

**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; EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW;
FEDERAL BUREAU OF INVESTIGATION;
and OFFICE OF LEGAL COUNSEL,

Defendants.

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**DECLARATION OF RENEE FELTZ IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

I, Renee Feltz, 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 a New York City-based investigative reporter and producer whose coverage of immigration enforcement has been published by online, print and broadcast outlets including *Mother Jones.com*, *The American Prospect* and PBS *Need to Know*. See my *Curriculum Vitae* (including a list of publications), attached as Exhibit A and a sample of my reporting, attached as Exhibit B.

2. I have been a member of Investigative Reporters and Editors (IRE) for almost five years.

3. Some of my work is funded by a 2010 Soros Justice media fellowship that I share with my reporting partner, Stokely Baksh. We co-produce DeportationNation.org, an investigative reporting project that critically examines the increase in detention of non-criminal and low-level immigrant offenders as a result of enforcement programs that are congressionally mandated to target “dangerous criminal aliens.” The site includes original print and multimedia reports, and an interactive library of data and documents about Secure Communities — the flagship immigration enforcement program of President Barack Obama’s administration. Many of our stories register about five thousand individual visits; a popular January 2011 piece logged 17,332 views.

4. Since January 2011 I have also been a producer for the national TV/Radio news program, *Democracy Now*.

5. My journalism background includes 6 months as a researcher/reporter with *The New York Times* investigative unit in 2009-2010, when I contributed to the Pulitzer-nominated series, “The Reckoning.”

6. In 2008 I received an M.S. in Journalism from the Columbia University Graduate School of Journalism, where I was a Toni Stabile investigative reporting fellow. My masters project was an multimedia investigative report titled, *Business of Detention*, that relied in part on records I obtained from the Immigration and Customs Enforcement (ICE) agency through a Freedom of Information Act (FOIA) request.

7. From 2002-2006 I was radio reporter at KPFT-FM in Houston, Texas, where I often relied on court records in my reporting on capital punishment cases.

THE IMPORTANCE OF PUBLIC RECORDS REQUESTS AND FORMAT OF PRODUCTION TO REPORTERS

8. Any successful reporter looks for a paper trail, and as an investigative reporter I adopt a "document state of mind." Documents are a critical tool I use to do my job. In my experience "documents" obtained from government agencies are usually digital, i.e. provided in an electronic format. The supplying agency often redacts them to varying degrees.

9. From my experience, I know that in order to make sense of the documents provided upon request by government agencies, reporters need as much detail and context as possible about when they were created, if they have been altered, whether there are attachments, and if so, whether they are included in the documents provided by the government agencies. Without this information I essentially receive what would physically look like very large stack of papers that have had their rubber bands, staples and paperclips removed, and were then shuffled to remove any easily identifiable relation to each other.

10. Part of the process of obtaining these documents is waiting for agencies to respond my records requests, which can take months. Sometimes I have to clarify my request or file appeals over fee estimates, which lengthens the process. When I obtain documents from a public records request, whether the request is filed personally or by third parties, I need to promptly digest the material in the files to share with the public. It

is very difficult for me to quickly and efficiently review the documents when the agencies produce them in a non-searchable format, without reliable designation of the parent-child relationships, and are out of chronological order.

11. As an investigative reporter, I play a watchdog role and have a responsibility to hold powerful institutions and individuals accountable. I often rely on record requests to reveal information government actors wish to keep from the public. If these records are missing context and are not searchable, then I am unable to be fully confident they are reliable.

THE LACK OF INFORMATION AVAILABLE TO THE MEDIA AND THE PUBLIC ABOUT ICE'S SECURE COMMUNITIES PROGRAM

12. Since Secure Communities began in late 2008, ICE has made little information about Secure Communities available in the public record. The agency has been less than forthcoming with records that reveal whether the program is meeting its mandate to use a risk-based approach that targets high-level immigrant offenders for detention and removal. Much of the limited information about Secure Communities has only been released because of the records requested in this case – including data that shows most immigrants deported under the Obama administration are low-level offenders or “non-criminals” even though Congress has mandated a focus on more dangerous immigrants. Given ICE’s lack of openness, the FOIA request made by the Plaintiffs in this case have been central to my ability to report on Secure Communities.

13. I have also obtained the documents I use to report on immigration enforcement and Secure Communities through direct inquiries to ICE and DHS, similar

inquiries by others, and my own records requests to county law enforcement agencies and FOIA requests to ICE and DHS. Stokely Baksh and I have a pending FOIA request to ICE filed in July 2010 that seeks copies of correspondence and contracts associated with the Secure Communities program, among other records. ICE has not yet complied with our request.

COVERAGE OF ICE'S AUGUST 2010 PRODUCTION TO PLAINTIFFS

14. On August 10, 2010 the Plaintiffs in this case provided reporters with statistics based on data they received from ICE as part of the request at issue here. In particular, they stated that: "ICE's own records show that the vast majority (79%) of people deported due to [Secure Communities] are not criminals or were picked up for lower level offenses."

15. The public relies on me and other reporters to be accurate and provide context in our reporting, and I thought I made a safe judgment call that this statistic was accurate. Even though I cited the Plaintiffs as the source of this statistic in my reporting, I considered ICE the original source.

16. About one week after the Plaintiffs provided me and other journalists with this information, ICE posted a document on its website titled, "Setting the Record Straight." ICE alleged the Plaintiffs "have publicly made several false claims." With this document, ICE contributed to public confusion about Secure Communities and left reporters without confidence in records provided by the agency about the program. ICE noted in the document:

The statistical information initially provided as a result of the group's FOIA request was from April 2010, and as with all ICE statistical reports, it reflects data as of the date it was pulled. Updated information through July 2010 is now available, which includes updated conviction information for all previously reported removals and new removals. Additionally, a recent manual data audit, conducted from May to June 2010, revealed thousands of cases where removed aliens had been designated as non-criminal when, in fact, the alien had a criminal conviction at the time of removal; affected records have been corrected to include the appropriate criminal convictions, and accordingly, ICE's statistical information has also been updated.

17. However, the July 2010 document cited by Setting the Record Straight was posted to ICE's FOIA Reading Room *after* the August production and press release. This episode prompted me to question even more whether ICE was hiding information in order to arrive at its new estimates and appear more accountable. It makes it all the more necessary for documents the agency provides to include metadata that reflects any changes, and include details about retrieval and revision dates.

MY COVERAGE OF ICE'S JANUARY 2011 OPT-OUT PRODUCTION TO PLAINTIFFS

18. Plaintiffs in this case shared with me and other reporters the batch of documents produced for them by ICE in January 2011 that came in PDF files that were largely unsearchable. Email correspondence contained references to several attachments that were not included or provided in random order so that I could not determine which email an attachment related to. I wrote a short report based on my preliminary review of the documents, but am in fact still manually searching the documents for key details and have yet to write a more in depth story. Since January, the Secure Communities has been activated throughout California and New Mexico, and expanded in 37 other states. I

would like to report on the program where legislation or advocacy is pending, but I am unable to do this in a timely manner because of the unorganized production.

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

Dated: New York, New York
March 30, 2011

RENEE FELTZ