

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

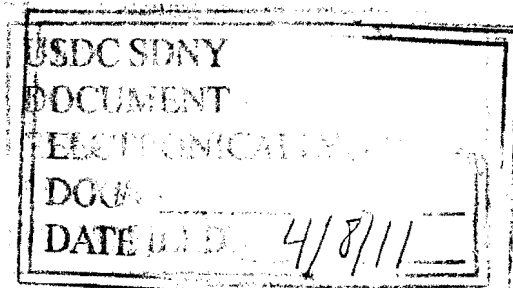
NATIONAL DAY LABORER ORGANIZING
NETWORK, CENTER FOR CONSTITUTIONAL
RIGHTS, and IMMIGRATION JUSTICE
CLINIC OF THE BENJAMIN N. CARDOZO
SCHOOL OF LAW,

Plaintiffs,

v.

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

Defendants.

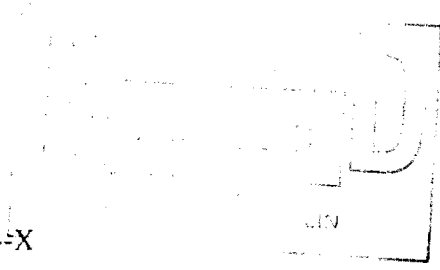


ECF CASE

10 CV 3488 (SAS)(KNF)

[Rel. 10 CV 2705]

STIPULATION AND ORDER



WHEREAS, on April 27, 2010, National Day Laborer Organizing Network, Kathryn O. Greenberg Immigration Justice Clinic of the Benjamin N. Cardozo School of Law, and Center for Constitutional Rights (collectively "Plaintiffs") filed a complaint ("the Complaint"), seeking the release of certain documents by United States Immigration and Customs Enforcement ("ICE"), the United States Department of Homeland Security ("DHS"), the Federal Bureau of Investigation ("FBI"), the Executive Office for Immigration Review ("EOIR"), and the Office of Legal Counsel ("OLC") (collectively "Defendants"), pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA");

WHEREAS the allegations in the Complaint concern, *inter alia*, a FOIA request dated February 3, 2010 (the "FOIA Request");

WHEREAS between August 3, 2010 and January 20, 2011, Defendants made seven productions in partial response to the FOIA Request;

WHEREAS on January 20, 2011, Plaintiffs submitted to Defendants a revised FOIA request (the "Second Revised FOIA Request");

WHEREAS the parties have continued disputes related to the Second Revised FOIA Request, and the Court has neither considered any aspect of the Second Revised FOIA Request nor ordered a date for production of records responsive to the Second Revised FOIA Request;

WHEREAS the parties wish to resolve certain of their disputes concerning the FOIA Request and Second Revised FOIA Request without further litigation;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

1. Plaintiffs agree that their request for "Individual Records," which appears at Section C(3) of the FOIA Request and at Section C(3) of the Second Revised FOIA Request, is satisfied in its entirety with respect to all Defendants, with the sole exception of any records necessary for calculating the number of individuals identified through Secure Communities who have been identified as potentially posing a terrorist or national security threat,¹ in exchange for Defendants ICE's and EOIR's agreement to the following:
 - a. ICE will provide twelve lists to Plaintiffs:

¹ Defendants reserve the right to object to any request for such records.

- i. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program between the dates of October 1, 2008 and January 31, 2010 (“List A(1)”);
- ii. A list of all individuals received or booked into ICE custody through the Criminal Alien Program (“CAP”) between October 1, 2007 and September 30, 2008 (“List A(2)”);
- iii. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program in Maricopa, AZ, in the first 12 months after activation in that jurisdiction (“List B(1)”); and a list of all individuals received or booked into ICE custody through CAP in the Phoenix, AZ docket control office in the 12 months immediately preceding Secure Communities activation in Maricopa, AZ (“List B(2)”);
- iv. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program in Wake, NC, in the first 12 months after activation in that jurisdiction (“List C(1)”); and a list of all individuals received or booked into ICE custody through CAP in the Atlanta, GA Area of Responsibility in the 12 months immediately preceding Secure Communities activation in Wake, NC (“List C(2)”);
- v. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program in Los Angeles, CA, in the first 12 months after activation in that jurisdiction (“List D(1)”); and a list of all individuals received or booked into ICE custody through CAP in the Los Angeles, CA docket control office in the 12 months immediately

preceding Secure Communities activation in Los Angeles, CA (“List D(2)”);

- vi. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program in Fairfax, VA, in the first 12 months after activation in that jurisdiction (“List E(1)”); and a list of all individuals received or booked into ICE custody through CAP in the Washington, DC field office in the 12 months immediately preceding Secure Communities activation in Fairfax, VA (“List E(2)”); and
 - vii. A list of all individuals identified as “IDENT-Matches” by the Secure Communities program in Suffolk, MA, in the first 12 months after activation in that jurisdiction (“List F(1)”); and a list of all individuals received or booked into ICE custody through CAP in the Boston, MA docket control office in the 12 months immediately preceding activation in Suffolk, MA (“List F(2)”).
- b. ICE agrees to assign to each individual from Lists A(1) through F(2) a unique dummy identifier (i.e. US1-US450,350). Only the dummy identifiers shall be supplied to Plaintiffs.
- c. Within one week of receiving Lists A(1) through F(2), Plaintiffs will provide ICE with the following:
- i. 1,650 randomly drawn dummy numbers (“Sample A(1)”) from List A(1);
 - ii. 300 randomly drawn dummy numbers (“Sample A(2)”) from List A(2);

- iii. Jurisdiction specific lists:
 - 1. 300 randomly drawn dummy numbers from List B(1) (“Sample B(1)”) and 300 randomly drawn dummy numbers from List B(2) (“Sample B(2)”) for Maricopa, AZ;
 - 2. 100 randomly drawn dummy numbers from List C(1) (“Sample C(1)”) and 100 randomly drawn dummy numbers from List C(2) (“Sample C(2)”) for Wake, NC;
 - 3. 300 randomly drawn dummy numbers from List D(1) (“Sample D(1)”) and 300 randomly drawn dummy numbers from List D(2) (“Sample D(2)”) for Los Angeles, CA;
 - 4. 200 randomly drawn dummy numbers from List E(1) (“Sample E(1)”) and 200 randomly drawn dummy numbers from List E(2) (“Sample E(2)”) for Fairfax, VA;
 - 5. 200 randomly drawn dummy numbers from List F(1) (“Sample F(1)”) and 200 randomly drawn dummy numbers from List F(2) (“Sample F(2)”) for Suffolk, MA;

d. ICE agrees to:

- i. Review its ENFORCE, EID, IIDS, and GEMS databases, which generally contain ICE’s best available electronic version of the data categories identified in Appendix I, Part A and, for each of the individuals identified in the samples set forth in subparagraphs 1(c)(i)-(ii), to extract data for the categories identified in Appendix I, Part A, to the extent it exists;

- ii. Review its ENFORCE, EID, and IIDS databases, which generally contain ICE's best available electronic version of the data categories identified in Appendix I, Part B, which correspond substantively to data which would appear in the corresponding fields on an individual's Form I-213. For each of the individuals identified in the samples set forth in subparagraphs I(c)(i)-(ii), ICE will extract data for the categories identified in Appendix I, Part B, to the extent it exists;
- iii. Coordinate with Defendant EOIR to provide data that will allow EOIR to run queries against its Case Access System for EOIR ("CASE") database, which generally contains EOIR's best available electronic version of the data categories identified in Appendix I, Part C and, for each of the individuals identified in the samples set forth in subparagraphs I(c)(i)-(ii), to extract data for the categories identified in Appendix I, Part C, to the extent it exists;
- iv. ICE and EOIR further agree to input the extracted data identified in subparagraphs I(d)(i)-(iii) into native Excel spreadsheets and to provide such spreadsheets to Plaintiffs no later than April 30, 2011.
- e. ICE further agrees to provide, for each of the individuals identified in the samples set forth in subparagraphs I(c)(i)-(ii), PDF copies of the narrative section of the Form I-213 associated with that individual's Secure Communities or CAP encounter. ICE shall identify each I-213 narrative by the dummy identifier assigned to that individual. The I-213 narratives will be produced in a PDF format that is searchable and allows the Plaintiffs to cut and paste the narrative

sections. All I-213 narratives will be provided subject to appropriate redactions consistent with FOIA's statutory exemptions. Plaintiffs agree that, in the event an individual has multiple encounters within the specified time periods, ICE will provide the narrative associated with the most recent Secure Communities or CAP encounter. ICE shall roll production of the I-213 narratives beginning on April 30, 2011, with full production to be completed by May 13, 2011.

f. ICE also agrees to provide to Plaintiffs by April 30, 2011 the following aggregate national data:

- i. The total number of (i) detainers issued, (ii) people received or booked into ICE custody, and (iii) people returned or removed after being encountered through the Secure Communities Program from its inception through February 2011;
- ii. The total number of (i) detainers issued, (ii) people received or booked into ICE custody, and (iii) people returned or removed after being encountered through the Secure Communities Program and/or the Criminal Alien Program between October 1, 2008 and January 31, 2010;
- iii. The total number of (i) detainers issued, (ii) people received or booked into ICE custody, and (iii) people returned or removed after being encountered through the Criminal Alien Program between October 1, 2007 and September 30, 2008.
- iv. Average length of ICE detention for all individuals detained by ICE. To the extent available, ICE will provide this data for the period

from October 1, 2008 to January 31, 2010, or for a closely corresponding timeframe.

- g. Defendants ICE and EOIR agree to undertake the same obligations outlined in subparagraphs 1(d)(i)-(iv) for each of the individuals identified in the samples set forth in subparagraph 1(c)(iii). ICE and EOIR agree to input the extracted data into native Excel spreadsheets, and to provide such spreadsheets to Plaintiffs no later than June 15, 2011.
- h. ICE further agrees to provide, for each of the individuals identified in the samples set forth in subparagraph 1(c)(iii), PDF copies of the narrative section of the Form I-213 associated with that individual's Secure Communities or CAP encounter. ICE shall identify each I-213 narrative by the dummy identifier assigned to that individual. The I-213 narratives will be produced in a PDF format that is searchable and allows the Plaintiffs to cut and paste the narrative sections. All I-213 narratives will be provided subject to appropriate redactions consistent with FOIA's statutory exemptions. Plaintiffs agree that, in the event an individual has multiple encounters within the specified time periods, ICE will provide the narrative associated with the most recent Secure Communities or CAP encounter. ICE shall roll production of the I-213 narratives beginning on June 15, 2011, with full production to be completed by July 1, 2011.
- i. The parties understand that ICE and EOIR cannot guarantee the availability of all data requested in Appendix I for each of the individuals identified in the samples set forth in subparagraphs 1(c)(i)-(iii). The data is to be produced by ICE and EOIR as it exists in the specified ICE and EOIR databases. The parties

understand that some of the data includes information obtained from interviews with detained aliens. ICE and EOIR cannot warrant the accuracy or integrity of the underlying data in the specified ICE and EOIR databases. ICE and EOIR represent only that they will truly and accurately produce to Plaintiffs the information contained in the data fields detailed in Appendix I in the best available forms maintained by ICE and EOIR, as that data is maintained in the agencies' ordinary course of business.

- j. Defendants agree not to seek fees for any productions made pursuant to this Stipulation and Order. Additionally, Defendants agree not to seek fees associated with any productions made in this litigation prior to the date on which the parties execute this Stipulation and Order.
- k. Plaintiffs agree to hold ICE and EOIR harmless for any delays that may result from a Government-wide shutdown. Plaintiffs further agree that, in the event of a Government-wide shutdown, all deadlines specified in this agreement will be extended for a period of working days equal to the duration of the shutdown, plus two working days.

- 2. This agreement does not constitute an admission or agreement by either party on any outstanding contested issue in this litigation, including but not limited to:
 - a. The formats in which Defendants must produce records to Plaintiffs, except as specifically described above;
 - b. The adequacy, or inadequacy, of Defendants' search cut-off dates;
 - c. The validity, or invalidity, of all exemptions claimed by Defendants in prior productions;

- d. The adequacy, or inadequacy, of Defendants' searches; and
 - e. All other issues pertaining to the Second Revised FOIA Request, including the breadth of the Second Revised FOIA Request.
3. The parties agree that it is in their collective best interests to attempt to resolve the outstanding issues in this litigation, and therefore agree to participate in settlement discussions concerning all outstanding issues which are not already part of the appeal filed by Defendants and currently pending in the United States Court of Appeals for the Second Circuit.
 4. Defendants reserve the right to seek fees associated with any material produced subsequent to the date on which the parties execute this Stipulation and Order, except for material produced pursuant to this Stipulation and Order. Nothing in this Stipulation and Order waives any argument by any party regarding whether Plaintiffs are entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A).
 5. The parties understand and agree that this Stipulation and Order contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

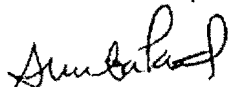
6. The parties agree that the United States District Court for the Southern District of New York shall retain jurisdiction over any controversy or claim arising out of or relating to this Stipulation and Order.

Dated: New York, New York
April 7, 2011

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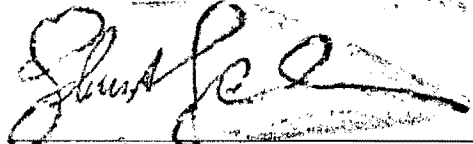
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SO ORDERED:



4/8/11

HON. SHIRA A. SCHEINDLIN
United States District Judge

APPENDIX 1

1. Unique Identifier

PART A - GENERAL DATABASE FIELDS

2. Location of Detention Facility or Facilities
3. Arrested or Booked by ICE
4. Secure Communities ("SC") Offense Level
5. Date Immigration Detainer was Issued
6. Date of Notice to Appear Issuance
7. Date of Service of Notice of Appear
8. Removal Charge
9. Date of Removal/Warrant of Removal
10. Book-In Date
11. Book-Out Date
12. Custody Determination/Bond Amount
13. Type of Proceeding Initiated
14. Date of Decision to Reinstate Prior Order

PART B - I-213 NON-NARRATIVE FIELDS

15. Country of Citizenship
16. Zip Code of Individual's United States Address
17. Country of Citizenship of Children
18. Country of Citizenship of Apprehended Individual's Parents
19. Location of Apprehension
20. Age

21. Number of Children
22. Sex
23. Marital Status
24. Status at Entry
25. Date of Apprehension by ICE
26. Status When Found
27. Year of Last Entry into United States
28. Country of Citizenship of Spouse

PART C - EOIR DATABASE FIELDS

29. Custody Redetermination Sought from Immigration Judge
30. Date of Filing of Notice to Appear with EOIR
31. Location of Removal Proceedings
32. Outcome of EOIR Removal Proceeding
33. Date of Immigration Judge Decision
34. Date of E-28, Notice of Entry of Appearance as Attorney or Representative
35. Representation Status at Case Conclusion
36. Date BIA Appeal Filed
37. Date of BIA Appeal Disposition
38. BIA Appellant
39. BIA Appeal Disposition

PART D - I-213 NARRATIVE FIELDS (IF AVAILABLE)

40. Pending Applications at Time ICE Assumes Custody
41. Criminal Charge(s) Leading to SC Identification & Arrest
42. Criminal History Narrative

43. Mental Health Status/History of Apprehended Individual
44. Medical Status/History of Apprehended Individual
45. Date of Apprehension by Local LEA
46. Apprehending Agency
47. Disposition (of Arrest Charge Leading to SC Identification)
48. Any Criminal Convictions Forming the Basis for the Removal Charge