

**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 SARAHI URIBE IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

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. The mission of NDLON is 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. 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 the Immigration and Customs Enforcement (“ICE”) agency’s Secure Communities program.

NDLON's ability to quickly review, analyze and distribute information from the documents produced in this Freedom of Information Act ("FOIA") litigation is essential to informing its member organizations, local and state policy makers, the communities NDLON serves and the general public about the operation of Secure Communities in a timely and effective manner.

3. In general, NDLON is disturbed by the lack of transparency and accountability surrounding the Secure Communities program. This litigation has revealed and confirmed that federal agencies continue to conceal legal justifications for the program, to negotiate non-public agreements and to delay disclosing data and statistics—all of which are alarming and detrimental to the development of public policy and promotion of government transparency. NDLON is committed to keeping the public actively engaged in this important policy issue, and the information gained through this FOIA litigation remains essential to that process.

4. NDLON is particularly concerned about the Secure Communities program because it increases the vulnerability of day laborers, an already marginalized sector of the public. Because of Secure Communities, our member organizations, and the communities we serve, are further exposed to police harassment and immigration enforcement actions. One central goal of NDLON is to use the documents obtained through the FOIA to educate day laborers about the Secure Communities program. This access to information provides them the opportunity to engage in an ongoing public policy debate that directly impacts their lives.

5. Since the Court's December 9, 2010 decision ordering Defendants to release records relating to the ability of states and localities to opt-out of Secure Communities ("Opt-Out Records"), 292 jurisdictions have joined the program; and since the release of the Opt-Out Records on January 17, 2011, 154 jurisdictions have activated the program. ICE claims the

program will be fully implemented in thousands of additional jurisdictions across the United States by 2013.

6. The rapid progression of the program's roll-out, without corresponding transparency and compliance with Plaintiffs' format of production request, raises significant concerns for individuals and legislatures impacted by Secure Communities. As discussed further below, several local jurisdictions have already passed resolutions, and some states have recently introduced legislation, to limit the scope of Secure Communities or provide a mechanism to opt-out of participation in the program. In other states and localities, advocates are actively engaging with decision makers to provide information, in part from the FOIA records in this case, about the impact of the program and to craft solutions in line with the culture and goals of the jurisdictions. Yet, the ability of the advocates, decision makers and Plaintiffs to quickly digest and understand the information is hampered by the crude format of the records produced.

7. Despite the format of the records, Plaintiffs have released a significant number of FOIA records and corresponding analysis to the public, decision makers and journalists related to Secure Communities. NDLO's request for information (and its ability to respond to requests for information) about Secure Communities remains urgent. These records are necessary to inform the public and legislatures about the program. ICE's rapid roll-out of the program, and the secrecy surrounding that roll-out, means that every delay in disseminating the information contained in the FOIA records costs individuals and legislatures precious time needed to effectively engage in public policy debate and make informed decisions about participation in Secured Communities.

#### **IMPACT OF PRIOR PRODUCTIONS' FORMAT**

8. The records Plaintiffs obtain as a result of this case, and the ability to quickly analyze those documents, are vital to ensure elected officials and the public can participate in this

ongoing, time-sensitive debate, and can make informed decisions about participating in Secure Communities. The Opt-Out Records this Court ordered the federal agencies to disclose demonstrate that ICE misled Congress, individual States and localities, along with the media, in an effort to rush implementation of Secure Communities.

9. The delay in producing the documents in the format Plaintiffs requested has directly impacted public policy. Decision makers are grappling with whether to enter, alter, or withdraw participation in Secure Communities. If our members, advocates and State or local officials do not receive accurate and timely information, the public interest is severely burdened, because federal agencies have obtained, and may continue to obtain, participation in Secure Communities based in large part on vague or misleading information. For example, once a State enters the program, reversing that decision based on newly acquired information may be difficult. Many of the Memoranda of Agreement (“MOA(s)”) between States and the federal government regarding Secure Communities have been modified to include clauses stating that ICE must agree to any modification of the MOA. This means that, once the program is implemented in a State, it becomes significantly more difficult to limit participation in the program. This fact heightens the need for States currently deciding whether to participate in Secure Communities to quickly obtain the information sought in this FOIA litigation.

10. Due to Defendants’ deficient format of production, the nearly 15,000 pages of Opt-Out Records produced to Plaintiffs in January, 2011 required manual, primarily page-by-page, review and analysis. This delayed our ability to provide information to member organizations, community members, news reporters and decision makers at all levels of government. Additionally, we were forced to manually index the thousands of pages of documents in order to understand and evaluate the information contained in the disclosed

records. Unless the information sought is provided in a format that is easier to manage, it is difficult for Plaintiffs to quickly read, analyze and disseminate the information and records to the public, media and elected officials.

11. Plaintiffs have expended significant time and resources reading, analyzing and organizing the documents we received in the Opt-Out Production in an effort to ascertain what information was produced, and then make the information available both to the public and to government decision makers. The fact that the produced documents are largely unsearchable forced NDLO, Center for Constitutional Rights (“CCR”) and the Cardozo Law School Immigration Justice Clinic to use a manual, labor-intensive process of coding and reviewing documents. The review effort required the implementation of a coding system and the coordination of a group of reviewers, including readers from outside of our organization who donated their time. CCR also hired temporary assistance due to the urgent need to review and analyze the records.

12. NDLO and the reviewers had a difficult time reviewing the documents because they were not arranged in chronological order, by email custodian or in any other order we could decipher. This made it more difficult to construct a narrative of the policy decisions relating to the Secure Communities program. The ability to read documents that were created and discussed during key points in time is critical to understanding the evolution and implementation of the program. Because we could not efficiently organize the documents by date, we opened each document, recorded the date, and used a spreadsheet to manually code for specific issues which are of interest to our members, the public and elected officials. We then conducted additional time-consuming analysis after coding for the discrete issues to retrieve, organize and re-review the records based on more specific issues. Our review would have been much more

efficient if, for example, we were able to electronically index the documents in chronological order, easily determine emails and attachments and search for certain words within the documents.

13. Our review was also hindered by the inability to search or categorize the documents by geographic location. This obstacle required us to manually code the many jurisdictions referenced within the nearly 15,000-page production. We then had to conduct a second review, which required us to go back and pull all documents related to each of the various jurisdictions. After this second review, we were then ready to substantively read the documents to understand the unfolding events in each location. This is an ongoing procedure and Plaintiffs are still in the process of disseminating location-specific information to advocates and decision makers around the country.

14. Further, being able to review email communications about a certain topic—from the first to the last email—would facilitate efficient public access to the information. It was very difficult to understand the agencies' policies and positions relating to opt-out and the voluntary nature of the program because we were not able to textually search all fields of the documents we received, or conduct any searches beyond simple natural language searches.

15. Overall, the process of manually coding each document for time and location, as well as for specific thematic issues, has significantly slowed our progress and delayed the public's access to vital information.

16. On February 25, 2011, Defendants produced over 19,800 pages of documents pursuant to the Court's Order to produce the Rapid Production List. *See* Docket # 25. This production suffers from the same deficiencies identified above and does not allow Plaintiffs to access and distribute the information quickly or efficiently. Thus, Plaintiffs have been working

urgently to review and organize these documents in the same manner as described for the Opt-Out Production.

### **USE OF RELEASED DOCUMENTS**

17. Plaintiffs have published briefing guides with analyses of the documents and data released in the course of this litigation. These guides are available on a website created by the Plaintiffs in this case. Center for Constitutional Rights, Secure Communities Case Page, <http://ccrjustice.org/secure-communities> (last visited Mar. 23, 2011); Uncover the Truth, ICE and Police Collaborations, <http://uncoverthetruth.org/> (last visited Mar. 23, 2011). We also update and inform members of Congress, other policy makers and journalists eager to report on the Secure Communities program. In addition, NDLOJ facilitates briefings with local advocates, who, in turn, brief their local decision makers. Thus, the need for documents in a form we can quickly analyze is not abstract, but real and imminent.

18. For example, several reporters have requested from Plaintiffs jurisdiction-specific information about the program. Responses to these requests are sometimes delayed because Plaintiffs cannot sort the documents by jurisdiction or search within all the documents for specific jurisdictions or key words. *See, e.g.*, Exhibit A.

19. Among the more important uses of the records has been their role in shaping policy. Advocates are presently meeting with officials in several States and local jurisdictions, including Santa Clara County and Illinois, to provide the information learned through the instant FOIA litigation about Secure Communities.

20. The records have also been used in current legislative efforts. There is pending legislation in California that would significantly alter the program's operation in that state. *See* Exhibit B-1; B-2. Illinois recently introduced legislation which creates an avenue for localities to opt-out of the program. *See* Exhibit C-1; C-2. Several cities have attempted to opt-out of the

Secure Communities program or have passed anti-Secure Communities resolutions. These cities include Washington, D.C.; Providence, Rhode Island; Cambridge, Massachusetts; Arlington, Virginia; and Santa Clara and San Francisco, California. The Massachusetts Governor, Deval Patrick, has not yet signed a MOA and has mandated a series of community forums to evaluate the negative impact of Secure Communities. *See* Exhibit D. Documents released as a result of this FOIA litigation have been provided to advocates and decision makers in these cities and States listed above. Plaintiffs' ability to continue to identify and release important documents that will aid such jurisdictions in making determinations related to the Secure Communities program is directly impacted by the usability of the documents produced by Defendants. Defendants' continued delay in producing the records sought in the format requested is denying these localities the opportunity to make informed decisions.

21. As requests for documents and analyses of the records grow, we continue to face the challenge of organizing and disseminating the records obtained through this FOIA request in a meaningful manner. The coding system we developed—which is uniquely designed to access information for current priorities—may not accommodate the public's future needs. This means that it is critical that documents are produced to the Plaintiffs in the way we requested, to allow us to identify, search and analyze them quickly.

22. Further, released documents have already been used in Congressional hearings, such as the House Appropriations Committee hearing on funding for ICE. Representative David Price (North Carolina) used data disclosed from this FOIA lawsuit to question ICE regarding whether the Secure Communities program is removing serious criminals and about variations in how localities are enforcing the Secure Communities program. *See*



<http://www.fednews.com/transcript.htm?id=20110311t7772> (last visited Mar. 30, 2011) (transcript of hearing available at this website for a fee).

23. The press routinely reports on Secure Communities and the various legislative and advocacy efforts. *See* Exhibits E-G. These articles make clear not only that the public and lawmakers have many questions about the program, but also that federal agencies were confused regarding whether localities can opt-out of Secure Communities. *Id.* In fact, the Government's message to the public about Secure Communities has been, at times, inconsistent. Plaintiffs' limitation, caused by the format of production, in promptly disseminating and analyzing the FOIA documents affects the media's ability to shed light on the impact of, and inconsistent messaging around, Secure Communities in order to facilitate public debate.

24. Finally, the delay in producing these documents does not just impact public policy or public debate. Every delay has a detrimental effect on the lives of the individuals personally impacted by Secure Communities—individuals are subject to police intimidation, racial profiling, pre-textual and unlawful arrests, family separation due to detention and deportation, and employer abuse as a result of the operation of the program—and these effects are not easily remedied, if they can be remedied at all.

### **CONCERNS ABOUT FUTURE PRODUCTIONS**

25. NDLOM needs future record productions in a format that facilitates the efficient review and analysis of the Secure Communities documents. We know that ICE is rapidly expanding the Secure Communities program and seeks to do so without public scrutiny of its actions. Public records must be able to keep pace. All over the country people are waiting to learn more about this program—from the communities we serve to the decision makers who create policy—and the documents released in this FOIA case are front and center in the advocacy efforts.

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

Dated: Washington, D.C.  
March 30, 2011



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**SARAH I URIBE**