

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NATIONAL DAY LABORER ORGANIZING	:	
NETWORK, et al.,	:	Civil Action No. 10-CV-3488
	:	
Plaintiffs,	:	
	:	
-v-	:	<u>DECLARATION</u>
	:	<u>OF RYAN LAW</u>
	:	
UNITED STATES IMMIGRATION AND CUSTOMS	:	
ENFORCEMENT, et al.,	:	
	:	
Defendants.	:	
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Ryan Law, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Deputy FOIA Officer of the Freedom of Information Act Office (the “ICE FOIA Office”) at United States Immigration and Customs Enforcement (“ICE”). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration’s FOIA Office beginning in September 2005. The ICE FOIA office is located at 500 12th Street, S.W., Washington, D.C. 20536-5009.

2. As the Deputy FOIA Officer, I am responsible for overseeing ICE processing of FOIA and Privacy Act requests. I assist in the management and supervision of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. I am personally familiar with ICE’s processing of the FOIA request that Cardozo Law School submitted on February 23, 2010, on behalf of the National Day Laborer Organizing Network

("NDLON"), the plaintiff in the above-captioned action. The ICE FOIA Office assigned FOIA case number 2010FOIA2674 to this request.

3. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. Pursuant to the Court's July 11, 2011, Order in this matter (the "July 11 Order"), all ICE personnel who sent or received the attorney-client privileged communications identified in Exhibit A to my August 23, 2011 Declaration that ICE withheld from plaintiffs under FOIA Exemption (b)(5) have reviewed all such communications for the purpose of determining whether confidentiality has been maintained. The purpose of this supplemental declaration is to further clarify the procedure that ICE used to determine that confidentiality of the challenged October 2, 2010 Memorandum was maintained.

5. In response to the July 11 Order—as indicated in my Declaration dated August 23, 2011—Agency Counsel identified the sender and recipient(s) of each "withheld document," based on the information reflected on the face of the "withheld documents." Decl. of Ryan Law, Aug. 23, 2011, ¶ 5. ICE then determined that the senders and recipients of the withheld documents were ICE employees. *Id.* at ¶ 6. Agency counsel sent emails to a central point of contact in each program office with employees who either sent or received any of the withheld documents, requesting that those employees be asked to examine the withheld documents on which their names appear and report back on whether they had disseminated the documents to anyone outside of the Department of Homeland Security or its component agencies. *Id.* at ¶ 7. The withheld documents relevant to each program office were either attached to the email communication or were uploaded to a shared drive that could be accessed by the individual

employees who were being asked to review the withheld documents. *Id.* at ¶ 8; *see id.* at Exhibit A, list of the withheld documents reviewed by ICE personnel.

6. In using the term “withheld documents” in my August 23, 2011 Declaration, I was referring to the entire withheld document — that is, the parent document and any child attachments. Therefore, if a single withheld document included a “parent” cover email and a “child” attachment, ICE identified and queried each sender and recipient whose name appeared on either the cover email or the attachment. ICE has consistently referenced a “withheld document” as inclusive of both the parent document and any child attachments in its Vaughn indices. Using the term “withheld document” to include the parent document and any child attachments is also consistent with Exhibit A to my August 23, 2011 Declaration. Exhibit A identifies the bates range for each withheld document, and includes in that bates range, where applicable, “parent” cover emails and “child” attachments.

7. In its October 24, 2011 Opinion and Order, the Court found that “only senders and recipients who were named on the face of a withheld document were asked whether they had disseminated it outside of DHS and its component agencies.” Oct. 24 Order at 26. While this is true, the senders and recipients included the senders and recipients identified on the face of the entire withheld document, which included the parent document and any child attachment(s). With respect to the October 2 Memorandum, the Court concluded that “only the nominal author of the memo (ICE’s Deputy Principal Legal Advisor) and its recipient (Beth Gibson) were asked about its confidentiality.” *Id.* The Court noted that at least ten other ICE employees received the final version of the October 2 Memorandum, but they were not queried concerning confidentiality. *Id.*

8. Contrary to the Court's finding, Agency Counsel's inquiry concerning the confidentiality of the October 2 Memorandum was not limited solely to the nominal sender and recipient identified on the Memorandum itself. Where the Memorandum was attached to a cover email, the agency asked *all* individuals who were identified as senders or recipients on either (1) the cover email or (2) the attached Memorandum itself whether the confidentiality of the information contained within the entire "document" (i.e., the cover email and attachment) had been maintained.

9. The individuals were specifically asked if they had disseminated the privileged information outside of the Department of Homeland Security and its component agencies. Each identified employee responded either verbally or by email to the central point of contact within his or her program office. The program offices that received the emails requesting review were Enforcement and Removal Operations, which encompasses the Secure Communities program management office, the Office of the Principal Legal Advisor, and the Office of the Director.

10. The points of contact advised agency counsel about the outcome of the review for each employee who either sent and/or received any version of the draft October 2 Memorandum, including each employee identified on any cover email transmitting the Memorandum. Each point of contact confirmed that that confidentiality had in fact been maintained and that the information had not been disclosed outside of the Department of Homeland Security or its component agencies. Agency counsel in turn advised me that all identified personnel had responded affirmatively that confidentiality had been maintained.

11. Because many of the names of identified personnel are subject to withholding under FOIA exemptions (b)(6) and (b)(7)(C), I cannot provide a listing of the individual names. I can, however, confirm specifically that Director John Morton, Chief of Staff Suzanne Barr,

Assistant Director Beth Gibson, Executive Assistant Director Dan Ragsdale, Principal Legal Advisor Peter Vincent, Deputy Principal Legal Advisor Riah Ramlogan, Enforcement and Removal Operations Executive Assistant Director Gary Mead, and Assistant Director David Venturella all responded that the confidentiality of the drafts of the October 2 Memorandum was maintained.

JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 14th day of November 2011.



Ryan Law
Deputy FOIA Officer
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security