

EXHIBIT A

Microsoft Outlook

From: Greenberg, Randi L
Sent: Wednesday, March 17, 2010 3:27 PM
To: Canty, Rachel E
Cc: (b) (6), (b) (7)(C)
Subject: mandatory vs voluntary memo

Attachments: Mandatory vs Voluntary Memo_rc_rg.doc; Mandatory vs Voluntary Memorc.doc

These were saved within a minute of each other, so I'm not sure which one is more recent- but it has the info we put together.

Randi Greenberg

Branch Chief, Communications & Outreach

Secure Communities

(b) (6), (b) (Desk)

(b) (6), (b) (BB)

(b) (6), (b) (7)(C)

DRAFT FOR DISCUSSION PURPOSES

Office of the Assistant Secretary

US Department of Homeland Security
Potomac Center North Building
500 12th St. SW
Washington, D.C. 20024



DATE:

MEMORANDUM FOR: Assistant Secretary John Morton

FROM: Marc Rapp, Acting Director, Secure Communities

SUBJECT: Local Law Enforcement and Interoperability

Background:

Since October of 2008, the Secure Communities initiative has deployed Automated Biometric Identification System (IDENT)/ Integrated Automated Identification System (IAFIS) Interoperability to approximately 90 sites in nine states across the nation. Through this deployment, criminal justice and immigration status information are made available to the FBI, ICE, state and local law enforcement agencies, allowing for the identification and subsequent removal of dangerous criminal aliens. When a local law enforcement agency is activated through Secure Communities, it sends biometric data collected from subjects in its custody to the Federal Bureau of Investigation's (FBI) IAFIS database for a record check as per usual. However, via **Secure Communities IDENT/IAFIS Interoperability**, a query is automatically routed to US-VISIT's IDENT database after which the system relays the immigration status of the subject to the FBI, ICE, and through the state to the submitting local law enforcement agency.

To date, Secure Communities has stated in various arenas, including to Congress, that state and local participation in IDENT/IAFIS is voluntary. What was meant by that statement was that if a jurisdiction did not want to participate, then IDENT/IAFIS Interoperability would not be activated for that jurisdiction, and biometric information submitted to IAFIS would not be submitted to IDENT. We have recently realized that mandates exist to make IDENT/IAFIS Interoperability mandatory by 2013. As a result, Secure Communities is modifying its definition of voluntary participation by state and local jurisdictions.

(b) (5)

A large, solid black rectangular redaction box covers the central portion of the page, obscuring the main body of the memorandum's text.

EXHIBIT B

Microsoft Outlook

From: Greenberg, Randi L
Sent: Monday, August 02, 2010 3:59 PM
To: [REDACTED]
Subject: FW: SC assistance needed
Importance: High

[REDACTED] can you send a message to CJIS on this topic to let them know what we're exploring and what they think?

Randi Greenberg
[REDACTED] (Desk)
[REDACTED] (BB)

From: Greenberg, Randi L
Sent: Monday, August 02, 2010 2:41 PM
To: [REDACTED]
Subject: SC assistance needed
Importance: High

[REDACTED]

Secure Communities has a meeting on **Wednesday (8/4/10)** with some Representatives from California on the ability to "opt out" of SC participation. As we continue to do refine our implementation strategy, Mr. Venturella has asked us to look into a legal mandate, provision, law, etc. that would allow ICE/DHS to request fingerprint information from the FBI for law enforcement and/or criminal justice purposes, regardless of whether states and locals can opt in or out. SC did some research on this topic months ago, though we never went anywhere with it. We're hoping that OPLA might now be able to weigh in and provide legal references and/or a legal interpretation of the references listed below. My guess is there is additional legislation out there that we don't know about but are hoping that you do!

References:

- 8 U.S.C. § 1373:

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local

government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

- 28 U.S.C. § 534. Acquisition, preservation, and exchange of identification records and information; appointment of officials
 - U.S. Attorney General is authorized to collect criminal identification information, including fingerprints
 - Federal government has information sharing agreements with states and locals through a series of compacts
- 42 U.S.C. § 14615. Enforcement and implementation
 - The federal government can enforce compact agreements
- 42 U.S.C. § 14616. National Crime Prevention and Privacy Compact and 42 U.S.C. § 14611. Findings
 - There are reasons above and beyond “traditional” criminal justice information sharing needs, such as need to know immigrations status, that may necessitate information sharing between federal, state, and local entities

Any help is appreciated, feel free to call me if you need some additional background.

Thanks!

Randi Greenberg

Branch Chief, Communications & Outreach
Secure Communities

[REDACTED] (Desk)

[REDACTED] (BB)

12/31/2010

ICE FOIA 10-2674.0013174

EXHIBIT C

[Redacted]

From: [Redacted]@dpscs.state.md.us]
Sent: Wednesday, August 11, 2010 3:45 PM
To: [Redacted]
Subject: RE: ORI Verification Request for 15 MD Counties

For clarity the NDR is just for the state to get the response or the submitting LLEU to get the response not to opt in on the search or not...the search of the IDENT data base will take place regardless. ALL criminal submissions to you nationally will search this Homeland Security hot files and the responses will be attached to the FBI normal response. Is that correct?

From: [Redacted] [mailto:[Redacted]@leo.gov]
Sent: Wednesday, August 11, 2010 3:41 PM
To: [Redacted]
Subject: RE: ORI verification Request for 15 MD Counties

For CJIS, in order to meet the information sharing mandate, we will send all criminal fingerprint submissions over to search DHS – US-VISIT IDENT. With the implementation of NGI, the SIB's will be able to choose whether or not they wish to receive the responses. If states are already participating in Interoperability and receive the responses (and wish to continue) it would be on going business. A new field (known as the NDR) which allows this selection is suppose to be implemented with NGI.

[Redacted]

*FBI CJIS Division
Interoperability Initiatives Unit*

[Redacted]
leo.gov

b6
b7c

This email may contain Personally Identifiable Information (PII) which must be protected in accordance with applicable privacy and security policies. If you are not the intended recipient of this information, disclosure, reproduction, distribution, or use of this information is prohibited.

From: [Redacted] [mailto:[Redacted]@dpscs.state.md.us]
Sent: Wednesday, August 11, 2010 3:18 PM
To: [Redacted]
Subject: RE: ORI Verification Request for 15 MD Counties

[Redacted] does this mean that by 2013 any criminal card we send you or any state will search IDENT hot files and the responses will go back to the submitting agency as is with the other counties we have on board anyway???

From: [Redacted] [mailto:[Redacted]@leo.gov]
Sent: Wednesday, August 11, 2010 2:55 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: ORI Verification Request for 15 MD Counties

[Redacted]

I am not sure if the message was mis communicated or not but, by 2013, to fulfill the Congressional mandate for increased information sharing, the federal government plans to activate IDENT/IAFIS interoperability for all criminal fingerprint submissions nationwide. I don't think Secure Communities has their own mandate, but I have copied [Redacted]

[redacted] the Regional POC for the SCPMO. [redacted], does SC have a separate mandatory federal bill? Please respond to all so we can clarify...

Thanks

[redacted]
FBI CJIS Division
Interoperability Initiatives Unit
[redacted]@leo.gov

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From: [redacted] [mailto:[redacted]@leo.gov]
Sent: Wednesday, August 11, 2010 1:44 PM
To: [redacted]
Cc: [redacted]
Subject: FW: ORI Verification Request for 15 MD Counties

[redacted]
Could you please follow up with [redacted] on this issue?
Thanks!

[redacted]
Management and Program Analyst
Interoperability Initiatives Unit
DOJ/FBI/CJIS
[redacted]@leo.gov

b6
b7c

This email may contain Personally Identifiable Information (PII) which must be protected in accordance with applicable privacy and security policies. If you are not the intended recipient of this information, disclosure, reproduction, distribution, or use of this information is prohibited.

From: [redacted] [mailto:[redacted]@dpsscs.state.md.us]
Sent: Wednesday, August 11, 2010 1:43 PM
To: [redacted]
Subject: RE: ORI Verification Request for 15 MD Counties

Im trying to follow up on something that was shared with me from a local Ice person in Balt...He stated that in 2013 this Secure Communities will be a mandatory federal bill?? Do you know if that is accurate and if so do we have a legislative reference for that fact. It would help my push here to keep things moving...let me know if you have any info on this or know who might... thanks

From: [redacted] [mailto:[redacted]@leo.gov]
Sent: Wednesday, August 11, 2010 11:38 AM
To: [redacted]
Cc: [redacted] (CTR); [redacted]@leo.gov
Subject: ORI Verification Request for 15 MD Counties
Importance: High

FBI-SC-FPL-335

EXHIBIT D

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA

70 West Hedding Street, 9th Floor
San Jose, California 95110-1770
(408) 299-5900 / (408) 292-7240 (FAX)



Miguel Márquez
COUNTY COUNSEL

Winifred Botha
Orry P. Korb
Lori E. Pegg
ASSISTANT COUNTY COUNSEL

August 16, 2010

VIA FEDEX OVERNIGHT DELIVERY

David Venturella, Executive Director
Office of Secure Communities
U.S. Department of Homeland Security
500 12th Street SW
Washington, D.C. 20024

Dear Mr. Venturella:

I am writing to request clarification regarding the "Secure Communities" program. The Santa Clara County Board of Supervisors has asked me to provide them with an explanation of the way Secure Communities operates at the local level and the extent of the County's obligation to comply. I have found that much of the available information concerning this program is confusing and contradictory. I therefore request written clarification on the following questions.

1. Is there a mechanism by which localities may "opt out?"

The Secure Communities Standard Operating Procedures appear to describe Secure Communities as a program that is voluntary for counties. The cover page, for example, states that the Standard Operating Procedures are "[d]istributed for adoption by participating county and local law enforcement agencies[.]"¹ Yet nothing in the Standard Operating Procedures explains how counties elect to become "participating count[ies]," what the mechanism for "adoption" is, or whether they can opt out instead if they so choose.

Additionally, in the cover letter accompanying the 2009 Memorandum of Agreement between Immigration and Customs Enforcement ("ICE") and the California Department of Justice, you stated that "[d]eployment at the county and local level requires a signed Statement of Intent (SOI) by participating agencies that oversee booking locations to ensure those agencies understand and adhere to the principles set forth in the MOA and a set of Standard Operating

¹ Immigration and Customs Enforcement, *Secure Communities (SC) Standard Operating Procedures (SOP)* (2009), available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf (hereinafter "Standard Operating Procedures").

Letter to D. Venturella
Re: Secure Communities
August 16, 2010
Page 2 of 4

Procedures.”² I have been unable to find any further information about these Statements of Intent. No department in Santa Clara County has signed or been asked to sign one; nor, to my knowledge, has any other California municipality.

Recent statements your office has made to the press suggest that you do not view county participation as voluntary, and that once ICE has signed an MOA with the relevant state department of justice, a county’s only recourse if it wishes not to participate in the program is to seek an exemption from the state. Is that correct? Do you view the State of California as having the ability, under the 2009 MOA your office signed with the California Department of Justice, to exempt certain counties from the program? Have you allowed other localities or law enforcement agencies, either inside or outside California, to opt out or modify their participation in the program?

I understand that ICE is offering counties one limited form of “opt out”: Counties may request not to receive “match messages” showing when an individual’s fingerprints have been matched with those in ICE’s IDENT database. My understanding is that these messages do not require or authorize counties to take any action with respect to the arrested individual. Assuming my understanding is correct, what is the purpose of receiving or not receiving these messages?

2. Once Secure Communities is deployed in a locality, is the locality required to comply with detainers, and will you provide reimbursement and indemnification?

The Standard Operating Procedures state that “[w]hen ICE determines an alien has been charged or convicted of a Level 1 offense that could result in removal, or when an alien who is already subject to removal is charged with a Level 1 offense, ICE will file an Immigration Detainer (Form I-247) at the time of booking with the local LEA that has custody of the alien.”³ ICE has not made clear, however, whether localities are *required* or merely *requested* to comply with such detainers. The Standard Operating Procedures use a mixture of mandatory and voluntary language.⁴ And the language of ICE’s Form I-247 states that “[f]ederal regulations (8 C.F.R. § 287.7) *require* you to detain the alien for a period not to exceed 48 hours (excluding Saturdays, Sundays and Federal holidays)” if ICE so requests.⁵ Is it ICE’s position that localities are legally required to hold individuals pursuant to Form I-247, or are detainers merely requests with which a county could legally decline to comply?

² Letter from David Venturella, U.S. Department of Homeland Security, to Linda Denly, Bureau of Criminal Identification and Information, California Department of Justice (Jan. 23, 2009), *available at* http://www.ice.gov/doclib/foia/secure_communities-moa/r_california_4-10-09.pdf.

³ Standard Operating Procedures at 5.

⁴ *Id.* at 6 (“*Requested* Local LEA Cooperative Actions . . . ICE *requests* that the LEAs: 2.2.1 Abide by Immigration Detainer conditions: The local LEA *will abide* by the conditions stated in the Immigration Detainer, Form I-247.”) (emphases added).

⁵ *Id.* at 11 (Form I-247, “Immigration Detainer—Notice of Action,” attached as Appendix C) (emphasis added).

Letter to D. Venturella
Re: Secure Communities
August 16, 2010
Page 3 of 4

It is also unclear who bears the costs related to detaining individuals at ICE's request. The federal regulation regarding detainers states that "[n]o detainer . . . shall incur any fiscal obligation on the part of the Department [of Homeland Security], until actual assumption of custody by the Department, except as provided in paragraph (d) of this section."⁶ I see nothing in paragraph (d) clarifying what financial reimbursement the Department provides to local agencies, although the paragraph itself deals with the kind of temporary detention at issue in the Secure Communities program.⁷ As you know, local governments are faced with increasing financial difficulties, and holding individuals pursuant to immigration detainers incurs costs and creates the risk of liability. Will ICE reimburse localities for the cost of detaining individuals pursuant to Form I-247 beyond their scheduled release times? Additionally, will ICE indemnify localities for any liability incurred because of that detention?

3. Once Secure Communities is deployed in a locality, is the locality required to comply with other "local LEA cooperative actions"?

As with detainers, the Standard Operating Procedures use a mixture of mandatory and voluntary language to describe other forms of local LEA cooperation.⁸ Is it ICE's position that localities where Secure Communities is deployed are legally required to a) inform ICE if a subject is to be transferred or released thirty days in advance of any release or transfer; b) allow ICE agents and officers access to detainees to conduct interviews and serve documents; and/or c) assist ICE in acquiring information about detainees? If so, what is the legal basis for such requirements?

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⁶ 8 C.F.R. § 287.7(e).

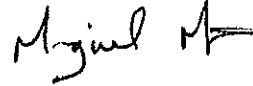
⁷ *Id.* § 287.7(d) (providing for "[t]emporary detention at Department request").

⁸ Standard Operating Procedures at 6 ("*Requested Local LEA Cooperative Actions . . . ICE requests that the LEAs: . . . 2.2.3 Inform ICE if subject is transferred or released: The local LEA will notify ICE when an alien's release or transfer to another location is imminent. . . . 2.2.4 Allow access to detainees: The local LEA will allow ICE Agents and Officers access to detainees 2.2.5 Assist ICE in acquiring information about detainees: The local LEA will locate and identify the booking and/or detention information on any alien against whom ICE has lodged a detainer.*") (emphases added).

Letter to D. Venturella
Re: Secure Communities
August 16, 2010
Page 4 of 4

Your clarification on the above questions would be appreciated. Please do not hesitate to contact me at the address above. I look forward to hearing from you.

Very truly yours,



MIGUEL MÁRQUEZ
County Counsel

- c: Marc Rapp, Deputy Director of Secure Communities, U.S. Department of Homeland Security *(via email)*
Hon. Zoe Lofgren, Chair, U.S. House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law *(via email)*
Honorable Board of Supervisors, County of Santa Clara
Jeffrey V. Smith, County Executive, County of Santa Clara
Laurie Smith, Sheriff, County of Santa Clara
Edward Flores, Chief of Correction, County of Santa Clara

EXHIBIT E

Microsoft Outlook

From: Rapp, Marc A
Sent: Tuesday, August 24, 2010 4:34 PM
To: (b)(6), (b)... (b)(6), (b)(... (...
Subject: Agenda Items for Meeting between and (b)(6),... and (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Dave has scheduled a VTC meeting with Mr. (b)(6), (b)... this Friday to discuss some ongoing issues related to the deployment of IDENT/IAFIS Interoperability. I have included below a brief summary of the issues. Please let me know if you have any questions or concerns.

Opt In/Opt Out

Would like to validate agreement on approach to opting out:

Jurisdictions (counties, parishes, independent cities) participating in the Secure Communities (SC) IDENT/IAFIS Interoperability deployment plan submit fingerprints through their state identification bureau to the FBI, which sends them to ICE. If there is a match in DHS' records, ICE determines and initiates prioritized immigration enforcement in accordance with the agency's stated priorities. The submitting agency may also receive information back on the subject in custody, including the criminal history and immigration information. SC's opt-in/opt-out policy is as follows.

- An IDENT identification response through Secure Communities does not delegate or relay any authority to local law enforcement to enforce immigration laws.
- If a jurisdiction does not wish to activate its jurisdiction in accordance with the Secure Communities deployment plan, it must formally notify the assistant director for Secure Communities at ICE and its state identification bureau. Upon receipt of that information, ICE will request a meeting with federal partners, the jurisdiction, and the state to discuss any issues and update the deployment plan.
- If a jurisdiction chooses not to activate in accordance with the Secure Communities deployment plan, the local law enforcement agency will be responsible for manually notifying the local ICE field office of suspected criminal aliens.

Local Law Enforcement Agency (LEA) Centric Activations

The current IDENT/IAFIS Interoperability deployment practice is to activate all of the validated ORIs in a particular jurisdiction. However, some states and jurisdictions are requesting to activate one (or a few) LEAs (ORIs) at a time to accommodate specific needs. SC would like to find a solution for those states who would like to approach activation in this manner.

- Washington: The State of Washington is requiring that each interested law enforcement agency make a request to participate directly to the Chief of the Washington State Patrol (WSP). Potentially, this could create a situation where only some of the LEAs in a given jurisdiction would wish to participate preventing full jurisdiction activation. WSP's only role will be to validate the ORIs of the requesting agency and share that information with ICE and the FBI.
- New York: New York State is a variant of the individual LEA deployment approach in that all ORIs within a jurisdiction may be activated except when a law enforcement organization expresses a desire to opt-out of Secure Communities. New York Department of Criminal Justice Services (DCJS), acting as the SIB, has insisted on a regimen of outreach to all LEAs and assurance that each organization has been polled as to its desires.
- Minnesota: Minnesota does not want to sign the MOA nor to validate ORIs. They want the activation of LEAs to be handled by ICE and its Interoperability partners. This may result in an LEA by LEA activation approach.

Cook County, IL

- In order to accommodate political considerations in the city of Chicago, the SC PMO bypassed the Chicago PD, which was unresponsive, and reached out to the Cook County Sheriff's Office (CCSO). The Illinois State Police (ISP), acting as the SIB, had agreed to go forward with activation of Interoperability in those jurisdictions that are willing and able to proceed. CCSO showed promise until, at CJIS' request, SC, CJIS, and the ISP met to discuss the situation. CJIS accentuated the potential sensitivities for ISP on the call, which ultimately resulted in the ISP's request for written consent from the CCSO prior to their activation. This was provided by the CCSO, but the ISP's Chief Legal Officer found the CCSO communication inadequate for ISP to consider it as agreement to activate Cook County.

Based on this history, what are CJIS's plans to activate Cook county?

Elimination of ORI Validation for Interoperability Activations

The current Interoperability deployment practice is to activate only newly validated ORIs in each jurisdiction. As the pace of activations has increased, so has the volume of ORIs requiring validation. This has at times created delays in the activation of some

counties to accommodate the completion of their ORI review by the SIB or local LEAs. It also creates a heavy coordination burden on CJIS, SIBs, local LEAs, and the SC PMO. SC has also been informed that SIBs participate in a biannual review of their ORIs with CJIS, making the additional county by county ORI review prior to Interoperability activation redundant. SC request elimination of the ORI validation process tagged to Interoperability activations because there does not appear to be adequate value to justify the resources expended by CJIS, SIBs, LEAs, and SC.

Activation of All Remaining Jurisdictions in 2013

By 2013, ICE plans to be able to respond nationwide to all fingerprint matches generated through the biometric information sharing capability. It is anticipated that there will still be LEAs not participating in Interoperability at the end of 2012 for a variety reasons. In 2013, ICE will be formally requesting that FBI/CJIS activate all remaining LEA/ORIs that have not been activated. It will be incumbent upon ICE to notify all remaining LEAs/Jurisdictions and their respective SIBs of the activation of each of their respective jurisdictions.

MAR

Marc A. Rapp
Deputy Director
Secure Communities Program

(b)(6), (b)(7)(C)
Office: (b)(6), (b)(7)(C)
Mobile: (b)(6), (b)(7)(C)

EXHIBIT F

Microsoft Outlook

From: (b) (6)
Sent: Thursday, September 09, 2010 12:26 PM
To: (b) (6)
Cc: (b) (6)
Subject: DRAFT messaging plan for mandatory activation
Attachments: Messaging Plan 9sept10.doc

(b)(6),

(b)(7)

(A)ttached is the draft messaging plan as a result of yesterday's meeting. I wanted to keep it short and sweet, but it is still a little rough (especially given that we don't quite know what to call what we're doing if we're not using "mandatory" or "not optional" or "participate").

Please take a look and feel free to comment/edit – and let me know if I'm forgetting something. I know we're still unsure of how to announce this (via a joint letter or via a joint statement or via the Secretary, etc.), but my general thoughts are to put something formal down on paper for distribution since this is a policy change, and have it come from ICE (with support from DHS). Open to other thoughts . . .

Cheers,

(b) (6)

[Redacted signature block]

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EXHIBIT G

Schlanger, Margo

From: Schlanger, Margo
Sent: Tuesday, September 21, 2010 10:34 AM
To: (b) (6)
Subject: FW: Secure communities opt out

Well, less clarity. I'll run this down.

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

(b) (6) (NOTE: NEW NUMBER)

(b) (6)

<http://www.dhs.gov/crcl>



**Homeland
Security**

From: Strait, Andrew R (b) (6)
Sent: Tuesday, September 21, 2010 7:32 AM
To: Schlanger, Margo
Subject: RE: Secure communities opt out

I wouldn't – I believe we will be pulling away from this stance and the program will be mandatory w/o opt out. This has been a tricky issue.

Andrew Lorenzen-Strait
Chief Public Engagement Officer
Office of State, Local and Tribal Coordination
U.S. Immigration and Customs Enforcement

(b) (6) - Direct

(b) (6) - BlackBerry

(b) (6) - Cell

General Inquiries: ICEPublicEngagement@dhs.gov

Personal E-mail: (b) (6)

From: Schlanger, Margo (b) (6)
Sent: Monday, September 20, 2010 9:52 PM
To: Strait, Andrew R
Subject: FW: Secure communities opt out

See below. This letter is a public document, now, posted on the web. I probably shouldn't even have asked Dave about it – but can we share its content when asked about opt-outs from Secure Communities?

Margo Schlanger

EXHIBIT H

Schlanger, Margo

From: Schlanger, Margo
Sent: Wednesday, September 22, 2010 6:45 AM
To: Gibson, Beth N
Subject: Re: In search of clarification.

Thx

From my blackberry
Margo Schlanger

From: Gibson, Beth N (b) (6)
To: Schlanger, Margo (b) (6) Gibson, Beth N
Sent: Wed Sep 22 06:39:56 2010
Subject: Re: In search of clarification.

There will be no ability to opt out after 2013.

Beth Gibson
Assistant Deputy Director, ICE

(b) (6)

From: Schlanger, Margo (b) (6)
To: Gibson, Beth N (b) (6)
Sent: Tue Sep 21 23:11:27 2010
Subject: In search of clarification.

Hi Beth –

The most frequent question I get asked about secure communities is on the opt out issue. Below, Dave Venturella tells me that both currently and after 2013, jurisdictions will be able to opt out. But I was talking with Andrew Straight, and he said this is not so clear to him. And I thought I understood you to say that after 2013, no more opt-outs will be possible. Can you provide me any clarity on this? Once we're in the new system, come 2013, do we think it will be available to a particular community to NOT query the immigration databases?

Thanks,
Margo

Margo Schlanger
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

(b) (6) (NOTE: NEW NUMBER)

(b) (6)

<http://www.dhs.gov/crci>



Homeland
Security

EXHIBIT I

Microsoft Outlook

From: Smith, Tadgh A
Sent: Thursday, September 30, 2010 11:16 PM
To: Greenberg, Randi L; Rapp, Marc A; Venturella, David (b) (6) Canty, Rachel E
Subject: RE: SC Mandatory Language

The premise of these questions is meant to box us into language we just don't use. I don't think that rejecting the premise and answering with something from our comfort zone is being non-responsive, so long as we provide a response that is usable and understandable.

This first question's premise is that all of SC is either mandatory or it is not. However, SC does rely on items that are mandatory - some implied, some explicit. We need to avoid saying it either way.

Is Secure Communities mandatory?

Secure Communities provides law enforcement entities access to DHS information. A law enforcement entity can elect not to access this information.

This is how I edited the last version:

~~No~~ Secure Communities provides federal, state, and local law enforcement entities that rely on IAFIS data, access to alien biometric and biographic information stored in the DHS IDENT system DHS information. A law enforcement entity can elect not to access this information.

The premise of the last question is that locals can choose to enable, or prevent enforcement of immigration law. We should not speak to this premise. "Interoperability" is already implemented, ICE is merely adopting it slowly to manage our own capacity build out.

If an agency doesn't want to be part of SC, will ICE still implement interoperability?

-

A law enforcement agency can chose to not access DHS information, but this does not prevent ICE from taking enforcement actions against criminal aliens.

This is how I edited the last version:

~~A decision by a~~ A law enforcement agency can chose to not access alien biometric and/or biometric information contained in the DHS information IDENT system , but this does not prevent ICE from taking enforcement actions against criminal aliens identified through IAFIS/IDENT interoperability.

-Tadgh

Tadgh Smith
Secure Communities

(b) (6)

7

From: Greenberg, Randi L
Sent: Thursday, September 30, 2010 4:30 PM
To: Rapp, Marc A; Venturella, David (b) (6) Canty, Rachel E; Smith, Tadgh A
Subject: Re: SC Mandatory Language

I think the addition of "no" changes the meaning of the subsequent sentence.

I think you're saying it's not mandatory for them to receive the immigration response, though I am not sure that's how it reads. Perhaps the "no" needs to come after the first sentence as it's the question that isn't

posed correctly.

Randi Greenberg
Branch Chief, Communications & Outreach
Secure Communities, ICE

(b) (6)

(Apologies for any typos as I am sending this from my BlackBerry)

From: Rapp, Marc A
To: Venturella, David; Greenberg, Randi L; Archibeque, Vincent E; Canty, Rachel E; Smith, Tadgh A
Sent: Thu Sep 30 16:24:09 2010
Subject: RE: SC Mandatory Language

One addition, the word "no"

MAR

Marc A. Rapp
Deputy Assistant Director
Secure Communities Program
Immigration and Customs Enforcement/ERO
marc.rapp@dhs.gov

(b) (6)

From: Venturella, David
Sent: Thursday, September 30, 2010 3:26 PM
To: Rapp, Marc A; Greenberg, Randi L (b) (6); Canty, Rachel E; Smith, Tadgh A
Subject: SC Mandatory Language

Please review my revisions.

Is Secure Communities mandatory?

~~The Secure Communities program is not based on state and local cooperation with, or participation in, federal immigration enforcement. Instead, the program's foundation is information sharing between the Department of Justice (FBI-CJIS) and the Department of Homeland Security (USVISIT & ICE). State and local law enforcement agencies simply continue to book and fingerprint people they have arrested on criminal charges as they always have. The person's fingerprints are transmitted to federal agencies for criminal and immigration checks. ICE receives leads from this interaction and takes immigration enforcement action as appropriate to ensure the removal of criminal aliens from our communities.~~

No. Secure Communities provides federal, state, and local law enforcement entities that rely on IAFIS data, access to alien biometric and biographic information stored in the DHS IDENT system. A law enforcement entity can elect not to access this information.

If an agency doesn't want to be part of SC, will ICE still implement interoperability?

~~In 2008, ICE launched Secure Communities. In its initial deployment, ICE activated counties and corresponding law enforcement agencies in a measured and phased approach to ensure technical and operational responsiveness. This approach required an unprecedented amount of coordination and collaboration with state identification bureaus and willing local law enforcement partners. As a result of this cooperation, ICE has been~~

12/31/2010

ICE FOIA 10-2674.0003394

able to adapt and modify its deployment strategy to address the technical, logistical and operational challenges faced in the first two years of existence. Going forward, ICE will coordinate with FBI CJIS to activate the remaining counties and law enforcement agencies by FY 2013. The program does not require state and local law enforcement agencies to enforce federal immigration law. Instead, the program rests on the sharing of information between federal partners and ICE independently enforces the immigration law as appropriate if a person in criminal custody is subject to removal proceedings.

-
A decision by a law enforcement agency to not access alien biometric and/or biometric information contained in the DHS IDENT system does not prevent ICE from taking enforcement actions against criminal aliens identified through IAFIS/IDENT Interoperability.

David J. Venturella
Assistant Director - Secure Communities

(b) (6)

FAX: (202)732-4030

http://www.ice.gov/secure_communities/

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EXHIBIT J

issue emerging in several places. The urgency on the get backs has increased, particularly in light of the Santa Clara votes. Peter, I understand Director Morton asked you to pull together a binder of the legal underpinnings. That dovetails with the get backs listed below (pasted from my September 9th email). Please provide asap to help inform the redraft of the opt out language. Dave, If you have specific language drafted to move away from the "voluntary" and "phased" language we have been using, please send it. Thanks

"In terms of specific meeting get backs,
--OPLA is gathering the legal support for the "mandatory" nature of participation in 2013
--SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula"

From: Venturella, David
Sent: Friday, September 10, 2010 2:24 PM
To: Gibson, Beth N
Cc: (b)(6), (b)(7)(C) 'Vincent, Peter S' (b)(6), (b)(7)(C)
[REDACTED] SCAAP

FYI – Attached in the SFR City Ordinance the Sheriff references.

David J. Venturella
Assistant Director - Secure Communities
(b)(6)
FAX: (202)732-4030
http://www.ice.gov/secure_communities/

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From: Gibson, Beth N
Sent: Thursday, September 09, 2010 7:40 AM
To: Venturella, David
Cc: (b)(6), (b)(7)(C) Vincent, Peter S (b)(6), (b)(7)(C)
Subject: RE: SCAAP

Dave,

Director Morton will be calling Jerry Brown. If he still wants me to go to SF for a meeting, I think you definitely should attend. You are more than welcome to attend any meetings that follow, even if we opt against OAS participation. Please loop Tim into that issue.

In terms of SCAAP, I think you should approach the folks in DOJ with whom you have good relationships. Please first explore whether they think the application could be amended to indicate a clear preference that jurisdictions use SC as a tool to speed and ease the identification of illegal aliens they have/have had in their custody. I think we may have some room for gains even before we tackle whether to try to bring SCAAP over to ICE and statutory reform.

In terms of statutory provisions (b)(6), (b)(7) is looking at the issue. Ideally, the provision will establish a greater link between reimbursement and cooperation with immigration officials. The statute need not spell out the tiered layers of cooperation, but should generally create a presumption that the more you cooperate, the more you receive. Imagine a tiered approach that identifies SC as the sole mechanism to identify illegal aliens (followed by all the other steps ICE takes to determine alienage and status) and then favors jurisdictions that honor detainees

correctly, support an institutional hearing program, create a presumption of detention for illegal aliens pending trial and allow a slight sentence reduction or benefit for aliens who voluntarily sign administrative stipulated orders.

In terms of specific meeting get backs,

--OPLA is gathering the legal support for the "mandatory" nature of participation in 2013

--SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula

--SC is monitoring for the need for a meeting in SF

--I will follow any call between the Director and AG Brown and let SC know if the call alters the bullet above.

Call if you need any clarification of if I missed any get backs. Otherwise, send the get backs to me and we will schedule a follow up meeting once it is all collected.

From: Venturella, David
Sent: Tuesday, September 07, 2010 5:33 PM
To: Gibson, Beth N
Subject: Re: SCAAP

Beth,

Based on the discussion we had this afternoon, is there anything more you need me to do with this white paper?

Also, do you still plan on making the trip to SFR? If so, would you need me to join you? I would be happy to participate.

Sent using BlackBerry

From: Gibson, Beth N
To: Venturella, David
Cc: Chaparro, James
Sent: Mon Sep 06 13:57:23 2010
Subject: RE: SCAAP

This is quite helpful. Your suggestions are quite good. Additional considerations for SCAAP payments could include quick courts for aliens, a presumption of pre-trial detention for aliens without legal status, and creation of IRP.

From: Venturella, David
Sent: Friday, September 03, 2010 3:14 PM
To: Gibson, Beth N
Cc: Chaparro, James
Subject: SCAAP

Beth,

This is my first cut at this.

David J. Venturella
Assistant Director - Secure Communities

(b) (6)
FAX: (202)732-4038
http://www.ice.gov/secure_communities/

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EXHIBIT K

Assistant Deputy Director, ICE

(b) (6)

From: Gibson, Beth N (b) (6)

Sent: Wed Sep 29 13:53:49 2010

Subject: Re: SCAAP and SC issue about "opting out"

If the draft memo explores the underlying CJIS agreement and authority, the draft may be useful now -- even if it is subject to revision. The "mandatory" piece from our view likely slows from the CJIS agreement (if you want their data, you play ball with all federal partners-as outlined in the CJIS charters and amendments).

Beth Gibson

Assistant Deputy Director, ICE

(b) (6)

From: Vincent, Peter (b) (6)

Sent: Wed Sep 29 13:40:49 2010

Subject: FW: SCAAP and SC issue about "opting out"

Beth:

We have a draft memorandum under review now. We have not shared it yet to OGC. Would you like to see our draft before David has reviewed? As to the mandatory question, as discussed with David, we may be constrained by the Supreme Court decision in [Printz](#), which relied on the Tenth Amendment to hold that the USG may not compel states to implement programs. Of course, the draft memorandum discusses that issue.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

(b) (6)

From: Gibson, Beth N [mailto: (b) (6)]

Sent: Wednesday, September 29, 2010 12:00 PM

To: Venturella, David; Vincent, Peter S

Cc: (b)(6), (b)(7)(C)

Subject: RE: SCAAP and SC issue about "opting out"

Dave and Peter,

I am following up on the get backs listed below. First, Dave, thanks for the SFR ordinance that you sent and for the revised messaging on SC generally. I am now focused on how to rework our messaging on the "opting out"

12/31/2010

ICE FOIA 10-2674.0002998

issue emerging in several places. The urgency on the get backs has increased, particularly in light of the Santa Clara votes. Peter, I understand Director Morton asked you to pull together a binder of the legal underpinnings. That dovetails with the get backs listed below (pasted from my September 9th email). Please provide asap to help inform the redraft of the opt out language. Dave, If you have specific language drafted to move away from the "voluntary" and "phased" language we have been using, please send it. Thanks

"In terms of specific meeting get backs,
--OPLA is gathering the legal support for the "mandatory" nature of participation in 2013
--SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula"

From: Venturella, David
Sent: Friday, September 10, 2010 2:24 PM
To: Gibson, Beth N
Cc: (b)(6), (b)(7)(C) 'Vincent, Peter S' (b)(6), (b)(7)(C)
[REDACTED] SCAAP

FYI – Attached in the SFR City Ordinance the Sheriff references.

David J. Venturella
Assistant Director - Secure Communities
(b)(6)
FAX: (202)732-4030
http://www.ice.gov/secure_communities/

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From: Gibson, Beth N
Sent: Thursday, September 09, 2010 7:40 AM
To: Venturella, David
Cc: (b)(6), (b)(7)(C) Vincent, Peter S (b)(6), (b)(7)(C)
Subject: RE: SCAAP

Dave,

Director Morton will be calling Jerry Brown. If he still wants me to go to SF for a meeting, I think you definitely should attend. You are more than welcome to attend any meetings that follow, even if we opt against OAS participation. Please loop Tim into that issue.

In terms of SCAAP, I think you should approach the folks in DOJ with whom you have good relationships. Please first explore whether they think the application could be amended to indicate a clear preference that jurisdictions use SC as a tool to speed and ease the identification of illegal aliens they have/have had in their custody. I think we may have some room for gains even before we tackle whether to try to bring SCAAP over to ICE and statutory reform.

In terms of statutory provisions (b)(6), (b)(7) is looking at the issue. Ideally, the provision will establish a greater link between reimbursement and cooperation with immigration officials. The statute need not spell out the tiered layers of cooperation, but should generally create a presumption that the more you cooperate, the more you receive. Imagine a tiered approach that identifies SC as the sole mechanism to identify illegal aliens (followed by all the other steps ICE takes to determine alienage and status) and then favors jurisdictions that honor detainees

EXHIBIT L

the proposed SCAAP legislative change and tell her it is still a draft?

(b)(6), (b)(7)

Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement

(b) (6)

From: Gibson, Beth N [mailto: (b)(6), (b)(7)(C)]
Sent: Friday, October 01, 2010 5:39 AM
To: Gibson, Beth N; Vincent, Peter S; Venturella, David
Cc (b) (6)
Subject: Re: SCAAP and SC issue about "opting out"

I expect the WP article today to keep the heat on this issue. Any sense of eta?

Beth Gibson
Assistant Deputy Director, ICE

(b) (6)

From: Gibson, Beth N (b)(6), (b)(7)(C) >
To: Vincent, Peter S (b)(6), (b)(7)(C) >; Gibson, Beth N (b)(6), (b)(7)(C) >; Venturella, David (b)(6), (b)(7)(C) >
C (b)(6), (b)(7)(C)
Sent: Wed Sep 29 13:53:49 2010
Subject: Re: SCAAP and SC issue about "opting out"

If the draft memo explores the underlying CJIS agreement and authority, the draft may be useful now -- even if it is subject to revision. The "mandatory" piece from our view likely slows from the CJIS agreement (if you want their data, you play ball with all federal partners-as outlined in the CJIS charters and amendments).

Beth Gibson
Assistant Deputy Director, ICE

(b) (6)

From: Vincent, Peter S (b)(6), (b)(7)(C) v>
To: Gibson, Beth N (b)(6), (b)(7)(C) >; Venturella, David (b)(6), (b)(7)(C) >; Vincent, Peter S (b)(6), (b)(7)(C) >
Cc (b)(6), (b)(7)(C)
Sent: Wed Sep 29 13:40:49 2010
Subject: FW: SCAAP and SC issue about "opting out"

Beth:

We have a draft memorandum under review now. We have not shared it yet to OGC. Would you like to see our draft before David has reviewed? As to the mandatory question, as discussed with David, we may be constrained by the Supreme Court decision in Printz, which relied on the Tenth Amendment to hold that the USG may not compel states to implement programs. Of course, the draft memorandum discusses that issue.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor

12/31/2010

ICE FOIA 10-2674.0002653

EXHIBIT M

From: Vincent, Peter S (b) (6)

To: (b)(6)(b)(7)(c)

Sent: Wed Sep 29 12:04:30 2010

Subject: FW: SCAAP and SC issue about "opting out"

It looks like we are working on this. I am not sure as to Beth's reference to the legal underpinnings, but earlier e-mails suggest that (b)(6)(b)(7)(c) (copied here) has been working on this. Please advise.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
202-732-(b) (6)

From: Gibson, Beth N [mailto:(b) (6)]

Sent: Wednesday, September 29, 2010 12:00 PM

To: Venturella, David; Vincent, Peter S

Cc: (b)(6)(b)(7)(c)

Subject: RE: SCAAP and SC issue about "opting out"

Dave and Peter,

I am following up on the get backs listed below. First, Dave, thanks for the SFR ordinance that you sent and for the revised messaging on SC generally. I am now focused on how to rework our messaging on the "opting out" issue emerging in several places. The urgency on the get backs has increased, particularly in light of the Santa Clara votes. Peter, I understand Director Morton asked you to pull together a binder of the legal underpinnings. That dovetails with the get backs listed below (pasted from my September 9th email). Please provide asap to help inform the redraft of the opt out language. Dave, if you have specific language drafted to move away from the "voluntary" and "phased" language we have been using, please send it. Thanks

"In terms of specific meeting get backs,

--OPLA is gathering the legal support for the "mandatory" nature of participation in 2013

--SC is drafting revised language to describe the shift from the current "voluntary" formula to the "2013" formula"

From: Venturella, David

Sent: Friday, September 10, 2010 2:24 PM

To: Gibson, Beth N

Cc: (b)(6)(b)(7)(c); Vincent, Peter S; L (b)(6)(b)(7)(c)

Subject: RE: SCAAP

FYI – Attached in the SFR City Ordinance the Sheriff references.

David J. Venturella

Assistant Director - Secure Communities

Office: (202)732-(b) (6)

FAX: (202)732-4030

12/31/2010

ICE FOIA 10-2674.0003728

Document ID: 0.7.98.17474

EXHIBIT N

Microsoft Outlook

From: (b)(6)(b)(7)(c)
Sent: Wednesday, September 29, 2010 3:22 PM
To: (b)(6)(b)(7)(c)
Cc: (b)(6)(b)(7)(c)
Subject: RE: SCAAP and SC issue about "opting out"

(b)(6)(b)(7)(c)

Just so that I redirect Terr (b)(6) ---I just wanted to make sure I have our assignment correct. I understand that we are rewriting our memo to OPLA to argue for the "mandatory" participation in 2013, which per Beth flows from the CJIS agreement and also note any weaknesses in this argument. Secondly we should create a binder with copies of our authorities.

I'll stop by in a minute to make sure we are on the right track.

(b)(6)(b)(7)(c)
Section Chief
Enforcement Law Section
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 202- (b)(6)

From: (b)(6)(b)(7)(c)
Sent: Wednesday, September 29, 2010 2:48 PM
To: Vincent, Peter S; (b)(6)(b)(7)(c)
Cc: (b)(6)(b)(7)(c)
Subject: RE: SCAAP and SC issue about "opting out"

I talked (b)(6), (b)(7)(C), (b)(7)(D) mandatory language.

(b)(6)(b)(7)(c)
Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732 (b)(6)

From: Vincent, Peter S [mailto:(b)(6)]
Sent: Wednesday, September 29, 2010 2:45 PM
To: (b)(6)(b)(7)(c) Vincent, Peter S; Raml (b)(6)(b)(7)(c)
Cc: (b)(6)(b)(7)(c)
Subject: RE: SCAAP and SC issue about "opting out"

Thanks, A refer to you as who is best situated to address the other issue noted by Beth.

Best regards,

Peter

Peter S. Vincent
Principal Legal Advisor

12/31/2010

ICE FOIA 10-2674.0003726

EXHIBIT O

Microsoft Outlook

From: (b)(6)(b)(7)(c)
Sent: Wednesday, September 29, 2010 12:34 PM
To: (b)(6)(b)(7)(c)
Subject: Fw: SCAAP and SC issue about "opting out"
Attachments: Secure Communities Opt Out Memo.doc

It looks like the SC issue in my previous email may be resolved.

(b)(6)(b)(7)(c)
Chief
District Court Litigation Section
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., 9120
Washington, D.C. 20024

Office: (202) 7 (b) (6)

*****Sent By Blackberry*****

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From: (b)(6)(b)(7)(c)
To: (b)(6)(b)(7)(c) eter S <Peter.Vincent@dhs (b) (6)
(b)(6)(b)(7)(c)
(b)(6)(b)(7)(c)

Sent: Wed Sep 29 12:31:53 2010
Subject: RE: SCAAP and SC issue about "opting out"

Peter,

Attached is the memo, that one of my folks, EROLD/ELS attorney Terry Cooperman, prepared that discusses the "legal underpinning" of the "opting out."

Please let me know if you need anything else.

(b)(6)(b)(7)(c)
Section Chief
Enforcement Law Section
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 202- (b) (6)

EXHIBIT P

Microsoft Outlook

From: (b)(6), (b)(7)c
Sent: Thursday, September 30, 2010 8:11 PM
To: (b)(6), (b)(7)c

Attachments: Secure Communities-Mandatory Memo.doc

(b)(6), (b)(7)c

Attached is (b)(6), (b)(7)c memorandum regarding the legal support for the “mandatory” nature of participation in Secure Communities in 2013. Substantively, Terry (b)(6), (b)(7)c did a great job of hitting all the relevant points. I had minor edits. Of course, I would like to review again first thing in the morning with fresh eyes, but I wanted to send this to you both to make sure that we are on track and determine whether you have any major concerns with our product.

Thanks!!

(b)(6), (b)(7)c

Section Chief
Enforcement Law Section
Office of the Principal Legal Advisor
Department of Homeland Security
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., 9th Floor

(b)(6)

Office: 202-732-(b)(6)
Blackberry: 602-690-(b)(6)

EXHIBIT Q

Microsoft Outlook

From: (b)(6), (b)(7)c
Sent: Friday, October 01, 2010 1:23 PM
To: (b)(6), (b)(7)c
Cc: Vincent, Peter S; Ramlogan, Riah; Golp (b)(6), (b)(7)c
Subject: RE: SC language: Predecisional Draft For Review and Comment
Attachments: Secure Communities-Mandatory Memo (10 01 10).doc

(b)(6), (b)(7)c

Attached is ELS' draft memorandum regarding the legal support for the "mandatory" nature of participation in Secure Communities in 2013.

We are still reviewing Beth's email below.

(b)(6), (b)(7)c

Section Chief
Enforcement Law Section
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Office: 202-732 (b)(6)
Blackberry: 602-690 (b)(6)

From: (b)(6), (b)(7)c
Sent:
To: (b)(6), (b)(7)c
Cc: Vincent, Peter S; Ramlogan, Riah; Golparvar
Subject: RE: SC language: Predecisional Draft For Review and Comment

Thanks

(b)(6), (b)(7)c
Director of Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202-732 (b)(6)

From: (b)(6), (b)(7)c
Sent: Friday, October 01, 2010 10:52 AM
To: (b)(6), (b)(7)c
Cc: rvar (b)(6), (b)(7)c
Subject: RE: SC language: Predecisional Draft For Review and Comment

We will give it one last review for typos etc. But substantively we are comfortable with our positions.

Give me 30 minutes and we will send the final version..

(b)(6), (b)(7)c

Section Chief
Enforcement Law Section
Office of the Principal Legal Advisor