

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
NATIONAL DAY LABORER ORGANIZING :  
NETWORK, et al., :

Plaintiffs, :

- v - :

UNITED STATES IMMIGRATION AND CUSTOMS :  
ENFORCEMENT, et al., :

Defendants. :  
----- X

Civil Action No. 10-CV-3488

**DECLARATION  
OF RYAN LAW**

**I. INTRODUCTION**

1. I am the Deputy FOIA Officer of the United States Immigration and Customs Enforcement (“ICE”) Freedom of Information Act Office (the “ICE FOIA Office”). I have held this position since May 9, 2010. Prior to this position, I was a Senior Paralegal Specialist and Paralegal Specialist within the ICE FOIA Office beginning in February 2007. Prior to my employment with ICE, I was a FOIA Specialist within the Transportation Security Administration’s FOIA Office beginning in September 2005.

2. The ICE FOIA Office is responsible for processing and responding to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. The ICE FOIA Office mailing address is 500 12<sup>th</sup> Street, S.W., STOP 5009, Washington, D.C. 20536-5009.

3. As the Deputy FOIA Officer, my official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and

Privacy Act requests received by ICE. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In that respect, I am familiar with ICE's handling of the FOIA request dated February 3, 2010, submitted by plaintiffs the Center for Constitutional Rights ("CCR"), the National Day Laborer Organizing Network ("NDLON"), and the Immigration Justice Clinic of the Benjamin N. Cardozo Law School ("Cardozo"), to which the ICE FOIA Office assigned FOIA case number 2010FOIA2674.

4. I make this declaration in my official capacity in support of ICE's motion for partial summary judgment on the adequacy of its searches for "opt out" and "Rapid Production List" ("RPL") records. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

5. The purpose of this declaration is to describe, in detail, ICE's search for, and production of, opt-out and RPL records.

## **II. PLAINTIFFS' FOIA REQUEST AND THE INSTANT LITIGATION**

6. On or about February 3, 2010, ICE received a FOIA request from Plaintiffs for records relating to the immigration enforcement strategy Secure Communities.

7. Through the Secure Communities strategy, ICE improves public safety by transforming the way criminal aliens are identified and removed from the United States. This strategy leverages an existing information sharing capability between the U.S. Department of Homeland Security ("DHS"), of which ICE is a component, and the U.S. Department of Justice ("USDOJ") to quickly and accurately identify aliens who are arrested for a crime and booked into local law enforcement custody. With this capability, the fingerprints of everyone arrested

and booked are not only checked against Federal Bureau of Investigation (“FBI”) criminal history records, but they are also checked against DHS immigration records. If fingerprints match DHS records, ICE determines if immigration enforcement action is required, considering the immigration status of the alien, the severity of the crime and the alien's criminal history. Secure Communities also helps ICE maximize and prioritize its resources to ensure that the right people, processes and infrastructure are in place to accommodate the increased number of criminal aliens being identified and removed. Secure Communities modernizes the identification and removal processes by: (1) using fingerprint-based biometric identification technology, (2) prioritizing resources toward the greatest threats, and (3) sharing information between law enforcement partners. The ICE Enforcement and Removal Operations (“ERO”) Secure Communities Program Office is further described in Paragraphs 36 through 42, below.

8. Plaintiffs’ FOIA request was 21-pages long and sought records relating to seven broad categories: “Policies, Procedures and Objectives”; “Data and Statistical Information”; “Individual Records”; “Fiscal Impact of Secure Communities”; “Communications”; “Secure Communities Program Assessment Records”; and “Secure Communities Complaint Mechanisms and Oversight”. ICE’s preliminary estimates indicated that Plaintiffs’ request would implicated millions of pages of potentially responsive records.

9. Beginning on February 19, 2010, the ICE FOIA Office initiated searches within ICE for records that would be responsive to Plaintiffs’ FOIA request. ICE FOIA identified the offices and divisions within the agency that had direct oversight over Secure Communities or may have been tangentially involved with Secure Communities

as a part of general agency operations. ICE tasked the following offices and divisions with searching for records that were potentially responsive to Plaintiffs' request.

- a. The ICE Office of Enforcement and Removal Operations: Within ICE ERO, the Secure Communities Program Office implements and manages ICE's Secure Communities strategy. Additionally, each ICE ERO Field Office has appointed a point of contact (Supervisory Detention and Deportation Officer or higher) to serve as the Secure Communities Field Coordinator for their respective Area-of-Responsibility ("AOR"). These Secure Communities Field Coordinators serve as ICE ERO HQ's main points of contact for Secure Communities activities with state and local law enforcement in their AORs. Duties include coordinating outreach sessions to law enforcement agencies, developing activation schedules, and coordinating activation-related activities in support of achieving nationwide deployment by 2013. The Secure Communities Field Coordinator assignments are collateral duty positions within each Field Office.
- b. The ICE Office of Policy is responsible for identifying, developing, and effectively communicating ICE priorities and policies. The Office of Policy was searched because it is responsible for the development and maintenance of agency policies related to the Secure Communities enforcement strategy.
- c. The ICE Office of the Principal Legal Advisor ("ICE OPLA") provides legal advice, training, and services to support the ICE mission and defends the interests of the United States in the administrative and Federal Courts. ICE OPLA was searched because OPLA provides legal advice and guidance to the ERO program office on a wide range of agency issues, including those related to Secure Communities.

- d. The ICE Office of State, Local, and Tribal Coordination (“ICE OSLTC”) is responsible for building and improving relationships and coordinating partnership activities for multiple stakeholders – including state, local, and tribal governments, as well as law enforcement agencies/groups and non-governmental organizations.
- e. The Office of Congressional Relations (“ICE OCR”) represents ICE in a broad variety of federal congressional liaison activities. ICE OCR is responsible for maintaining an effective liaison and promoting greater congressional awareness of ICE operations, national and local policies, as well as the agency’s various programs and initiatives. ICE OCR was searched because OCR is the agency liaison to Congress and provides briefings and reports to Congress on various ICE programs, including Secure Communities.
- f. The ICE Office of Public Affairs (“ICE OPA”) is the agency’s public face, dedicated building understanding of, and support for, the ICE mission through outreach to employees, the media, and the general public. ICE OPA was searched because OPA worked very closely with Secure Communities in responding to media inquiries and questions from local law enforcement and the general public about Secure Communities.
- g. The ICE Office of Homeland Security Investigations (“ICE HSI”) is responsible for investigating a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States. ICE HSI investigates immigration crime, human rights violations and human smuggling, smuggling of narcotics, weapons and other types of contraband, financial crimes, cybercrime and export enforcement issues. ICE special agents conduct investigations aimed at protecting critical infrastructure industries that are vulnerable to sabotage,

attack, or exploitation. In addition to ICE criminal investigations, ICE HSI oversees the agency's international affairs operations and intelligence functions. ICE HSI was searched because the Criminal Alien Program (CAP), about which Plaintiffs had originally requested information, was previously under the direction of HSI.

h. The ICE Office of the Chief Financial Officer ("ICE CFO") is responsible for providing financial and asset management services and guidance for ICE. The ICE CFO was searched because Plaintiffs' request sought budget and funding information pertaining to Secure Communities.

i. The ICE Office of Acquisitions ("ICE OAQ") is responsible for managing ICE's procurement operations. ICE OAQ facilitates the acquisition of goods and services through contracts. ICE OAQ was searched because Plaintiffs' request sought budget and funding information pertaining to Secure Communities which could possibly involve information maintained by ICE OAQ.

j. The ICE Office of Professional Responsibility ("ICE OPR") is responsible for investigating allegations of employee misconduct impartially, independently, and thoroughly. ICE OPR prepares comprehensive reports of investigation for judicial or management action. ICE OPR inspects and reviews ICE offices, operations and processes in order to provide executive management with an independent review of the agency's organizational health and assesses the effectiveness and efficiency of the overall ICE mission. ICE OPR screens potential ICE employees for character and suitability. ICE OPR was tasked because Plaintiffs' original request sought information on complaints arising from Secure Communities including claims of racial profiling or other constitutional violations.

k. The ICE Office of Training and Development (“ICE OTD”) is responsible for providing technical, educational, and career development and training programs for ICE employees. ICE OTD was searched because Plaintiffs’ request sought information on training materials pertaining to Secure Communities.

l. The ICE Office of the Assistant Secretary (“ICE OAS”) includes the offices of the Director, the Deputy Director, the Assistant Deputy Directors, and the Chief of Staff. ICE OAS was searched because OAS is responsible for the overall day-to-day operation of the agency including all ICE programs. ICE OAS provides oversight over agency operations and is involved with higher level decision making on sensitive issues impacting the agency.

10. Each identified office was provided with a copy of the original FOIA request and was instructed to identify employees within the office that might reasonably be expected to have responsive documents. Each office was instructed to search paper files, email files, electronic files, and database files as appropriate. In addition, each individual employee was required to fill out a search tracker form that described the actions taken by the employee to search for potentially responsive records. All potentially responsive documents and search tracker forms were to be returned to the ICE FOIA Office.

11. Beginning in March 2010 and continuing through September 2010, ICE FOIA received potentially responsive documents from the following offices: ICE OCR, ICE OPA, ICE OPLA, ICE ERO, ERO-Secure Communities, ICE OAS, and ICE OSLTC. The following offices completed their searches and indicated that they had not located any potentially responsive records: ICE CFO, ICE OTD, ICE HSI and ICE OPR.

12. On April 27, 2010, before ICE had produced any records, Plaintiffs commenced the instant litigation.

### **III. RAPID PRODUCTION LIST SEARCH AND PRODUCTIONS**

13. Following Plaintiffs' filing of the instant litigation, ICE, through its attorneys, engaged Plaintiffs in numerous unsuccessful negotiations aimed at narrowing the scope of the extremely broad request.

14. Plaintiffs did not agree to any of ICE's narrowing proposals. However, on June 25, 2010, Plaintiffs presented ICE and the other defendant agencies with a "Rapid Production List" ("RPL") that identified ten broad categories of records, as well as certain specific documents that Plaintiffs sought on a priority basis.

15. On July 9, 2010, ICE agreed to produce records responsive to the RPL on an expedited basis.

16. A full description of ICE's search for, and disclosure of, records responsive to Plaintiffs' RPL is described in Paragraphs 17 through 33, below.

17. Upon receipt of Plaintiff's RPL, the ICE FOIA Office and agency counsel assigned to this matter reviewed those records submitted to the ICE FOIA Office by the offices and divisions described above during their initial search for records responsive to plaintiffs' FOIA request as a whole. Within these records, the ICE FOIA Office and agency counsel identified specific documents responsive to the RPL.

18. Further, the ICE FOIA Office and agency counsel contacted several ICE program offices that they reasonably believed were likely to have additional responsive RPL records. These program offices then conducted targeted searches for specific documents and categories of documents identified in the RPL:

19. Item I of the RPL requested a) Copies of all regularly generated statistical reports and b) copies of any cumulative statistics compiled on SC. ICE FOIA and agency counsel consulted with the ICE ERO Secure Communities Program Office, specifically, the Communications and Outreach Branch. The ICE ERO Secure Communities Communications and Outreach Branch compiled all regularly generated statistical reports and cumulative statistics by locating such reports from archived and then-current files. The reports were generated for Plaintiffs as well as posted to the ICE FOIA Reading Room, which is available to the public on ICE's website. Monthly statistical reports on Secure Communities continue to be posted to the ICE FOIA Reading Room on a regular basis as they are generated.

20. Item II of the RPL requested "opt-out" records. ICE's search for the opt out records is described in detail at paragraphs 34 through 57, below.

21. Item III of the RPL requested copies of executed agreements related to Secure Communities between ICE/DHS and the FBI, and agreements between DHS/FBI and local government or local law enforcement agencies. All copies of agreements between DHS/ICE and state governments were already publicly available on the ICE FOIA Reading Room. ICE produced a copy of the only executed agreement related to Secure Communities between DHS/ICE and FBI to Plaintiffs in the September 10, 2011 release.

22. Item IV of the RPL requested a technical explanation of all databases that could contain information related to sections of Plaintiffs' broader FOIA request that sought individual records, including a list of all databases that contain information on individuals identified by Secure Communities; a list of all fields in each database that contains information on individuals identified by Secure Communities, and records that

indicate on interoperability functions. ICE does not maintain a list of databases that contain information on individuals identified by Secure Communities. As such a list does not exist, nor does ICE maintain a list of all of the fields contained in databases that contain information on individuals identified by Secure Communities. ICE further conducted a search of the ICE ERO Secure Communities Program Office and located documents describing the function of interoperability. Those documents were produced to Plaintiffs as part of the July 2010 and February 25, 2011 productions.

23. Item V of the RPL requested a list of DHS Office of Inspector General (“OIG”) documents that had been referred to ICE for direct response. ICE processed the requested documents and released them to Plaintiffs as part of the September 2010 production.

24. Item VI of the RPL requested records related to the creation or revision of three specific media documents. Agency Counsel contacted ICE OPA, who identified two employees that worked with the documents in question. The two employees conducted a search for records related to the creation or revision of the documents. The employees searched their e-mail files based on a specific date range that preceded the date of the three documents. A number of responsive e-mails were located and were produced to plaintiffs as part of the July 2010 production.

25. Item VII of the RPL sought all reports and memoranda reporting on Secure Communities to DHS, the Assistant Secretary of Homeland Security in Charge of ICE, or to the White House. Both the ICE ERO Secure Communities Program Office and the ICE Office of the Assistant Secretary conducted a search for the requested documents by searching the agency’s electronic tasking system Sharepoint. All agency wide taskings

and documents that require review by more than one program office, such as would be the case for the types of reports and memoranda sought by the RPL, are logged into the Sharepoint system. No documents were located.

26. Item VIII requested specific enumerated records related to Secure Communities and racial profiling. Two employees within ICE OSLTC, as well as employees from the ICE ERO Secure Communities Communications and Outreach Branch, conducted a search for responsive records. No responsive documents were located that pertained to the first category sought by plaintiffs, to wit, “records created in relation to the drafting of Section 1.0 of the Secure Communities Standard Operating Procedures (SOP) or Section VII of the Secure Communities MOA.” Records relating to ICE plans to monitor for racial profiling or other Constitutional violations were produced to Plaintiffs in the September 2010 and February 25, 2011 productions. No responsive records were located pertaining to evaluation of any state or local jurisdiction pursuant to Section 1 of the SOP or Section VII of the MOA. ICE is not routinely involved with the assessment of claims of racial profiling or constitutional violations against states and local jurisdictions. The DHS Office of Civil Rights and Civil Liberties is the entity that is charged with addressing such complaints. To the best of ICE’s knowledge, at the time ICE conducted the RPL searches, no such complaints had been received.

27. Item IX of the RPL sought records of ICE communications with the states of Florida, California, and Texas related to costs, reimbursements, monetary agreements, or monetary incentives related to Secure Communities. The ICE ERO Secure Communities Program Office conducted a search for the requested documents, but no responsive documents were located. Secure Communities does not involve any monetary

agreements and/or incentives or other reimbursements to states and localities. A number of e-mails were located that conveyed information to various states about Department of Justice programs that could provide funding to states and localities. These documents were produced as part of the February 25, 2011 production.

28. Item X of the RPL sought a list of specific documents and categories of documents that were contained in an appendix to the RPL.

29. All documents and categories of documents requested in Item X of the RPL were located and produced to Plaintiffs in the July and September 2010 productions with the exception of certain funds utilization reports (# 4, RPL appendix), executive monthly status reports (#5, RPL appendix), and PMO status reports (#6, RPL appendix), which were produced in the February 25, 2011 production.

30. Plaintiffs requested the overall implementation plan for Secure Communities (# 9, RPL appendix), but it was determined by the ICE ERO Secure Communities Program Office that such a document was never created. The document that would best fit such a description would be the Concept of Operations Strategic Plan, which was produced to Plaintiffs in September 2010.

31. Certain categories of documents were not located or were determined to be non-existent, including records relating to the presentations to the National Association of Counties, Office of Management and Budget, and an NEC AFIS briefing (# 11, 12, 13, RPL appendix). Although the presentation materials themselves were located and produced, the agency did not have records of notes and plans of the meetings, lists of attendees, and correspondence before and following the presentations.

32. As a result of the searches described above, documents responsive to Plaintiffs' RPL were released to the Plaintiff on July 30, 2010, September 10, 2010, October 21, 2010, and December 6, 2010.

33. By order dated December 17, 2010, the Court directed ICE to produce the remainder of the RPL documents to Plaintiffs on February 25, 2011. On that date, consistent with the order, ICE produced the remaining 2,014 pages of records it had identified through the searches described above as responsive to the RPL.

#### **V. DESCRIPTION OF ICE'S SEARCH FOR OPT-OUT RECORDS**

34. In October 2010, plaintiffs informed the defendant agencies for the first time that RPL Item II, requesting opt-out records, was their top priority. Thereafter, ICE initiated a supplemental search for opt-out records.

35. On November 11, 2010, the ICE FOIA Office instructed ICE OSLTC, ICE OPA, ICE OCR, ICE OAS, ICE OPLA, and ICE ERO (including the ICE ERO Secure Communities Program Office) to conduct a targeted supplemental search for opt-out records. The ICE FOIA Office provided these ICE Program Offices with a copy of the Plaintiffs RPL, instructed those programs to conduct a comprehensive search of paper and electronic files for records that would be potentially responsive to item II of the RPL, and requested that those ICE Program Offices forward any potentially responsive records to the ICE FOIA Office for review and processing. Further, the ICE FOIA Office suggested that those ICE Program Offices use the following search terms during the search for responsive electronic records: "opt-out," "mandatory," "voluntary," "participation," "opting-out," "choosing," "mandate," and "opt out." Finally, the ICE FOIA Office instructed those ICE Program Offices not to limit their searches to the suggested search terms, but to use their knowledge of their particular record keeping systems and practices to conduct a

search that they believed was likely to uncover any and all records that would be potentially responsive to Plaintiffs' request.

36. Within the ICE ERO Secure Communities program office, every staff member in each of the Program's six branches were instructed to conduct a search for opt-out records. Those six branches are the Business Transformation Unit ("BT"); the Information Technology Management Unit ("IT Management"); the Deployment Unit ("NDU"); the Enforcement Portfolio Unit ("EPU"); the Strategy and Operational Analysis Unit ("SOA"); and the Communications & Outreach Unit ("C&O"). Additionally, ICE ERO Secure Communities front office staff, including the Assistant Director, the Deputy Assistant Director, the Chief of Staff, and mission support personnel also completed searches in accordance with the direction provided by the ICE FOIA Office.

37. BT supports ERO by transforming the criminal alien enforcement process through modernizing systems and enhancing processes. The Unit provides analysis and definition of requirements for projects prior to detailed requirements, design, and software development. This ensures that all investments are aligned with critical ERO needs and that all solutions drive resolution to specific technological or process based challenges. Additionally, the Unit integrates ERO efforts to achieve process and technology efficiency across units by defining the strategy, capabilities, and resource needs required to execute upon program priorities.

38. As a complement to the Business Transformation Unit, IT Management provides hands-on portfolio and project management support for ICE IT projects. This team supplies the needed oversight to drive successful project delivery and investment

return by ensuring adherence to the ICE System Lifecycle Management processes, implementing best practices, monitoring change requests, and analyzing alternative investments/strategies.

39. NDU Manages all functions related to interoperability deployment to achieve nationwide activation by 2013. NDU includes liaising with ERO Field Operations, SC Field Coordinators, the ICE OSLTC, ICE OPA, ICE OCR, and the Department of Homeland Security (DHS) Intergovernmental Affairs (OIA). Specifically, NDU provides oversight and coordinates training, communication, and deployment activities (including strategy) for new and ongoing technology initiatives. NDU provides critical tactical support to SC initiatives by monitoring ongoing deployments, identifying potential risks, issues, and interdependencies, and adjusting deployments accordingly.

40. EPU manages the interaction between ERO programs and mission support functions. The Unit is critical to successfully coordinating and reporting on law enforcement activities managed by ERO by providing subject matter expertise that extends beyond ERO to HSI, ICE, and local law enforcement agency needs. Additionally, EPU leads specialized, high-impact studies that require deep law enforcement field operations understanding beyond that of other Secure Communities units.

41. SOA conducts performance and operational analysis to continually identify and introduce efficiencies throughout ERO. SOA works in partnership with the ERO Mission Support Division (MSD) and the ICE Office of the Chief Financial Officer to integrate their cost models into our operational analyses.

42. C&O supports many divisions in ERO and ICE by managing communication and outreach efforts and activities to federal, state and local law enforcement partners, media entities, NGOs, Congress and local elected officials. This unit liaises internally with ERO Front Office, OPA, OCR, OSLTC and DHS IGA to further the transformational mission of SC.

43. Within the ICE ERO Secure Communities Program Office, staff members in each Program Unit conducted searches of network drives, hard drives, and Microsoft Outlook e-mail files for potentially responsive records. Those employees were provided a copy of Plaintiffs' RPL and the instructions provided by the ICE FOIA Office as described in Paragraph 35, above.

44. Additionally within ICE ERO, employees serving as the ICE ERO Secure Communities Field Coordinators at each of the 24 ICE ERO Field Offices conducted searches of their network drives, hard drives, and Microsoft Outlook e-mail files. Those employees were provided a copy of Plaintiffs' RPL and the instructions provided by the ICE FOIA Office as described in Paragraph 35, above.

45. The ICE ERO Field Office Directors at each of the 24 ERO Field Offices also conducted searches of their network drives, hard drives, and Microsoft Outlook e-mail files. The ICE ERO Field Office Directors were provided a copy of Plaintiffs' RPL and the instructions provided by the ICE FOIA Office as described in Paragraph 35 above.

46. Moreover, each ICE ERO Field Office Director was asked to instruct those employees within their respective offices who, in their opinion, would be most likely to have information related to Secure Communities to conduct a search for responsive

records. Those employees were provided a copy of Plaintiffs' RPL and the instructions provided by the ICE FOIA Office as described in Paragraph 35, above.

47. Lastly, Headquarters ICE ERO staff conducted searches of the archived e-mail files of a retired ICE ERO Field Office Director. Those employees were provided a copy of Plaintiffs' RPL and the instructions provided by the ICE FOIA Office as described in Paragraph 35, above.

48. Within ICE OPLA, a search of the OPLA Homeland Security Investigations Law Division ("HSILD") was conducted. OPLA HSILD is responsible for advising ICE's operational components about immigration and customs enforcement issues. Among other things, OPLA HSILD provides legal support during worksite enforcement operations. OPLA HSILD was searched because that office provides legal advice to ICE's operational offices during the planning and execution of the enforcement operations. Within OPLA HSILD, a search of network drives, hard drives, and Microsoft Outlook e-mail files was conducted. The search terms used were "opt-out" and "opt out".

49. Additionally within ICE OPLA, a search of the OPLA Enforcement and Removal Operations Law Division ("EROLD") was conducted. OPLA EROLD is responsible for advising ICE's operational components about detention and removal issues and provides support to the Secure Communities Program. Within OPLA EROLD, staff in the Detention and Removal Law, District Court Litigation, and Enforcement Law Sections conducted manual searches of paper files located in file cabinets or binders as well as electronic searches of hard drives, network shared drives, and Microsoft Outlook email files. These searches were conducted using the following

keywords: “Secure Communities”; “opt-out”; “mandatory”; “voluntary”; “participation”; “opting-out”; “choosing”; “mandate”; and “opt out”.

50. Also within ICE OPLA, senior OPLA leadership, including the Principal Legal Advisor, the Deputy Principal Legal Advisor, then Director of Enforcement and Litigation, and several other members of OPLA’s senior leadership team also searched for documents. Electronic searches of hard drives, shared drives, and Microsoft Outlook email files were conducted using the following keywords: “Secure Communities”; “opt-out”; “mandatory”; “voluntary”; “participation”; “opting-out”; “choosing”; “mandate”; and “opt out”.

51. ICE OSLTC was searched because two staff members in OSLTC have frequent contact with representatives of various NGOs, and the opt-out issue was likely to have come up in some of their communication. Within OSLTC, those staff members conducted searches of their hard drives, shared drives, and Microsoft Outlook email files using the following keywords: “opt-out”; “voluntary”; and “mandatory”.

52. Within ICE OCR, a search was conducted of electronic files located on hard drives, shared drives, and Microsoft Outlook email files. Prior to beginning their search, OCR staff members were provided with search guidance listing recommended search terms. The following search terms were recommended: “opt-out”; “mandatory”; “voluntary”; “participation”; “opting-out”; “choosing”; “mandate”; and “opt out”.

53. Within ICE OPA, a manual search was conducted of paper files located in a file cabinet, as well as an electronic search of hard drives, shared drives, and Microsoft Outlook email files. The electronic searches were conducted using the following

keywords: “Secure Communities”; “opt-out”; “mandatory”; “voluntary”; “participation”; “opting-out”; “choosing”; “mandate”; and “opt out”.

54. Within ICE OAS, a search of the e-mail files of the ICE director, ICE Assistant Deputy Director, the ICE Chief of Staff, the ICE Executive Associate Director for Management and Administration, and a former Special Assistant to the Director was conducted. Key-word searches of all e-mails sent or received by these individuals between October 2008 and October 15, 2010 was conducted using the terms “opt out” and opt-out”. All potentially responsive records located during these searches were provided to the ICE FOIA Office for review and processing.

55. In total, over 200 agency employees expended well over than 1000 man hours searching for records responsive to the “opt-out” portion of the RPL.

56. Although Plaintiffs have inquired about documents from the ICE Privacy Office, the Privacy Office was not tasked to search for documents responsive to either the RPL or the opt-out portion specifically. The function of the ICE Privacy office is to ensure that the agency is complying with the mandates of the federal Privacy Act, 5 U.S.C. Section 522a and the DHS Privacy Policy 6 C.F.R. Part 5. ICE FOIA determined that the ICE Privacy Office would not have records responsive to Plaintiffs request based upon the subject matter. Further, following Plaintiffs query in August 2011, agency counsel contacted the ICE Privacy Office, which confirmed via the ICE Privacy Officer Lyn Rahilly, that the Privacy Office did not have any records that would be responsive to the Plaintiffs’ FOIA request or RPL.

57. As a result of the search described above, ICE identified a total of over 100,000 pages of potentially responsive opt-out records. After review, ICE determined

that 12,388 pages were responsive, and produced those pages to plaintiffs on December 6, 2010 and January 17, 2011.

**VI. JURAT CLAUSE**

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 12<sup>th</sup> day of January 2012.



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