UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

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

Defendants.

ECF CASE: 1:10-cv-3488

DECLARATION

----------X

DECLARATION OF ANN BENSON IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR STAY

I, ANN BENSON declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. My name is Ann Benson. I am the Directing Attorney for the Immigration Project of the Washington Defender Association (WDA). WDA is the leading resource in Washington State for public defenders. The Immigration Project provides education and information to defenders, prosecutors, judges and policy makers regarding issues related to immigrants in the criminal justice system.

2. In my role as Directing Attorney of the Immigration Project, I have worked closely with state and local officials, and local law enforcement, to address issues

related to the complicated situation created by the implementation of Secure Communities in a home-rule state such as Washington.

3. Washington declined to sign a Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) in 2010. The WSP refused to implement the program because the state's "home rule" law requires that each county decide individually whether or not to participate. Based on research and consultation with plaintiffs in this case, I worked with the state police in their development and implementation of a policy by which the WSP acts as an intermediary with the FBI rather than initiate state-wide implementation. The WSP informs the FBI when a county decides to activate Secure Communities and coordinates with local law enforcement to submit fingerprints only for the jurisdictions that instruct them to. DHS and ICE's August 2011 action to rescind the state MOAs and their announcement about the mandatory implementation of Secure Communities in 2013 has created immense confusion among local and state officials - impacting our efforts to create a state opt-in policy.

4. The October 2 Memo is needed urgently in Washington because new counties continue to face the prospect of Secure Communities activation, either through pressure by ICE or the FBI to opt-in or by mandatory implementation. Since May 2011, the program has expanded rapidly in the state, with approximately six counties of our 38 counties currently activated and six more in the pipeline to activate the program. In my work with local law enforcement officials, it is clear that large information gaps remain in the public's understanding of how the program works and its potential impact on community policing. The rapid expansion of the program, coupled with a lack of

information and transparency, has caused many sheriffs to green-light activation without public input, fostering distrust of law enforcement. With this Memo, advocates can better inform local police and communities about how to continue limiting information sharing to protect non-citizens in counties that have not asked to opt into the program.

5. In most counties, it is the local sheriff that decides whether or not to activate Secure Communities. Sheriffs are concerned about the impact of activation on local communities, but they do not have access to enough information to develop options to limit or combat the implementation of the program. Many state and local officials have almost no information about Secure Communities, or question the information provided by DHS, and have relied on advocates to provide information. For example, Sergeant Sean Gardner from Clark County admitted he had only heard of the program three days before an October 28, 2011 community meeting addressing local concerns about the County's decision to activate.

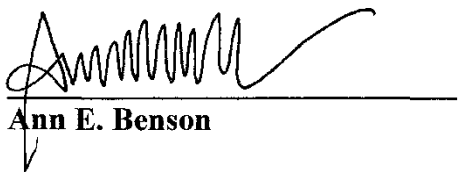
6. Additionally, because the comprehensive legal justification for the mandatory implementation of the program contained in the October 2 Memo is unknown, local officials and advocates have no ability to fully gauge the impact of unwanted activations on the rights normally held by our counties and localities under home rule. Without an understanding of the legal justifications for mandatory implementation, ICE and DHS's position that state and localities have no ability to assess how mandatory implementation conflicts with home rule.

7. Because of the information deficit caused by ICE and DHS withholding key information such as the October 2 Memo, advocates and law enforcement officials are also hampered in our efforts to combat the harmful consequences of the program and

develop strategies to resist activation. We have undertaken alternate strategies to minimize the negative consequences of distrust of law enforcement, such as failure to report crimes and erosion of community policing, caused by the program. For example, advocates have shifted to jurisdictions' policies of honoring ICE detainer requests. The belief among the advocacy community is that if local jurisdictions refuse to honor detainer requests, than the consequences of Secure Communities can be averted. However, developing new detainer policies does not fully address all the concerns arising from forced participation in Secure Communities and cannot keep up with the immediate need for protections caused by the program's rapid deployment.

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

Dated: Seattle, Washington
November 18, 2011



Ann E. Benson