

**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

DECLARATION

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.

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**DECLARATION IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR STAY PENDING APPEAL**

I, ANGELA CHAN 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 Angela Chan. I am a staff attorney with the Asian Law Caucus ("ALC") in San Francisco, California. Founded in 1972, the ALC is the nation's oldest legal and civil rights nonprofit organization serving low-income Asian Pacific American ("APA") communities. The ALC strives to defend and empower APA communities through a three-pronged strategy of community organizing, direct legal services, and strategic impact litigation. As a staff attorney at the ALC, I provide direct

legal services, community education, and policy advocacy to low-income immigrant families and youth.

2. The ALC has a strong interest in curtailing the impact of Secure Communities, an Immigration and Customs Enforcement (“ICE”) program that automatically runs biometric information taken by local law enforcement through the Department of Homeland Security (“DHS”) databases to conduct civil immigration enforcement, because it impacts and harms the large immigrant population that the ALC serves. Over the past two years, the ALC has focused a substantial amount of time and resources on advocacy and education relating to Secure Communities, and I have been the lead on behalf of my organization in these activities.

3. The ALC and Californians urgently need the Oct. 2 Memo to inform a time-sensitive legislative process relating to amendment of the Transparency and Responsibility Using State Tools Act (“TRUST Act”) (AB 1081-Ammiano), a pending bill in the California legislature relating to Secure Communities, discussed further below. The amendments to the bill need to be submitted in January 2012 per California’s legislative calendar. Moreover, the ALC and Californians have a strong interest in understanding the federal government’s purported legal justification for a program that is now operating in one hundred percent of California jurisdictions, even in those jurisdictions, such as San Francisco and Santa Clara that have explicitly rejected it.

4. From the outset, ICE was inconsistent, misleading, and secretive about the process whereby counties could opt-out of Secure Communities. Initially, San Francisco and Santa Clara tried to opt-out per the cover letter to California’s April 2009, Memorandum of Agreement (MOA) with the federal government to implement the

program, which detailed that a statement of intent was required to opt a county into the program. The counties also tried to opt out based on the instructions given by Secretary Janet Napolitano in her September 7, 2010, letter to U.S. Congressperson Zoe Lofgren about counties being able to opt out by submitting a written request. After much confusion, in November 2010, ICE informed local officials in those jurisdictions that opt-out was not possible at the county level because the state had signed the MOA with the federal government to implement the program.

The California TRUST Act

5. Since it appeared that negotiations with ICE regarding Secure Communities may have to occur at the state level, California state legislators and advocates drafted and proposed the TRUST Act in January 2010. The TRUST Act is authored by California Assembly member Tom Ammiano, D-San Francisco, and co-authored by Assembly members Bonilla, Cedillo, Eng, Monning and Skinner, and Senators Calderon, Hancock, and Yee. The ALC is an organizational co-sponsor of the bill. The TRUST Act required California to amend the terms of the state's Secure Communities MOA with DHS to only opt counties into the program if they affirmatively chose to do so and included protections for victims of crime who may be swept up by Secure Communities, among other modifications to the program. On May 26, 2011, the TRUST Act passed the California Assembly with a vote of 47 to 26. On June 14, 2011, the Senate Public Safety Committee passed the bill by a vote of 5 to 2. The TRUST Act was then scheduled to go before the Senate Appropriations Committee and then to the Senate floor for a vote. If it passed the Senate, the bill would go to Governor Jerry Brown for his signature. However, when states like Massachusetts, Illinois and New

York rejected Secure Communities, ICE backtracked further. Rather than honoring the legitimate concerns of those states, on August 5, 2011, ICE unilaterally rescinded Secure Communities MOAs with *all* states, including California. ICE stated that it would operate this program without state or local consent. The California TRUST Act, which centered on *amending* California's MOA, was suddenly meaningless, because it required California to amend a contract that ICE had invalidated. Advocates and state legislators, who had spent countless hours crafting the legislation and shepherding it through the legislative process, were shocked and frustrated with this development. The fatal flaw of the original bill was that it did not take into account ICE's purported legal framework for Secure Communities because ICE had never shared that legal framework with the public.

6. This sudden and unexpected nullification of the Secure Communities MOAs by ICE late into the legislative cycle resulted in the TRUST Act having to be turned into a two year bill. The ALC, as a co-sponsor of the bill, now has less than two short months to work with Assembly member Ammiano's office and civil rights organizations throughout California that are concerned about Secure Communities to research amendments to the bill to ensure that it has the desired impact. The TRUST Act must be amended by January 2012 so that it can continue through the legislative process, starting where it left off before the Senate Appropriations Committee, when the next legislative cycle begins. The Asian Law Caucus, as a co-sponsor of the bill, now has less than two months to research amendments to the bill. The TRUST Act must be amended by January 2012 so that it can continue through the legislative process when the next legislative cycle begins. Therefore, we are operating under a very short timeline to push the TRUST Act through the democratic process. After January 2012, it is unclear whether

the sponsors will have another opportunity to introduce similar legislation in the subsequent legislative cycle in 2013 since ICE has repeatedly stated its intention to activate Secure Communities nationwide by that point. .

7. I have conducted over thirty lobby visits with members of the California legislature to advocate for the TRUST Act. California Assembly members and Senators have repeatedly asked me how a bill like the TRUST Act can be effective given ICE's statements in the press that the program was mandatory and that opting out was not possible.

8. Without access to the contents of the Oct. 2 Memo or full information about ICE's legal analysis underlying its policy that Secure Communities is mandatory, it is difficult for the TRUST Act sponsors to devise an effective approach for the amendments. The ALC and the other proponents of the bill are hesitant to introduce changes in January, fearful that the bill will have little effect because ICE has withheld a comprehensive and authoritative explanation of its legal position from the public. The information in the Oct. 2 memo, which appears to contain such an explanation, would inform the proponents of the TRUST Act about ICE's legal analysis and therefore enable them to craft legislation that will have the desired impact, which includes protecting victims of crime.

Minimizing Continued Confusion and Mistrust

9. In addition, the October 2 Memo should be released to resolve the confusion about ICE's legal basis to force Secure Communities on unwilling localities, minimize public safety risks and restore trust in the federal government.

10. ICE implemented Secure Communities in San Francisco on June 8, 2010, despite a written request to delay implementation from San Francisco Sheriff Michael Hennessey on June 3, 2010, and in direct opposition to a May 21, 2010, resolution from the San Francisco Board of Supervisors. As a consequence, in San Francisco and throughout California, many immigrant residents, are fearful of reporting crimes to law enforcement because under Secure Communities, fingerprints of anyone arrested are automatically transferred to ICE, even if the criminal charges are eventually dismissed or are the result of an unlawful arrest, for example, following a call to the police by a domestic violence victim.

11. The ALC's ability to advocate for San Francisco and other counties in California that would like to opt-out of Secure Communities is severely impaired by ICE's failure to disclose the Oct. 2 Memo or other comprehensive information relating to the ICE's legal basis to make Secure Communities mandatory. Most importantly, the delay in the disclosure of the information to the public limits the ability of the ALC to explain to community members, public officials, and the press what can be done to resist or limit implementation of Secure Communities in light of its harmful impact on victims of crime and community policing strategies. Without access to the agency's legal analysis, many community members and public officials do not understand the basis for ICE's claims that the program is mandatory, and are thereby inhibited from participating in the democratic process on the state, local and federal level to advocate that states and localities be allowed to opt out of or limit participation in Secure Communities.

12. If the Oct. 2 Memo is not released, public safety will be compromised as the immigrant residents served by the ALC will continue to be fearful of cooperating with

local law enforcement. Secure Communities also will continue to impose significant costs and demands on local law enforcement, which must bear the financial and administrative burdens of holding individuals in county jail for civil immigration purposes. It is difficult for localities that are faced with the impact of Secure Communities on a day-to-day basis to engage in a meaningful discourse with state and federal decision-makers about how to minimize the negative impact of the program without a comprehensive understanding of the government's purported legal basis or bases for imposing Secure Communities in the first instance.

Dated: San Francisco, California
November 18, 2011



ANGELA CHAN, ESQ.