

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

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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; EXECUTIVE OFFICE OF
IMMIGRATION REVIEW and OFFICE OF
LEGAL COUNSEL,

Defendants.

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**DECLARATION OF SARAHI URIBE IN SUPPORT OF PLAINTIFFS' CROSS-
MOTION FOR SUMMARY JUDGMENT ON SEARCH CUT-OFF DATES**

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 the National Campaign Coordinator for the National Day Laborer Organizing Network ("NDLON"), a Plaintiff in the above captioned matter. Access to current information about government operations is central to the advancement of NDLON's mission to improve the lives of day laborers in the United States by unifying and strengthening its member organizations to protect and expand their civil, labor and human rights.

2. In my position at NDLO, I help coordinate the national Uncover the Truth Campaign. The campaign's central purpose is to demand government transparency and accountability on the Immigration and Customs Enforcement ("ICE") Secure Communities program—a federal program that profoundly impacts both day laborers and public safety in general. NDLO's aim is to provide accurate information and analysis about Secure Communities' current operations and policies to government officials, community-based organizations and the public. To that end, we submitted a Freedom of Information Act ("FOIA") request in February 2010 ("FOIA Request"). When we received no response, NDLO, along with our co-Plaintiffs, filed the instant lawsuit in April.

3. As part of the Uncover the Truth Campaign, NDLO disseminates the information we obtain about Secure Communities to the public. In particular, we use the records produced in this action in our work with community groups that are impacted by Secure Communities. We also use the records produced in this action in our communications with state and local decision-makers who must grapple with public policy positions on Secure Communities. Since the deployment of Secure Communities has been marked by secrecy and contradictions, elected officials are often unaware of activation or how the complex program works. As a result, government officials and others who do not have backgrounds in immigration or law enforcement often have questions and concerns about the program's operational details and impact. NDLO, through the use of our own expertise in conjunction with our review and analysis of the records produced in this action, attempt to address these concerns.

4. In December, I learned that ICE and the FBI – other than the records related to opt-out that the Court in this action ordered to be produced – seek to withhold records created after April and March of last year. The prospect of receiving information that is already *almost a year old* is alarming. Given the fluid nature of Secure Communities, only having access to such “stale” information means that NDLOM will run the risk of providing information to the public, policymakers and its constituent organizations that is no longer reliable or accurate. Exacerbating the confusion and need for current information is the fact that there is no one statutory provision authorizing the program and the agencies involved have not promulgated any regulations governing its operation. Therefore, old information is significantly less useful to NDLOM’s advocacy and organizing efforts than more current information, for the following reasons, among others.

5. *First*, out-of-date information exposes NDLOM to criticism that the information it disseminates in education and advocacy work is no longer relevant and should not be relied upon. This concern is not hypothetical. In August 2010, ICE accused NDLOM of using stale data obtained *through this lawsuit*. On August 3, 2010, the first set of documents that ICE released in response to this action contained previously unpublished cumulative data about the arrest and deportation of *non-criminals* through Secure Communities through April 30, 2010. This is critical data because the government advertises Secure Communities as a program “to better identify, detain and ultimately remove *dangerous criminal* aliens from your community.”¹

¹ See Secure Communities Brochure (“ICE prioritizes the removal of criminal aliens by focusing efforts on the most dangerous and violent offenders. This includes criminal aliens determined to be removable and charged with or convicted of crimes such as homicide, rape, robbery, kidnapping, major drug offenses, or those involving threats to

6. On August 10, 2010, NDLO, in conjunction with our co-Plaintiffs in this action, the Center for Constitutional Rights (“CCR”) and the Immigration Justice Clinic at Cardozo School of Law (“Immigration Justice Clinic”), quickly analyzed the data and promptly released a briefing guide summarizing the newly released data for the public. *See* a true and correct copy of the *Briefing Guide to “Secure Communities” ICE’s Controversial Immigration Enforcement Program – New Statistics and Information Reveal Disturbing Trends and Leave Crucial Questions Unanswered*, dated August 10, 2010 (“*Briefing Guide*”), attached hereto as Exhibit A. Specifically, the newly released data revealed, among other things, “The vast majority (79 percent) of the people deported due to S-Comm are non-criminals or were picked up for lower level offenses, such as traffic offenses or petty juvenile mischief.” *Id.*

7. On August 17, 2010, however, ICE posted a document to its website titled *Setting the Record Straight* specifically in response to the *Briefing Guide* that attempted to discredit NDLO for using “outdated data.” *See* a true and correct copy of *Setting the Record Straight*, attached hereto as Exhibit B (“[NDLO, CCR and the Immigration Justice Clinic] have publicly made several false claims about . . . Secure Communities strategy. . . [The Briefing Guide’s] data regarding non-criminal alien removals is outdated. Current data indicates”)”² In conjunction with the *Setting the Record Straight* posting, ICE released newer arrest data current *through* July 2010. ICE failed to acknowledge that the July data had not been available to NDLO or the public when the

national security.”), *available at* <http://www.ice.gov/doclib/secure-communities/pdf/sc-brochure.pdf> (last visited Feb. 8, 2011).

² The *Setting the Record Straight* posting also detailed how states and localities can “opt-out” of Secure Communities. It has since been removed from ICE’s website without explanation.

Briefing Guide was drafted because, in part, ICE had already delayed over six months before responding to the FOIA Request. Moreover, ICE demonstrated that it has the ability to release current data when it suits it; here, it released data a mere two weeks old – data current through July 2010 was released on August 17, 2010.

8. *Second*, obtaining current, up-to-date information is particularly crucial because, unlike other government programs that are more static (and that, unlike Secure Communities, are often operating via statutory or regulatory authority), Secure Communities is changing and expanding at a rapid pace. When the FOIA Request was submitted in February 2010, the program was in its pilot phase, operating in just over 100 jurisdictions. But now, ICE has recently accelerated the pace of Secure Communities deployment across the country. For example, since I last provided testimony in this action at a December 9, 2010 hearing, ICE has signed Secure Communities Memorandum of Agreement with at least three more states. It seems that ICE is now activating the program in as many as 100 additional jurisdictions *per week*. ICE's policies relating to the program are also constantly changing. For example, since the filing of the instant lawsuit, ICE has changed its position on the voluntary nature of Secure Communities.

9. *Finally*, we have informed state officials that have not yet signed onto Secure Communities that we are reviewing and analyzing records produced in this action in order to inform them and assist in their decisions they will make imminently. For example, in Massachusetts, Governor Deval Patrick has not yet signed a Secure Communities Memorandum of Agreement. CCR, with NDLOJ's input, sent a letter to Governor Patrick on January 24, 2011, informing him that ICE would release new

information about Secure Communities on February 25, 2011, per the Court's December 17, 2010 Order in this action. *See* a true and correct copy of a letter to Gov. Deval Patrick (MA) from Sunita Patel of CCR, dated January 24, 2011, attached hereto as Exhibit C. On January 28, 2011, the Massachusetts Executive Office of Public Safety and Security sent a letter on behalf of Governor Patrick to Cambridge City Councilor Marjorie Decker explaining that Massachusetts had not yet entered the program and was seeking further community input. *See* a true and correct copy of a letter to Cambridge City Councilor Marjorie Decker from John Grossman of the Massachusetts Executive Office of Public Safety and Security, dated January 28, 2011, attached hereto as Exhibit D.

10. NDLOM is also working with officials in states that have already signed onto Secure Communities to craft possible legislative responses to ICE's newest announcement that Secure Communities is a "mandatory" program.

11. NDLOM, policy makers, advocates, and the public need access to current information about Secure Communities to evaluate the program and formulate appropriate responses. Basing these positions and actions on information that is almost a year old would be senseless and possibly irresponsible. Of course, this issue would be resolved if ICE would release up-to-date, comprehensive information about Secure Communities to the public of its own accord. Unfortunately, ICE does not, which is why we have had to rely on FOIA and this action as the primary means to obtain access to information about Secure Communities for the public.

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

Dated: February 9, 2011
New York, New York



SARAH URIBE