Branch  
Firearms and Toolmark Examination Division  
Metropolitan Police Department  
300 Indiana Avenue, NW  
Room 4056  
Washington, DC 20001  
(202) 727-5754  
(202) 727-0580 Fax  
linda.bateman@dc.gov

**For ICE Detention and Removal Operations (DRO):**

Leonard Desanti  
Acting Field Office Director  
Detention and Removal Operations  
2675 Prosperity Avenue  
Fairfax, VA 22031  
(703) 285-6301  
lvdesant@fins3.dhs.gov

**For ICE Office of Investigations (OI):**

James Dinkins  
2675 Prosperity Avenue  
Fairfax, VA 22031  
(703) 285-6700  
james.dinkins@dhs.gov

## **APPENDIX D**

### ***Public Information Points of Contact***

Pursuant to Section X. of this MOA, RELEASE OF INFORMATION TO THE MEDIA AND OTHER THIRD PARTIES, the signatories will coordinate with the ICE Public Affairs Office regarding release of any information about Secure Communities and/or IDENT/IAFIS Interoperability and agree to coordinate appropriate release of subsequent information to the media regarding actions taken under this MOA. The points of contact for coordinating such activities are:

#### **For the SIB:**

Miss Karen A. Wiggins  
Executive Director  
Firearms and Toolmark Examination Division  
Metropolitan Police Department  
300 Indiana Avenue, NW  
Room 1046  
Washington, DC 20001  
(202) 727-4416  
(202) 724-3842 Fax  
karen.wiggins@dc.gov

#### **For ICE:**

Cori Bassett  
Immigration and Customs Enforcement  
500 12th Street, SW  
Washington, DC 20024  
(202) 732-4228  
cori.bassett@dhs.gov



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT**

JUN 23 2010

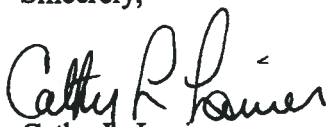
Mr. David J. Venturella  
Executive Director  
Secure Communities  
Immigration and Customs Enforcement  
Washington, DC 20536

Dear Mr. Venturella:

As outlined in Section VIII of the Secure Communities Memorandum of Agreement between the U.S. Department of Homeland Security, Immigration and Customs Enforcement and the Metropolitan Police Department, Washington, D.C., I am writing to respectfully inform you that we must formally terminate the Memorandum of Agreement due to pending legislative action being taken by the District of Columbia City Council.

It should be noted that although the Memorandum of Agreement was signed in November of 2009, the Secure Communities program was never activated. Thank you for your patience and assistance as we attempted to craft a unique Secure Communities program in the District of Columbia; however, we are unable to move forward with implementation in any form at this time.

Sincerely,

  
Cathy L. Lanier  
Chief of Police

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**Government of the District of Columbia**



**Metropolitan Police Department**

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Testimony of  
**Peter Newsham**  
**Assistant Chief of Police**

Public Hearing on the  
***Secure Communities Act***

Committee on Public Safety & the Judiciary  
Phil Mendelson, Chair  
Council of the District of Columbia  
July 12, 2010

Council Chamber  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

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Good afternoon, Chairman Mendelson, members of the Committee, and guests. I appreciate this opportunity to discuss with you the proposed legislation related to the federal Secure Communities initiative.

The Secure Communities program is a United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) initiative that focuses federal resources on identifying and removing high-risk criminal aliens held in state and local prisons through the use of technology and information sharing among law enforcement agencies. The enhanced information sharing and expedient identification of wanted or dangerous individuals would aid in the efforts of the Metropolitan Police Department (MPD) to safeguard our neighborhoods, as well as the many critical institutions in the nation's capital.

When the Department of Homeland Security approached MPD about Secure Communities, the Chief felt she had a responsibility to explore it because it is her job to evaluate all options to safeguard residents of and visitors to the District. Not only could the program help remove serious criminals from our streets, but law enforcement members across the nation who know the communities they serve are in the best position to detect and investigate criminal activity that might be connected to terrorism, and potentially avert a terrorist incident. The program closes a large gap in the information sharing environment of law enforcement, a vulnerability outlined in great detail by the 911 Commission, thus the federal mandate for complete interoperability between the FBI and ICE databases. As a result, the federal government will implement Secure Communities nationwide by 2013.

Already, as of June 29, over 400 jurisdictions throughout the country have implemented the program, including Prince George's, Frederick, Queen Anne's, and St. Mary's counties in Maryland and the entire Commonwealth of Virginia. Some other notable participating jurisdictions include the areas of Boston, Philadelphia, Detroit, Dallas, Atlanta, Chicago, and all of Florida.

That said, the Chief recognized that the program presented some legitimate concerns, and therefore MPD - contrary to allegations we were secretly implementing the program - has explored this issue in a very open manner, with a public announcement and numerous meetings with the community. We had been proactively working to modify the federal program to meet the needs of the District prior to the Council's introduction of this bill. The Chief also committed to notifying the community and the Council of any implementation at least 30 days in advance. As such, this legislation seems premature. It preempts the Department's ability to explore appropriate ways to safeguard our city with the participation of our community. Furthermore, the legislation could also have unintended consequences on our collaborative task force efforts and could even jeopardize certain criminal investigations.

Before I go into further detail as to the potential impact of this legislation, I would like to provide the details of our unique approach to the Secure Communities program and also clarify some of the main issues and concerns that have surrounded our exploration of the initiative.

First, Secure Communities has not been implemented in the District of Columbia. The Memorandum of Agreement was signed last November with the knowledge that it would take a

period of time to complete the technological requirements and other logistics, as well as allow appropriate time for us to discuss the program with members of the community. However, in light of this pending Council action, the Chief requested that the Agreement be voided and the formal request for unique safeguards be withdrawn.

The Secure Communities program is an information sharing program based on the interoperability developed between the databases of the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE). To be clear, Secure Communities is not the 287(g) program that provides police officers with delegated authority to serve as immigration officers. Secure Communities does not allow participating police departments to enforce federal civil immigration laws. MPD's participation in this program would in no way change its longstanding policy strictly prohibiting officers from inquiring about citizenship or residency status for the purpose of determining whether an individual has violated civil immigration laws. Department members would not be involved in the identification of criminal aliens or the enforcement of civil immigration laws. There would be absolutely no change in the way officers serve or interact with the community.

If implemented, the program would allow the FBI to forward to ICE the fingerprint data that we collect from adults arrested in the District for certain offenses. The program does not apply to victims, witnesses, or other members of the community with whom we interact and encounter. Indeed, non-citizen victims and witnesses of certain criminal acts are afforded additional safeguards in the form of the U-Visa, which provides the individual with legal status and work eligibility in the United States.

In brief, MPD would submit the fingerprints of adult arrestees to the FBI, as we have always done, for a national criminal background check. Under the proposed Secure Communities initiative, the same information would be transmitted to ICE by the FBI. Although this basic process is the same for all participating jurisdictions, MPD had been working to carefully craft a unique program in DC that remains consistent with the principals of community policing. For example, while most other participating jurisdictions provide ICE with the fingerprints of individuals arrested for all offenses, MPD would exclude the fingerprints of all juveniles, as well as for individuals arrested for certain lesser offenses, such as traffic, vending, and disorderly charges. We were also working with the FBI and ICE to develop a mechanism to exclude the fingerprints of individuals arrested in misdemeanor domestic violence incidents. We had submitted a formal request for a filtering mechanism that would allow these fingerprints to still be sent to the FBI, but they would not be forwarded to ICE. However, due to this legislative action, the Chief has withdrawn this request. Of the more than 400 jurisdictions involved in this initiative, I believe MPD is the only agency that has undertaken such an extensive effort to ensure that the program does not inhibit the reporting of domestic violence.

Furthermore, the scope of our proposed participation in the program would have been limited to focus on the most dangerous, previously-convicted offenders. Our focus on violent offenders for the last three years has helped us to reduce violent crime, especially homicides. Properly constructed, Secure Communities, would be an effective part of that overall strategy. ICE had agreed that they would only act upon those individuals who were identified as criminal aliens with a previous conviction for a Level One offense: specifically those offenders who had been

previously convicted of homicide, rape, robbery, kidnapping, aggravated assault, weapons, as well as major drug crimes or those crimes involving threats to national security. We were also committed to continually monitoring the outcomes of the initiative to ensure they remained in line with our objectives, and we could withdraw from the program at any time if we found they were not.

Even if the District waits to implement Secure Communities until it is federally mandated, the ban on sharing arrest information with a federal law enforcement agency as is proposed in the legislation will impede – and could possibly jeopardize – important criminal investigations. Law enforcement agencies regularly share offenders' arrest information as part of the investigative process, and as a result, cases are closed, offenders are held accountable, and future crimes are prevented.

This proposed legislation could very well have an unintended impact on our collaborative work on important law enforcement task forces, such as the High Intensity Drug Trafficking Areas (HIDTA) program and the Joint Terrorism Task Force (JTTF). MPD and ICE both have representatives on these task forces. In addition, we regularly reach out to federal agencies, including DHS and ICE, in support of criminal investigations; whether it's determining if a wanted suspect has fled the country or investigating a legitimate terrorist threat. In all of these cases, the proposed legislation would forbid a basic function vital to our ongoing criminal investigations and national security protections.

In the end, the Chief has made it very clear that she was committed to addressing the concerns of the community before the Secure Communities program would have been put into operation in the District. Both she and members of the command staff have met with numerous community groups to hear and address concerns, and we continued to work with our federal partners to craft a custom program for DC. Recently, other jurisdictions and even the Major Cities Chiefs Association have followed in our footsteps and requested changes to the standard agreement that are identical to our carefully-crafted proposals.

In the last six months, the number of jurisdictions participating in Secure Communities has more than doubled to over 400, and by 2013 the program will be activated nationwide. Before the Council unanimously proposed this bill, we had the opportunity – in collaboration with the community – to structure our participation in Secure Communities in a just and prudent manner before it is activated nationwide. We were actively working with the community to craft a narrowly-tailored program that respects the many diverse communities of the District. We also recognize that we have an obligation to remain vigilant in our mission to safeguard all those who visit, work, and reside in the District of Columbia. We still believe we have an opportunity to implement this initiative in a manner consistent with both principles before it is federally mandated and therefore respectfully request that this Committee vote to table this legislation at this time. Instead, give us the opportunity to work with the community, the Council, our federal and regional partners, and other stakeholders, on a solution that best protects the residents of and visitors to the District. Thank you.



# Exhibit Q



OFFICE OF THE COUNTY MANAGER

2100 Clarendon Boulevard, Suite 302, Arlington, VA 22201

TEL 703.228.3120 FAX 703.228-3218 TTY 703.228.4611 [www.arlingtonva.us](http://www.arlingtonva.us)

October 7, 2010

The Honorable John Morton  
Director  
U.S. Immigrations and Customs Enforcement  
500 12th St, SW  
Washington, DC 20536

Dear Director Morton:

I am writing to request information regarding Arlington County's inclusion in the Immigration and Customs Enforcement's (ICE) Secure Communities initiative. I have included a copy of the recently passed Arlington County Board Resolution regarding this issue for your information. I appreciate your prompt attention to this request.

In recent months, there has been conflicting information from your agency regarding the ability of local governments to not participate in Secure Communities. In a September 7, 2010 letter to Representative Zoe Lofgren, Homeland Security Secretary Janet Napolitano stated "a local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program.....the agency must also notify the appropriate state identification bureau by mail, facsimile, or e-mail. If a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens." Additionally, in an August 17, 2010 document produced by ICE entitled "Setting the Record Straight," ICE outlines potential solutions for jurisdictions that choose not to be activated under the program, "which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan."

Conversely, an October 7, 2010 article in the Washington Post quotes Secretary Napolitano, speaking of Secure Communities, as saying "we do not see this as an opt-in, opt-out program." This statement follows a September 30, 2010 article that quotes a "senior ICE official, speaking on the condition of anonymity because he was not authorized to talk" as saying, "Secure Communities is not based on state or local cooperation in federal law enforcement. The program's foundation is information sharing between FBI and ICE. State and local law enforcement agencies are going to continue to fingerprint people and those fingerprints are forwarded to FBI for criminal checks. ICE will take immigration action appropriately."

Due to these conflicting statements, I am writing to seek clarification on the ability of Arlington County and other local governments to withdraw from the program. If local participation is voluntary, I request you inform us how Arlington may withdraw from the program and what would be required regarding notification to ICE of "suspected criminal

aliens" once Arlington becomes a non-activated community. Should local participation not be voluntary, I would appreciate the opportunity to work with you to identify potential technical and procedural solutions that would fulfill ICE's stated objectives for Secure Communities while not adversely impacting local community policing models and not compromising Arlington's submissions to the Virginia Central Criminal Records Exchange or the federal Automated Fingerprint Identification System.

Let me be clear - Arlington County has and will continue to abide by all federal and state laws related to immigration, and our concerns regarding Secure Communities do not mean that we believe our nation's immigration laws should be ignored. Arlington County understands the need for ICE to fulfill its national security and public safety role by enforcing federal immigration law, and in fact, there are many instances in which our local law enforcement officers work with you to achieve this mission.

As you may know, Arlington County has an extremely diverse population, with nearly one quarter of our residents born outside of the United States. The manner in which Secure Communities has been implemented creates an unnecessary and dangerous fear of local law enforcement in our immigrant community. Contrary to its intent, Secure Communities potentially makes our community less safe by creating divisions within our community that hinder our successful community policing practices. There must be a better way to achieve the federal and local public safety missions without forsaking either. We look forward to working with you to find this solution.

Thank you for your attention to this important matter. I look forward to hearing from you soon. Should you have any questions, I can be reached at (703) 228-3120.

Sincerely,

A handwritten signature in dark ink, appearing to read "Barbara M. Donnellan", with a stylized, flowing script.

Barbara M. Donnellan  
County Manager

Enclosure

**RESOLUTION PROMOTING COMMUNITY SAFETY  
IN ACCORDANCE WITH CONSTITUTIONAL PRINCIPLES**  
*Adopted by the Arlington County Board – September 28, 2010*

**WHEREAS**, Arlington County strives to be a diverse and inclusive world-class urban community where people unite to form a caring, learning, participating, sustainable community in which each person is important; and

**WHEREAS**, Arlington County has a racially, ethnically, and culturally diverse population and more than one third of our residents are Hispanic/Latino, African-American, Asian-American or multi-racial; and

**WHEREAS**, nearly one quarter of Arlington residents were born outside of the United States, and Arlington County public school children speak 93 languages and hail from 124 countries; and

**WHEREAS**, public trust in law enforcement officers and their reciprocal respect for the rule of law are vital to promoting public safety; and

**WHEREAS**, the mission of the Arlington County Police Department is to reduce the incidence of crime and improve the quality of life in Arlington County by making it a place where all people can live safely and without fear; and

**WHEREAS**, it is not the role of Arlington County law enforcement to enforce federal immigration laws; and

**WHEREAS**, it is long-standing policy that Arlington County law enforcement has not and will not perform immigration status checks on our residents or visitors, and has not and will not arrest individuals to determine their immigration status; and

**WHEREAS**, the Arlington County Police Department is committed to a community-oriented policing strategy which emphasizes collaboration with other county agencies as well as partnerships with advocacy groups and neighborhood associations, and to a respect for the Constitutional rights and personal dignity of all people in Arlington; and

**WHEREAS**, in Arlington County we believe our capacity to maximize public safety depends on the ability of our residents to interact with our local law enforcement authorities without fear due to actual or perceived race, national origin, ethnicity, or immigration status; and

**WHEREAS**, the United States Constitution vests the federal government with the sole authority to prescribe the rules governing which foreign nationals are granted entrance into the country and the sole responsibility for determining who among them may stay; and

**WHEREAS**, there are concerns among Arlington County law enforcement and our residents that the Secure Communities Initiative will create divisions in our community and promote a culture of fear and distrust of law enforcement that threatens public safety and makes communities less safe; and

**WHEREAS**, in a letter to Representative Zoe Lofgren dated September 8, 2010, U.S. Secretary of Homeland Security Janet Napolitano said, "if a local law enforcement agency chooses not to be activated in the Secure Communities deployment plan, it will be the responsibility of that agency to notify its local ICE field office of suspected criminal aliens," indicating that jurisdictions have the option of not participating in the program; and

**WHEREAS**, the unilateral imposition of the Secure Communities Initiative on Arlington County law enforcement agencies has deprived the residents of Arlington County, its elected officials, and its law enforcement officials of the opportunity to give full and proper consideration to the impact the program may have on our community, including the possibility of not activating the program.

**NOW, THEREFORE, BE IT RESOLVED, THAT:**

1. Arlington County remains firmly committed to the protection of civil rights and civil liberties for all people;
2. The Arlington County Board re-affirms the Arlington County Police Department's commitment to the following:
  - a. the Arlington County Police Department does not monitor, stop, detain, question, interrogate, search or investigate a person solely for the purpose of determining that individual's immigration status;
  - b. the Arlington County Police Department has a long standing policy regarding racial profiling that prohibits law enforcement action against an individual based solely on that individual's race, ethnicity, or national origin rather than on reasonable suspicion or probable cause;
  - c. the Arlington County Police Department does not initiate a criminal investigation based solely on information or suspicion that an individual has committed a civil violation by residing in the United States without proper authorization; and
  - d. unless required by a criminal investigation, the Arlington County Police Department does not inquire about the immigration status of any crime victim or witness, nor do they refer such information to federal immigration enforcement authorities;
  - e. the Arlington County Police Department does not request passports, visas, "green cards," or travel documents, unless they are required to establish or verify an individual's identity;
  - f. a person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon citizenship or immigration status;

3. The Arlington County Board commends the Arlington County Police Department and Arlington County Sheriff's Office for their commitment to a robust dialogue with our community regarding the Secure Communities Initiative. The Board calls on all parties to continue to work together to develop a joint strategy to minimize the negative impacts of the program on our community and to maintain the safety of all County residents without regard to actual or perceived race, national origin, ethnicity or immigration status. Particular emphasis should be placed on the program's potential impacts on the ability of law enforcement to prevent, respond to and prosecute crimes involving domestic violence and human trafficking;
4. The Arlington County Board calls on the United States Congress to enact meaningful and comprehensive immigration reform that provides a path to citizenship, provides the resources necessary to ensure an effective and timely processing of those eligible for legal permanent residency or naturalization; and promotes the integration of immigrants into our community;
5. The Arlington County Board calls on federal immigration enforcement agencies to not impose federal mandates which are burdensome to local agencies or which interfere with the effectiveness of community oriented policing strategies, which have proven effective in reducing crime;
6. The Arlington County Board wishes to discontinue participation in the Secure Communities program. The County Manager is directed to formally notify Immigration and Customs Enforcement (ICE) and the Virginia State Police of Arlington's intent to withdraw from the program and to meet with representatives of both agencies to:
  - a. definitively outline the procedure and actions required for Arlington County to not participate in the Secure Communities program, and
  - b. identify the actions that would be required of Arlington County regarding notification to ICE of "suspected criminal aliens" once Arlington becomes a non-activated community.

# Exhibit R



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530

SEP 8 2010

The Honorable Zoe Lofgren  
Chairwoman  
Subcommittee on Immigration, Citizenship, Refugees,  
Border Security and International Law  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Madam Chairwoman:

This responds to your letter, dated July 27, 2010, to the Attorney General regarding the current deployment of the Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) Secure Communities program.

In your letter, you specifically asked for "a clear explanation of how local law enforcement agencies may opt out of Secure Communities by having the fingerprints they collect and submit to the SIBs checked against criminal, but not immigration, databases." A local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program at ICE and the appropriate state identification bureau (SIB). Formal notification may be by mail, facsimile, or e-mail. If an agency chooses not to activate in accordance with the Secure Communities deployment plan, the local law enforcement agency will be responsible for notifying ICE of suspected criminal aliens.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of further assistance with this, or any other matter.

Sincerely,

Ronald Weich  
Assistant Attorney General

cc: The Honorable Steve King  
Ranking Member  
Subcommittee on Immigration, Citizenship, Refugees,  
Border Security and International Law



# Exhibit S

# Cities, counties can't stop federal immigration checks

ICE won't honor requests to opt out of Secure Communities — and it won't say why



By **Alex Johnson**  
Reporter

msnbc.com  
updated 10/15/2010 6:13:19 AM ET

Cities and counties can't stop U.S. immigration officials from sifting through local police records to root out illegal immigrants, even though Immigration and Customs Enforcement has characterized the program as voluntary since it started up two years ago, federal documents show.

When a local law authority arrests someone, it submits his or her fingerprints to the FBI to confirm identity and check for a previous criminal record. That's been a standard part of the booking process in every police agency in America for decades.

Under the disputed program, called Secure Communities, the FBI automatically shares those fingerprints with ICE, which checks to see whether the person is in its database for any reason. If not, ICE steps out of the picture. But if so, ICE then looks more closely to determine whether the person is "eligible for deportation" — either by being in the country illegally or by holding a green card that's been invalidated by a previous conviction.

If that's the case, ICE can begin proceedings to take the person into federal custody for possible deportation. While the Secure Communities [standard operating procedures](#) (PDF) say ICE "normally" won't remove a "criminal alien" until the local case is resolved, they specify that the agency can begin the process to do so "at the time of booking" so it can move quickly once the case is concluded.

The program has been implemented in phases since it was created late in the administration of [President George W. Bush](#), and ICE now reviews all arrests in more than 650 cities and counties in 33 states. The Obama administration, which has strongly backed the program it inherited in January 2009, said it hopes to implement Secure Communities nationwide by 2013.

Some local elected officials in nearly every state have objected to Secure Communities, news reports show, citing concerns that immigrants will stop cooperating with police as witnesses for fear of running afoul of ICE.

Some [immigration](#) activists also allege that it's being used as a dragnet to round up illegal immigrants indiscriminately. ICE vigorously disputes that, but [its own statistics](#) (PDF) reveal that 78 percent of the 56,358 people deported through the program through August, the last date for which full figures were available, hadn't been convicted of a violent crime. Twenty-six percent had no criminal convictions at all.

Concerns like those have led at least four communities — San Francisco; Washington, D.C.; Arlington County, Va.; and Santa Clara County, Calif. — to formally request to opt out of Secure Communities.

This is where things get confusing.

## 'Yes or no?'

Since Secure Communities began rolling out in October 2008, ICE has indicated that local participation is voluntary. As recently as August, it outlined a process for local officials to object and to negotiate a resolution that "may include ... removing the jurisdiction from the deployment plan."



The green areas on this map show the 666 jurisdictions in 33 states where Secure Communities is implemented.

## What is Secure Communities?

When Secure Communities is implemented, it outlines four major goals:

- Identify and process all criminal aliens for removal while in federal, state, or local custody
- Enhance ICE detention strategy by releasing removable alien is released because of a lack of detentive appropriate alternative to detention
- Implement removal initiatives where removable aliens remain in ICE custody
- Maximize cost effectiveness through reduced recidivism.

At the same time, ICE's internal documents make it clear that the agency has always considered Secure Communities to be a federal-only program in which local officials have no say. Just last week, [Homeland Security Secretary Janet Napolitano](#) said she didn't "view this as an opt-in/opt-out program."

So which is it? Can cities and counties opt out?

ICE officials have repeatedly refused to clarify whether local jurisdictions can prevent ICE from using their police records to identify deportable illegal aliens. Asked to explain conflicting language in ICE documents that appears to characterize Secure Communities as both mandatory and optional, spokesmen for the agency said they couldn't comment.

That frustrates local officials in jurisdictions that are seeking to opt out of the program.

"Is there an opt-out — yes or no?" asked J. Walter Tejada, a member of the Arlington County Board in the Virginia suburbs of Washington, which recently voted to opt out, only to learn it couldn't. "We have had a number of conflicting statements on the part of ICE."

Some activists in the debate over [illegal immigration](#) accuse the Obama administration of deliberately leaving the issue in doubt until after the 2012 election, out of fear that confirming it's mandatory could weaken support for Democratic candidates in jurisdictions with large immigrant populations.

"The word I would use is 'duplicitous,'" said Jessica Vaughan, policy director of the Center for Immigration Studies, which supports tighter controls on immigration, including the Secure Communities program. "They are telling people what they want to hear, not what they mean."

#### ICE tries to set the record straight

It's understandable that local governments would think they could opt out: ICE has indicated in numerous documents distributed to local officials that Secure Communities cannot "activate" or "deploy" in a jurisdiction without their explicit consent.

That begins with the program's 11-page document outlining standard operating procedures, which state that it's subject to "adoption by participating county and local law enforcement agencies" and which "requests" the cooperation of local law enforcement authorities — instead of telling them what to do.

Then, in January 2009 — as the new Democratic administration of Barack Obama was taking office — David J. Venturella, executive director of Secure Communities, said in a [letter](#) (PDF) to the FBI accompanying a memorandum of understanding with California officials that participation in the program "requires a signed statement of intent" at the county and local level.

By this summer, as the program expanded to encompass hundreds of jurisdictions along the Mexican border — including most of Texas, California and Arizona — immigration activists began raising more questions about Secure Communities. In August, ICE responded with a talking-points memo titled [Setting the Record Straight](#) (PDF).

One "false claim" addressed in the memo, dated Aug. 17, is that there was "widespread confusion about how jurisdictions can choose not to participate."

The truth, the memo said, is that local officials can request a meeting where both sides can "discuss any issues" and "come to a resolution, which may include ... removing the jurisdiction from the deployment plan."

But local officials who object to Secure Communities said ICE has never honored those promises.

In August, Miguel Márquez, legal counsel for Santa Clara County, Calif., [sent ICE a request for clarification](#) (PDF) highlighting the requirement for adoption by local agencies in the standard operating procedures, which he said "appear to describe Secure Communities as a program that is voluntary for counties."

But "nothing in the standard operating procedures explains ... what the mechanism for 'adoption' is, or whether they can opt out instead if they so choose," Márquez wrote.

As to the local "statement of intent" in Venturella's January 2009 letter, Márquez reported that he had been "unable to find any further information" and that "no department in Santa Clara County has been asked to sign one."

#### Targets of Secure Co

ICE proclaims that Secure C target "dangerous criminals," most dangerous "criminal ali custody based on a sliding s

- Level 1 – Individuals who h major drug offenses and viol murder, manslaughter, rape,
- Level 2 – Individuals who h minor drug offenses and pro burglary, larceny, fraud and r
- Level 3 – Individuals who h other offenses.

Its own deportation statistics tell a different story. Of the 51 under Secure Communities s October 2008 through Aug. 2

- About 22 percent were four Level 1 crimes.
- About 41 percent were four Level 2 crimes.
- About 12 percent were four Level 3 crimes.
- About 26 percent were nev

Sources: ICE procedural rec Communities monthly statisti 2010)

#### Official response fro

Following is the response frc of public affairs for the Burea Customs Enforcement, to wr msnbc.com about Secure Cc

Secure Communities does n law enforcement agencies to immigration law. Instead, the sharing of information betwe ICE independently enforces appropriate if a person in crii to removal proceedings.

Secure Communities agreee reached at the State level an set schedule. ICE seeks to v enforcement agencies to ad determine next appropriate s not wish to activate on its scl Secure Communities deploy formally notify both its state i ICE.

ICE officials did not respond statement and declined mult interviews.

That scenario sounded familiar to Eileen Hirst, chief of staff for San Francisco Sheriff Michael Hennessey, who has also sought to opt out of Secure Communities because it appears to conflict with San Francisco's 20-year status as a "sanctuary city" for immigrants.

Hirst said her department has never been asked to sign anything approving Secure Communities. In fact, at a meeting with state and federal officials in April, ICE representatives said there were no documents to sign at all, Hirst said.

And Tejada, of Arlington County, Va., said his board waited until after ICE issued its August memo to take a vote on opting out. It was still turned down.

"Setting the Record Straight," he said, laughing. "What a name!"

### What are 'next appropriate steps'?

Other local government and police leaders said they, too, have tried to decline to participate in the program but have been rebuffed. They said they were told that ICE is happy to discuss their concerns and that it could consider delaying the date their jurisdiction is "activated."

But, they said, ICE's responses never address their actual request: Can we opt out of the program itself?

When an msnbc.com reporter asked numerous ICE officials that question, they wouldn't answer. And they said they couldn't discuss why they couldn't comment.

In a two-paragraph statement this week in response to detailed written questions, Brian P. Hale, ICE's director of public affairs, wrote that "ICE independently enforces the immigration law as appropriate" and "seeks to work with local law enforcement agencies to address any concerns and determine next appropriate steps."

He did not say what those steps might include, and ICE said it couldn't elaborate.

That's essentially the same answer Rep. [Zoe Lofgren](#), D-Calif., chairwoman of the Judiciary subcommittee on immigration and border security, got when she fired off a letter in July asking for "a clear explanation of how local law enforcement agencies may opt out of Secure Communities by having the fingerprints they collect and submit ... checked against criminal, but not immigration, databases."

[Napolitano's reply](#) (PDF) six weeks later didn't answer Lofgren's question. Instead, it repeated ICE's mantra that local authorities should notify ICE if they don't want to "participate in the Secure Communities deployment plan," without saying whether they could actually be allowed to opt out.

### Top priority: 'Identify and process all criminal aliens'

It seems, in fact, that ICE never meant for local authorities to have a say.

Dozens of Secure Communities technical documents and other ICE communications make it clear that the program is intended to eventually review the immigration status of every person arrested in the United States.

In its original organizing documents and in quarterly reports to congressional committees, ICE declares that the first priority for Secure Communities is to "identify and process all criminal aliens subject to removal while in federal, state and local custody."

In its [field training manual](#), ICE tells agents that "Secure Communities is committed to improving public safety by identifying, detaining and removing all criminal aliens held in custody and at large."

And: "Secure Communities will expand the capability to screen for criminal aliens to all local jails and booking stations electronically as individuals are brought into custody."

Local officials can disapprove all they want. The idea, ICE said in a [report to Congress](#) (PDF) in May, is to create "a virtual ICE presence at jails and booking locations in jurisdictions across the country."

That hasn't stopped communities from trying to break free anyway.

In California, the Santa Clara County Board of Supervisors voted unanimously late last month to send formal notice asking ICE to stop using fingerprints collected in the county, even if it turns out the request has no official effect.

Board member George Shirakawa acknowledged that the vote was "merely symbolic." But he said it was still important because it "sends a message."

### Documents quoted in

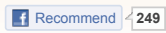
*Following are copies of documents quoted in this report (.pdf). These and all other documents quoted in this report were provided by the Center for Constitutional Rights, a civil liberties activist group that opposes the Secure Communities program, and available on its website.*

- [Secure Communities Standard Operating Procedures](#)
- [Secure Communities deployment plan](#)
- [Letter from Secure Communities to the FBI](#)
- [ICE "Setting the Record Straight" letter to Congress](#)
- [San Mateo, Calif., letter to ICE for clarification of Secure Communities](#)
- [DHS reply to request for information from Rep. Lofgren](#)
- [May 2010 ICE report to Congress on Secure Communities](#)
- [Secure Communities field training manual](#)

"We are not going to create an atmosphere of fear in our communities," he declared.

[Follow Alex Johnson on Facebook](#) | [Follow Alex Johnson on Twitter](#)

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# Exhibit T

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

-----X

NATIONAL DAY LABORER ORGANIZING  
NETWORK; CENTER FOR CONSTITUTIONAL  
RIGHTS; and IMMIGRATION JUSTICE  
CLINIC OF THE BENJAMIN N. CARDOZO  
SCHOOL OF LAW,

**ECF CASE**

10-CV-3488 (SAS)(KNF)

[Rel. 10-CV-2705]

Plaintiffs.

v.

**DECLARATION**

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY;  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY;  
FEDERAL BUREAU OF INVESTIGATION;  
and OFFICE OF LEGAL COUNSEL

Defendants.

-----X

**DECLARATION OF MICHAEL HENNESSEY IN SUPPORT OF PLAINTIFFS'  
MOTION FOR A PRELIMINARY INJUNCTION**

I, MICHAEL HENNESSEY, declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. My name is Michael Hennessey. I am currently the Sheriff of the City and County of San Francisco. I was elected Sheriff of San Francisco for the first time in 1979. I took office in January of 1980. I have been elected eight consecutive times to this position. The San Francisco Sheriff's Department is responsible for operating San Francisco's jails and providing security to San Francisco's courtrooms and judges.

2. On May 18, 2010, and again on August 31, 2010, I requested that my Department be allowed to opt-out of the United States Immigration and Customs Enforcement (“ICE”) program Secure Communities, in part, because of my concern that this program conflicts with local law. To date, ICE has not honored my request.
3. On November 8, 2010, I will be meeting with ICE officials to discuss my request to opt-out.
4. I urgently need more information about Secure Communities to prepare for my November 8, 2010, meeting with ICE. Specifically, I need information about how Secure Communities operates and the process for localities to opt-out. I need this information so that I can adequately represent the interests of my constituents in my upcoming meeting and follow-up conversations with ICE.
5. The manner in which ICE has implemented Secure Communities in San Francisco and ICE’s lack of transparency about opt-out has placed me in a difficult law enforcement and county government dilemma.
6. As a law enforcement officer, I wish to enforce my local laws as well as complying with state and federal law. My county has a local law, San Francisco Administrative Code Section 12H.2 et seq., that directs me to not cooperate with ICE except where required by federal or state statute, regulation or court decision. If localities may opt-out of Secure Communities, my local law directs me to ensure that my Department does not participate in the program. Therefore, it is vitally important for me to know whether localities may opt-out of Secure Communities. If so, I must opt-out.
7. I learned in an email on April 13, 2010, that Secure Communities was to be activated in the San Francisco. On May 18, 2010, I wrote a letter to the California State



Attorney General, attached as Ex. A, asking that my agency be allowed to opt-out and not participate in Secure Communities. In the letter, I explained that it has been my agency's practice and policy to directly report to ICE anyone booked into my jail, charged with a felony, and not born in the United States. I wrote that I would continue to follow that practice, but could not participate in Secure Communities because it would require my Department to violate the San Francisco Administrative Code Section 12H.2 et seq. On June 3, 2010, I wrote a letter to the Executive Director and Assistant Director of Secure Communities at ICE, attached at Ex. B, asking to delay the implementation of Secure Communities to allow time to discuss my request to opt-out.

8. I received no written response from ICE. I did, however, receive a phone call on June 4, 2010, from the Deputy Director of Secure Communities Marc Rapp, who told me that my Department could not opt-out and that Secure Communities would be activated as scheduled.

9. On June 8, 2010, Secure Communities was placed in effect in the City and County of San Francisco over my objection. I was notified of the activation of Secure Communities by email.

10. On August 17, 2010, ICE set forth a procedure on their website by which a local jurisdiction could request to opt-out of Secure Communities. On August 31, 2010, I sent a letter, attached at Ex. C, renewing my request to opt-out to the Executive Director and Assistant Director of Secure Communities at ICE and the California State Attorney General. Since that time, ICE, the Department of Homeland Security (DHS) and Department of Justice (DOJ) spokespersons, have made confusing and conflicting statements about the Secure Communities opt-out process. DHS confirmed in a letter to

Congresswoman Zoe Lofgren the procedure to opt-out. This procedure included sending a written request to opt-out, a meeting with ICE and possible “removal from the Secure Communities deployment plan.” Later, however, I saw that DHS Secretary Janet Napolitano stated in a press conference that she did not see Secure Communities as an “opt-in, opt-out program”.

11. In spite of recent confusion about opt-out, it is my belief and understanding that DHS or the Federal Bureau of Investigation (FBI) has the ability to allow an agency to opt-out of Secure Communities. I believe that this is possible to facilitate because when a Local Law Enforcement Agency sends fingerprints to its State Department of Justice to send to the FBI, those fingerprints are identified by local agency by a code. Therefore, I believe that it is technologically possible to exclude transmission of data from my Department to ICE, while still allowing me to access the criminal justice information I need to identify individuals booked into my jail and whether they have outstanding arrest warrants.

12. My constituents have also expressed concerns to me that a program, like Secure Communities, that automatically checks immigration status of all arrestees might make individuals less likely to cooperate with the police. As a democratically elected official, I feel I must provide a clear explanation of why I am participating in the program despite these concerns. Due to the current lack of publicly available information about the process to opt-out, I am unable to provide a satisfactory explanation.

13. The confusion about opt-out has caused me difficulty in fulfilling my duties as Sheriff. The lack of clarity about the process for opting-out of Secure Communities

makes it difficult for me to explain my attempts to opt-out to my colleagues and to be accountable to my constituents.

14. To inform my conversations with ICE at the meeting on November 8, 2010, and following that meeting, I need information about Secure Communities that ICE has not disclosed to the public. For example, I need documents that explain whether the fingerprints sent by my Department are identified by a specific agency identifier and whether they can be screened out. It would also be helpful to know the route that the information goes from my Department to ICE, to determine whether there are interruption points that can be established along the way. Documents shedding light on whether ICE or DHS has made a determination from their perspective about whether localities or agencies can opt-out of Secure Communities would also be helpful. This type of information would allow me to understand what I am asking ICE to do when I ask to allow my Department to opt-out.

15. I urgently need documents relating to opt-out to inform my ongoing conversations and negotiations with ICE, on behalf of my constituents, about allowing my Department to opt-out of Secure Communities. If my Department can opt-out, I must do so because otherwise participation results in the violation of local law.

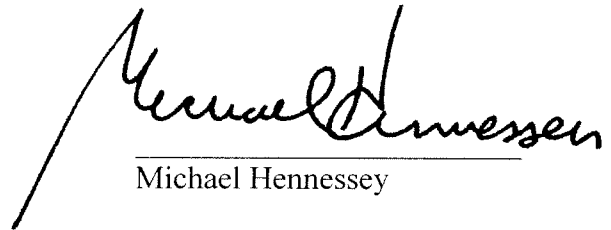
16. Attached as Ex. A is a true and correct copy of my Letter to Edmund G. Brown, Attorney General, California Department of Justice, May 18, 2010.

17. Attached as Ex. B is a true and correct copy of my Letter to David Venturella, Executive Director, Secure Communities, and Marc A. Rapp, Deputy Director, Secure Communities, U.S. Department of Homeland Security, June 3, 2010.

18. Attached as Ex. C is a true and correct copy of my letter to Edmund G. Brown, Attorney General California Department of Justice, David Venturella, Executive Director, Secure Communities, and Marc A. Rapp, Deputy Director, Secure Communities, U.S. Department of Homeland Security, August 31, 2010.

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

Dated: San Francisco, California  
October 27, 2010



Michael Hennessey

1

# City and County of San Francisco

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## OFFICE OF THE SHERIFF

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Michael Hennessey  
SHERIFF

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(415) 554-7225

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May 18, 2010

Ref: 10-048

The Honorable Edmund G. Brown, Jr.  
Attorney General  
California Department of Justice  
1300 I Street  
Sacramento, CA 94814-2919

Dear Attorney General Brown;

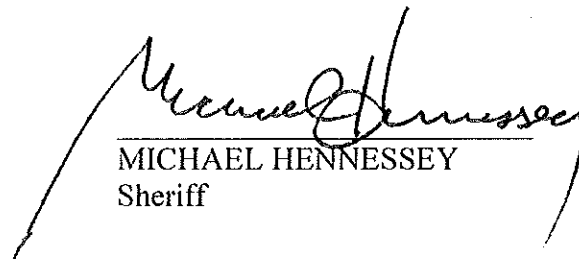
I write to seek your assistance in opting out of participation in Secure Communities, ICE's automated fingerprint screening system that links local law enforcement agencies to the Department of Homeland Security's biometric system through interoperability agreements with each state. It is my understanding that Scott Lorigan, of the California Department of Justice, Bureau of Criminal Identification and Information, signed such an agreement with John P. Torres, Acting Assistant Secretary of ICE on April 10, 2009. I have been informed by ICE officials that San Francisco is due to go live on Secure Communities on June 1, 2010.

I believe your agency has the technological capability to isolate by agency the information linked to ICE. I ask that you isolate transactions from the San Francisco Sheriff's Department because Secure Communities conflicts with local law, specifically, San Francisco Administrative Code Section 12H.2, et seq. My department already has a system in place that reports individuals to ICE and I do not wish that it be replaced by Secure Communities. Furthermore, I am concerned about the unintended consequences of ICE technology interfacing with that of the Department of Justice's fingerprint database, which also holds fingerprints collected for non-criminal justice purposes such as employment applications.

My department currently reports foreign-born individuals arrested on a felony crime or found during the booking process to have a felony or previous ICE contact in their criminal histories. Since January 2007, my department has delivered more than 3100 individuals to ICE, and has reported at least twice that number. It is my intention to continue reporting directly to ICE foreign-born individuals charged with felonies or having a felony or previous ICE contact in their criminal histories.

As it is ICE's intention to activate its interface with the City and County of San Francisco on June 1, 2010, I would appreciate hearing back from you at your earliest possible convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hennessey", is written over a horizontal line. The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back up to the right.

MICHAEL HENNESSEY  
Sheriff

# City and County of San Francisco

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## OFFICE OF THE SHERIFF

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Michael Hennessey  
SHERIFF

---

(415) 554-7225

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VIA FACSIMILE (202) 732-3900 4030

June 3, 2010  
Reference: 2010-056

Mr. David Venturella, Executive Director  
Office of Secure Communities  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW  
Washington, DC 20024

Mr. Marc A. Rapp, Deputy Director  
Office of Secure Communities  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW  
Washington, DC 20024

Dear Mr. Venturella and Mr. Rapp:

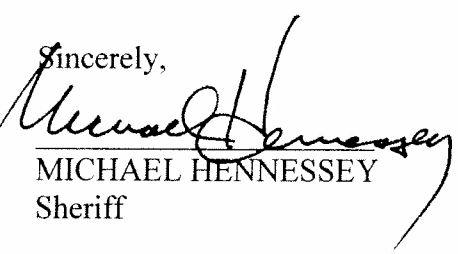
I am writing to request a further delay in implementing the Interoperability of Secure Communities as it relates to San Francisco County.

As you may know, Interoperability was set to engage on June 1, 2010, but I was recently informed that the date has been delayed until June 8, 2010. I would ask that Interoperability be delayed until at least July 8, 2010, to give my county time to further study the impact and to have discussions with I.C.E. about whether there is an opportunity to "opt out."

My Department already directly reports all foreign born persons who are booked into custody on felony charges. I will continue that practice. During 2009, I reported over 2000 such individuals and I.C.E. agents placed detainers on over 1000. I honored those detainers and delivered the detained individuals to I.C.E. custody. I am not seeking to avoid cooperation with I.C.E., but believe I can do so without engaging the Interoperability component of Secure Communities.

Thank you for considering my request. I can be reached at (415) 554-7225.

Sincerely,

  
MICHAEL HENNESSEY  
Sheriff

# City and County of San Francisco

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## OFFICE OF THE SHERIFF

---



Michael Hennessey  
SHERIFF

---

(415) 554-7225

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August 31, 2010  
Reference: 10-079

VIA FACSIMILE (510) 622-4188, (202) 732-4030

Hon. Edmund G. Brown  
Attorney General  
California Department of Justice  
1300 I Street, Suite 1740  
Sacramento, CA 95814

Mr. David Venturella, Executive Director  
Office of Secure Communities  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20024

Mr. Marc A. Rapp, Deputy Director  
Office of Secure Communities  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW  
Washington, D.C. 20024

Dear Attorney General Brown, Mr. Venturella and Mr. Rapp;

Pursuant to *Secure Communities: Setting the Record Straight*, dated August 17, 2010, I write to formally notify the California Department of Justice, as my state's identification bureau, and ICE that San Francisco County wishes to be removed from participation in Secure Communities.

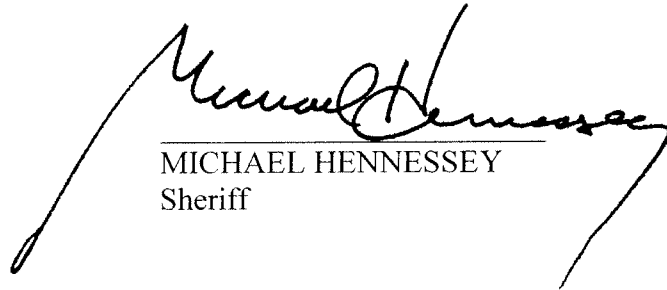
The ICE communication, *Secure Communities: Setting the Record Straight*, specifies that, "If a jurisdiction does not wish to activate on its scheduled date in the Secure Communities deployment plan, it must formally notify its state identification bureau and ICE in writing (email, letter or facsimile). Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and come to a resolution, which may include adjusting the jurisdiction's activation date in or removing the jurisdiction from the deployment plan."



San Francisco County has already been activated in accordance with the deployment plan. However, as you know, I sought to opt out, in writing, to both the California Department of Justice and Secure Communities. I was told at that time in a telephone conversation with Mr. Rapp that there was no provision for a local jurisdiction to opt out. The information provided in *Secure Communities: Setting the Record Straight* would suggest that there is now a procedure in place to address such requests.

I look forward to meeting with you and to coming to a mutually agreeable resolution of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hennessey", is written over a horizontal line. The signature is stylized with a large initial 'M' and a long, sweeping tail that extends to the right and then curves back down.

MICHAEL HENNESSEY  
Sheriff

# Exhibit U

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

-----X

NATIONAL DAY LABORER ORGANIZING  
NETWORK; CENTER FOR CONSTITUTIONAL  
RIGHTS; and IMMIGRATION JUSTICE  
CLINIC OF THE BENJAMIN N. CARDOZO  
SCHOOL OF LAW,

ECF CASE

1:10-cv-3488 (SAS) (KNF)

Plaintiffs.

[Rel. 10-CV-2705]

v.

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY;  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; FEDERAL BUREAU  
OF INVESTIGATION; and OFFICE OF  
LEGAL COUNSEL,

Defendants.

-----X

**DECLARATION OF IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

I, SARAHI URIBE declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am an Organizer for the National Day Laborer Organizing Network (“NDLON”).

NDLON is a Plaintiff in the above captioned matter. The mission of NDLON is to improve the lives of day laborers in the United States. NDLON has forty-two member organizations in fourteen states located throughout the country.

2. NDLON has been a critical part of the national conversation about Immigration and Customs Enforcement (“ICE”) Secure Communities program. The recent confusion surrounding

the process for local jurisdictions to opt-out of Secure Communities is inhibiting NDLON's ability to further its mission of promoting the interests of day laborers in the democratic process.

3. NDLON urgently needs information about the process to opt-out of Secure Communities to inform ongoing work with local partners, as well as national advocacy and education campaigns. NDLON will immediately use any new information to educate and empower day laborers and others to participate in the public policy debate about opting out of Secure Communities. In particular, NDLON will provide the information to local officials and stakeholders in Santa Clara, San Francisco in California; Arlington, Virginia and other jurisdictions that are scheduled to meet with ICE in early November to discuss their requests to opt out.

#### **NDLON AND SECURE COMMUNITIES**

4. NDLON is concerned about Secure Communities because it increases the vulnerability of a marginalized sector of the public, day laborers. This program directly affects NDLON member organizations, comprised of day laborers. Educating day laborers about Secure Communities is critical to allow community members who are vulnerable to police intimidation and employer abuse to engage in a public policy debate, which impacts their lives.

5. NDLON collaborates with a broad range of national, State, and local immigrant rights organizations to educate the public, decision makers and law enforcement agencies about the Secure Communities program.

6. With our partners, I led and organized the following events to inform the public and immigrant rights advocates about Secure Communities: regular national telephone calls with up to 100 participants; presented in community forums; co-sponsored a national telephonic teach-in on Secure Communities on May 17, 2010 with nearly 200 participants; presented in a California

webinar with 40 statewide advocates on September 1, 2010; provided testimony and information at local hearings and meetings with city and county decision-makers and law enforcement; engaged in a range of local and national press outlets on the issue and the records released from the instant action; responded directly to numerous requests for information and assistance on Secure Communities from local rights groups across the country via email and telephone; used an advocacy website to educate the public; and held a national convention with 180 individuals from around the country on September 9-11<sup>th</sup>, 2010 in New Orleans, Louisiana. These activities inform the public, which in turn, creates an informed constituency that can engage in the current on-going debate around Secure Communities.

7. Other NDLOM staff members have met with Congressional staffers to provide them with up-to-date information on Secure Communities

8. We also work with our partners to educate law enforcement officials about the damaging effects that Secure Communities has on community policing efforts by discouraging immigrant victims and witnesses from contacting the police.

### **Current Opt-Out Concerns**

9. One of the most urgent concerns in the national policy discussion of immigration enforcement is local jurisdictions' ability to opt-out of Secure Communities. Public education and maintaining an informed citizenry is critical to ensuring that the public has a say in how Secure Communities is implemented in their communities across the nation.

10. The lack of transparency in ICE's rollout of Secure Communities flies in the face of open government. In some localities, the public and elected officials only discovered that Secure Communities had been activated through a newspaper article or an ICE press release. For example, in Arlington, Virginia, where I worked with local groups in their efforts to opt-out of

the program, Sheriff Beth Arthur was first notified of Secure Communities the night before it was activated through a phone call from ICE; simply informing her that Arlington would be listed on a press release the next day as a new Secure Communities jurisdiction.

11. The secretive negotiations ICE conducts to sign agreements related to Secure Communities with elected and appointed officials on the State level, has left little opportunity for civic engagement and public comment. NDLOM is committed to increase public participation on this important policy issue.

12. In addition to the secretive, yet rapid, deployment process, ICE has disclosed seemingly contradictory information about how localities can opt-out or limit participation in the program. Although ICE announced a clear procedure to opt-out, statements by ICE spokespersons in the press have caused confusion about the meaning of this procedure. The public and NDLOM members need information shedding light on the mechanism and process for local jurisdictions to opt-out of Secure Communities, so that they can, through the democratic process, be engaged in state and local decision-making.

### **The Local Opt-Out Policy Debate**

13. I and other NDLOM staff members have collaborated with at least four jurisdictions that have successfully organized to introduce or pass legislation to opt-out of Secure Communities.

14. The District of Columbia was the first jurisdiction that I know of to reject Secure Communities. After Washington D.C. signed a Secure Communities Memorandum of Agreement (“MOA”), I was very active in a local coalition’s efforts to educate the public, local officials and law enforcement about Secure Communities in Washington D.C. These efforts led to the unanimous introduction of legislation in the Washington D.C. Council that prohibits the District of Columbia to transmit data with the United States Department of Homeland Security,

Immigration and Customs Enforcement (ICE). In light of the pending bill, District of Columbia Police Chief Lanier notified the Secure Communities program on June 23, 2010 that the MOA was terminated effective immediately, successfully preventing activation of the program in the District.

15. After Washington D.C.'s decision to opt-out, other NDLOM member organizations have provided educational materials to NDLOM partners, local advocacy groups, community members and county officials across the country. In California, in particular, NDLOM has provided information to individuals in Sonoma, Santa Clara, and San Francisco in support of the democratic process in those jurisdictions to determine involvement in Secure Communities. Santa Clara and San Francisco have all passed resolutions requesting removal from the Secure Communities Program. Santa Clara County and San Francisco have formally written to ICE requesting to opt-out, based on the procedure that ICE posted to its website.

16. I have been closely involved with local groups advocating for Arlington, Virginia to opt-out of Secure Communities. I testified in Arlington's town hall meeting on June 17, 2010 to educate the public about Secure Communities. With the assistance of the information and support supplied by NDLOM, the Arlington County Officials passed a resolution in September to request removal from Secure Communities. Unlike Washington D.C., to date, ICE has not honored the request. However, Arlington officials such as the County Manager, Chief of Police and Sheriff have a meeting scheduled with ICE on November 5, 2010 to discuss its request to opt-out. This meeting was scheduled following the opt-out process made public as a result of the instant litigation.

17. Santa Clara County Counsel has scheduled a meeting with ICE to discuss its request to opt-out on November 9, 2010 and San Francisco Sheriff Hennessey will meet with ICE to discuss his request on November 8, 2010.

18. NDLOM recognizes that local officials in Arlington, Santa Clara, and San Francisco lack the information they need to understand how to proceed in attempting to opt-out of Secure Communities. Arlington, Santa Clara and San Francisco, in particular, urgently need this information to prepare for meetings with ICE in early November and to follow-up with ICE after those meetings. The officials and public in these three cities do not have enough information to understand ICE's position on opt-out or the technological mechanism through which opt-out could be possible.

19. But the urgent need for documents related to the opt-out process is not limited to the places where we have knowledge of meetings between local officials and ICE. Other local immigrant rights groups are currently meeting with state, county and law enforcement officials across the country to provide information about the opt-out process. NDLOM and our partners would like to provide clear information to local groups and community members about the mechanism for opting out of Secure Communities, to allow them to pass that information on to elected their officials. The process of information sharing around the opt-out process is critical at this juncture to prevent the government from secretly unleashing a program with a detrimental impact on the public.

20. NDLOM urgently needs the requested records to share with the public including elected officials, community members, and NDLOM's own member organizations to inform an ongoing national debate about opting out of Secure Communities.



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

Dated: Washington, D.C.  
October 27, 2010



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SARAHÍ URIBE

# Exhibit V

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

-----X

NATIONAL DAY LABORER ORGANIZING  
NETWORK; CENTER FOR CONSTITUTIONAL  
RIGHTS; and IMMIGRATION JUSTICE  
CLINIC OF THE BENJAMIN N. CARDOZO  
SCHOOL OF LAW,

**ECF CASE**

10-CV-3488 (SAS)(KNF)

[Rel. 10-CV-2705]

Plaintiffs.

v.

**DECLARATION**

UNITED STATES IMMIGRATION  
AND CUSTOMS ENFORCEMENT AGENCY;  
UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY;  
FEDERAL BUREAU OF INVESTIGATION;  
and OFFICE OF LEGAL COUNSEL

Defendants.

-----X

**DECLARATION OF MELISSA MARK-VIVERITO IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, MELISSA MARK-VIVERITO, declare pursuant to 28 U.S.C. § 1746 and  
subject to the penalties of perjury, that the following is true and correct:

1. I currently serve as New York City Council Member for the 8th Council  
District. I was first elected to this position in 2006, and I was re-elected in 2009. I also  
serve as Chair of the Parks and Recreation Committee, as Co-Chair of the New York City  
Council Progressive Caucus, and as Co-Vice Chair of the Black, Latino and Asian  
Caucus. The New York City Council (“the Council”) legislates on a wide range of  
subjects, has sole responsibility for approving the city’s budget, and is an equal partner

with the Mayor in the governing of New York City (“NYC”). Additionally, the Council holds regular oversight hearings on city agencies to determine how agency programs are working and whether budgeted funds are being well spent.

2. I am seeking to introduce a bill entitled *Proposed Legislation to Protect Families and Ensure New Yorkers a Full and Fair Opportunity to Contest Deportation* (“the Bill”), and will sponsor it for introduction to the Council. This legislation would, among other things, limit the use of New York City resources for immigration enforcement, and opt-out of Immigration and Customs Enforcement’s (“ICE”) Secure Communities Program (“Secure Communities”).

3. Unfortunately, the power of the City Council to enact a key part of the Bill—a provision which would stop NYC from participating in Secure Communities—has been questioned by some. This is due to many contradictory statements made by public agencies and officials regarding the procedure to opt-out of Secure Communities. Both the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) publicly explained that localities that did not wish to participate in Secure Communities could opt-out of the program. ICE also indicated that localities can opt-out of Secure Communities by simply notifying ICE and the state identification bureau. Additionally, the New York State Division of Criminal Justice Service has stated that localities are not required to participate in Secure Communities.

4. Despite these seemingly unequivocal statements by DHS, DOJ, and ICE, recently Secretary Janet Napolitano and various ICE officials have made statements suggesting that Secure Communities is not an opt-in or opt-out program.

5. Since the time of our first meetings regarding this legislation in early 2010, the Bill has garnered significant support among the Council Members. However, the uncertainty about the procedure for opting-out of Secure Communities is an impediment to the introduction of this Bill. This uncertainty prevents the Council from having a fully informed debate about the legislation's impact, and therefore prevents us from representing the interests of our constituents.

6. Foreign-born individuals make up approximately 40% of the population in NYC. Many families are not only comprised of recent immigrants, but also legal permanent residents, naturalized citizens and U.S. born citizens, many of whom are part of mixed-status households. All New Yorkers are affected by the City's policies towards immigrants. The loss of a family member, particularly a primary bread-winner, results in the breakdown of families who were previously self-sufficient, causing many to become dependent on the City's safety net services.

7. Without a clear sense of the procedure for NYC to opt-out of Secure Communities, however, the Council cannot know what effect the opt-out provision of the Bill will have, nor effectively evaluate other legislation concerning NYC's participation in immigration enforcement. The lack of information regarding Secure Communities therefore leaves the Council uncertain about how to move forward with Secure Communities-related legislation, because we want to ensure that the Bill's provision is honored by ICE.

8. This information is particularly important to the Council during the next two weeks because we will be holding an Oversight Hearing on November 10, 2010, to discuss this legislation. Without more information about the procedure for opting-out of

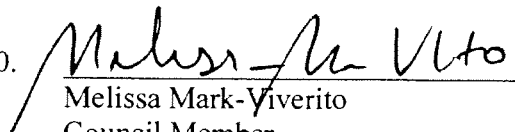
Secure Communities, the Council cannot have an informed discussion about the full impact of the Bill. Additionally, as the Council Member seeking to introduce this Bill, the lack of information will prevent me from answering many of the questions of other Council Members.

9. Further, the Council cannot effectively fulfill its duty to review the NYC budget or perform its agency oversight responsibilities, particularly concerning DOC, without more information regarding the opt-out or opt-in process, or without further details regarding the scope and impact of the Secure Communities.

10. Finally, because I serve as representative for a District with a largely immigrant population, encompassing Manhattan Valley, El Barrio/East Harlem, and part of Mott Haven in the Bronx, further information about Secure Communities and NYC's ability to opt-out is vital to my ability to effectively represent the interests of my constituents.

11. For these reasons, NYC residents, the Council, and myself, urgently need more information about the Secure Communities opt-out procedure.

Dated: New York, New York, October 27, 2010.



Melissa Mark-Viverito  
Council Member  
New York City Council  
105 East 116th Street  
New York, NY 10029  
Phone: 212-828-9800  
Fax: 212-722-6378