

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NATIONAL DAY LABORER ORGANIZING  
NETWORK, et al,

Plaintiffs,

v.

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT AGENCY, et al,

Defendants.

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) Civil Action No.10-cv-3488 (SAS)  
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**SEVENTH DECLARATION OF DAVID M. HARDY**

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently located in Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 31, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I am also an attorney who has been licensed to practice law in the State of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 277

employees who staff a total of ten (10) FBIHQ units and two (2) field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to FBI records and information pursuant to the FOIA, as amended by the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009; the Privacy Act of 1974; Executive Order 13526; Presidential, Attorney General and FBI policies and procedures; judicial decisions; and Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached and made in accordance therewith.

(3) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. Specifically, I am aware of the FBI's search efforts undertaken in response to the FOIA request made by plaintiffs the National Day Laborer Organizing Network, the Center for Constitutional Rights, and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law (collectively, "plaintiffs"), for records related to the U.S. Department of Homeland Security ("DHS")/U.S. Immigration and Customs Enforcement ("ICE") immigration enforcement strategy "Secure Communities."

(4) The FBI submits this declaration in support of its motion for partial summary judgment to provide further explanation of the FBI's search efforts for Rapid Production List ("RPL") and "Opt-Out" records, pursuant to the Court's order dated December 17, 2010. This declaration will expand upon the FBI's search efforts regarding the RPL and Opt-Out productions that were previously described in my First and Second Declarations. See [First]

Hardy Declaration, dated November 12, 2010, ¶¶ 19-26, 32-33 and Second Hardy Declaration, dated January 26, 2011, ¶¶ 6-12. This declaration supplements, and hereby incorporates by reference, both of these prior declarations.<sup>1</sup>

### **SEARCH FOR RECORDS RESPONSIVE TO THE RPL**

(5) By letter dated February 3, 2010 to FBIHQ, plaintiffs submitted a 21-page FOIA request seeking seven categories of records pertaining to Secure Communities: “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.”

(6) Secure Communities is an initiative of DHS/ICE. The FBI’s involvement in Secure Communities is part of its partnership with DHS/ICE to share information in the FBI’s Integrated Automated Fingerprint Identification System (“IAFIS”). IAFIS, which is managed by the FBI’s Criminal Justice Information Services Division (“CJIS”), is a biometric database that stores fingerprints and criminal history.<sup>2</sup> The sharing of information between the FBI’s IAFIS and DHS’s Automated Biometric Identification System (“IDENT”) is known as biometric interoperability. This interoperability provides ICE access to information in FBI’s IAFIS

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<sup>1</sup> The other four declarations previously submitted by the FBI are: the Third Hardy [Vaughn] Declaration signed January 28, 2011 (inadvertently dated January 28, 2010) (justifying the application of FOIA exemptions for the FBI’s January 17, 2011 release); the Fourth Hardy Declaration dated February 18, 2011 (explaining the technological limitations of the FBI’s FOIPA Document Processing System “FDPS” and why the FBI was unable to comply with Court’s February 7 and February 15, 2011 Orders); the Fifth Hardy Declaration dated March 23, 2011 (providing additional details concerning the technical aspects of the FBI’s FOIA response and processing systems); and the Sixth Hardy Declaration dated January 12, 2012 (providing further explanation of the FBI’s search efforts for RPL and Opt-Out records).

<sup>2</sup> Established in 1992, CJIS serves as the focal point and central repository for criminal justice information services. CJIS manages IAFIS. See [First] Hardy Declaration, ¶¶ 14-18.

repository and DHS's IDENT system in connection with the Secure Communities initiative.

(7) In order to locate all potentially responsive documents concerning Secure Communities which were responsive to plaintiffs' FOIA request, RIDS employed two mechanisms. First, RIDS conducted its standard electronic search of the FBI's Central Records System ("CRS"). When this search failed to yield any responsive material, RIDS requested a manual search for records from those FBI divisions and offices reasonably likely to have responsive records.

**A. Explanation of the FBI's Central Records System**

(8) The FBI began its search for potentially responsive records with a search of the CRS, which is the customary first step in responding to FOIA requests submitted to the FBI. The CRS enables the FBI to maintain all information which it has acquired in the course of fulfilling its mandated law enforcement responsibilities. The records maintained in the CRS consist of administrative, applicant, criminal, personnel, and other files compiled for law enforcement purposes. This system consists of a numerical sequence of files broken down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, activity, or foreign intelligence matter (or program). Certain records in the CRS are maintained at FBIHQ. Records that are pertinent to a specific field office of the FBI are maintained in that respective field office. Although the CRS is primarily designed to serve as an investigative tool, the FBI utilizes the CRS to conduct searches that are likely to yield documents responsive to FOIA and Privacy Act requests. The mechanism that the FBI uses to search the CRS is the Automated Case Support System ("ACS").

(9) Access to the CRS is obtained through the General Indices, which are arranged in alphabetical order. The General Indices consist of index cards on various subject matters that are

searched either manually or through the automated indices. The entries in the General Indices fall into two categories:

- (a) A “main” entry – A “main” entry, or “main” file, carries the name corresponding with a subject of a file contained in the CRS.
- (b) A “reference” entry – A “reference” entry, sometimes called a “cross-reference,” is generally only a mere mention or reference to an individual, organization, or other subject matter, contained in a document located in another “main” file on a different subject matter.

(10) Access to the CRS files in FBI field offices is also obtained through the General Indices (automated and manual), which are likewise arranged in alphabetical order, and consist of an index on various subjects, including the names of individuals and organizations. Searches made in the General Indices to locate records concerning a particular subject, are made by searching the subject requested in the index. FBI field offices have automated indexing functions.

(11) On or about October 16, 1995, the ACS system was implemented for all field offices, Legal Attachés (“Legats”), and FBIHQ in order to consolidate portions of the CRS that were previously automated. Because the CRS cannot electronically query the case files for data, such as an individual’s name or social security number, the required information is duplicated and moved to the ACS so that it can be searched. Over 105 million records from the CRS were converted from automated systems previously utilized by the FBI. Automation did not change the CRS; instead, automation has facilitated more economic and expeditious access to records maintained in the CRS.

(12) ACS consists of three integrated, yet separately functional, automated applications that support case management functions for all FBI investigative and administrative

cases:

(a) Investigative Case Management (“ICM”) – ICM provides the ability to open, assign, and close investigative and administrative cases as well as set, assign, and track leads. The Office of Origin (“OO”), which sets leads for itself and other field offices, as needed, opens a case. The field offices that receive leads from the OO are referred to as Lead Offices (“LOs”) – formerly known as Auxiliary Offices. When a case is opened, it is assigned a Universal Case File Number (“UCFN”), which is utilized by all FBI field offices, Legats, and FBIHQ that are conducting or assisting in the investigation. Using a fictitious file number “111-HQ-12345” as an example, an explanation of the UCFN is as follows: “111” indicates the classification for the specific type of investigation; “HQ” is the abbreviated form used for the OO of the investigation, which in this case is FBIHQ; and “12345” denotes the individual case file number for the particular investigation.

(b) Electronic Case File (“ECF”) – ECF serves as the central electronic repository for the FBI’s official text-based documents. ECF supports the universal serial concept, in that only the creator of a document serializes it into a file. This provides a single-source entry of serials into the computerized ECF system. All original serials are maintained in the OO case file.

(c) Universal Index (“UNI”) – UNI continues the universal concepts of ACS by providing a complete subject/case index to all investigative and administrative cases. Only the OO is required to index; however, the LOs may index additional information as needed. UNI, an index of approximately 113.4 million records, functions to index names to cases, and to search names and cases for use in FBI investigations. Names of individuals or organizations are recorded with identifying applicable information such as date or place of birth, race, sex, locality, Social Security number, address, and/or date of event.

(13) The decision to index names other than subjects, suspects, and victims is a discretionary decision made by the FBI Special Agent (“SA”) assigned to work on the investigation, the Supervisory SA (“SSA”) in the field office conducting the investigation, and the SSA at FBIHQ. The FBI does not index every name in its files; rather, it indexes only that information considered to be pertinent, relevant, or essential for future retrieval. Without a “key” (index) to this enormous amount of data, information essential to ongoing investigations could not be readily retrieved. The FBI files would thus be merely archival in nature and could not be



effectively used to serve the mandated mission of the FBI, which is to investigate violations of federal criminal statutes. Therefore, the General Indices to the CRS files are the means by which the FBI can determine what retrievable information, if any, the FBI may have in its CRS files on a particular subject matter or individual, e.g., “Secure Communities.”

**B. FBI’s Search for Responsive Records**

(14) On March 2, 2010, RIDS used ACS to perform a search of the CRS using the term “Secure Communities.” This search did not locate any responsive records.

(15) Based on the nature of the FBI’s limited involvement in the Secure Communities program – automated forwarding of information to ICE through the interoperability function between the FBI’s IAFIS repository and DHS’s IDENT system– and the results of the CRS search, RIDS concluded that it needed to conduct an individualized inquiry outside of the CRS system in order to determine if the FBI had any documents responsive to plaintiffs’ FOIA request.

(16) Based on plaintiffs’ FOIA request and RIDS’s knowledge about Secure Communities at the time it received plaintiffs’ FOIA request, RIDS prepared an internal memorandum directed to the FBI divisions and offices it reasonably expected to have potentially responsive records. On April 6, 2010, this search memorandum was circulated to the following FBIHQ divisions and offices: Counterterrorism, Criminal Investigative, CJIS, Cyber, Inspection, Intelligence Directorate, the National Security Law Branch in the Office of the General Counsel, and the Office of Public Affairs within the Director’s Office.<sup>3</sup> The search memorandum

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<sup>3</sup> RIDS included most of these divisions and offices as part of the initial search in the likelihood that the Secure Communities program pertained to the FBI’s national security investigations. However, as established by subsequent searches, most of the divisions and offices subject to the search memorandum did not possess Secure Communities related records,

requested the front office personnel of the designated divisions to coordinate the search for any potentially responsive documents within their respective divisions or units in their possession from January 2007 through February 3, 2010, including a review of database systems and all employee e-mail.<sup>4</sup> The search memorandum did not mandate the manner in which the search had to be conducted but did provide certain definitions and search guidelines. Specifically, the search memorandum requested that personnel in each office search for and produce all retrievable agency records relating to plaintiffs' FOIA request to include a review of all database systems and employee e-mail. The search memorandum specified the following as examples of agency records:

- All records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, faxes, files, guidance, evaluations, instructions, analysis, memoranda, agreements, notes, rules, technical manuals, technical specifications, training manuals or studies;
- Electronic records maintained on computers, or audio or video tapes;
- E-mails (regardless of whether they have been designated as a "record" or "non-record" in Microsoft Outlook;
- Any other portable media (CD-Roms, diskettes, etc.); and
- Any other standalone database created for the purpose of particular investigation(s).

The search memorandum advised the respective divisions that they did not need to conduct a search of the CRS because RIDS had already completed a search of the system. The search

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because they have no involvement with IAFIS-IDENT interoperability or local law enforcement records contained in IAFIS.

<sup>4</sup> Due to an inadvertent administrative error, the search memorandum incorrectly listed the search cut-off date as February 3, 2010 (the date of plaintiffs' request letter). The correct date should have been March 2, 2010 (the date of RIDS's first search of the CRS). This error turned out to be inconsequential as CJIS was the only division which located responsive records and CJIS's search was conducted through May 9, 2010. Moreover, because none of the other divisions and offices named above identified any responsive records for the January 2007-February 3, 2010 time period, the FBI has no reason to believe that they would possess responsive records from February 4, 2010 through March 2, 2010.



memorandum did not specify that archived records be searched. Each division or office was instructed to forward all potentially responsive documents to RIDS for processing or to provide a “no records” response by a date certain. RIDS tracked the responses received from the point of contact at each division or office in its FOIPA Document Processing System (“FDPS”).<sup>5</sup>

(17) In response to this search memorandum, only CJIS indicated that it had records potentially responsive to plaintiffs’ FOIA request. RIDS received “no records” responses from Counterterrorism, Criminal Investigative, Cyber, Inspection, and the Intelligence Directorate. RIDS has no record of receiving a responses from the National Security Law Branch in the Office of the General Counsel or the Office of Public Affairs within the Director’s Office. RIDS viewed a non-response as a “no records” response. Personnel from five units within CJIS provided potentially responsive records: the CJIS Audit Unit of the Law Enforcement Support Section, the Contract Administration Office of the Next Generation Identification Program Office, the Financial Management Unit and the Advisory Groups Management Unit (“AGMU”) both of the Resources Management Section, the Requirements Management Unit of the Information Technology Management Section, and the Interoperability Initiatives Unit (“IIU”) of the Global Operations Section.<sup>6</sup>

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<sup>5</sup> The FDPS is used by RIDS to track, monitor, and process FOIA requests.

<sup>6</sup> Plaintiffs inquired whether the FBI searched the Advisory Policy Board (“APB”) and/or the Advisory Groups Management Unit (“AGMU”). As indicated above, AGMU searched its records and provided RIDS with records potentially responsive to plaintiffs’ FOIA request. With respect to the APB, although its purpose is to provide guidance and advice on all criminal justice related CJIS division programs, it is not comprised of FBI personnel and has only recommendation authority. The main CJIS liaison with the APB is the Designated Federal Officer (DFO), an FBI employee within CJIS who is appointed by the FBI Director and serves as a management officer in coordinating, scheduling, and approving the APB Working Groups and APB meetings as well as other APB activities. The DFO received the search memorandum and

(18) The vast majority of the potentially responsive records forwarded to RIDS for review and processing were provided by the IIU. In order to locate records potentially responsive to plaintiffs' FOIA request, the IIU undertook a comprehensive review of its documents related to interoperability, of which the FBI's involvement with Secure Communities program is one small piece. Within CJIS's Operational Programs Branch, the IIU is responsible for all coordination and documentation of IAFIS with IDENT as a result of DHS/ICE's Secure Communities initiative. In consultation with the IIU, RIDS determined that the IIU employees store their electronic files in a variety of ways. Each employee has the ability to save files on the Unclassified and Secret systems in their Microsoft Outlook email, their respective personal drives, and a unit-shared drive located on the Unclassified and Secret systems. RIDS was informed that it is common practice for the IIU employees to save most of their records pertaining to Secure Communities on the units' shared drives.

(19) At the time CJIS received the search memorandum, IIU employees conducted a manual search of all records in the IIU operations folders contained on the shared drives on both the Unclassified and Secret systems in order to locate all records potentially responsive to plaintiffs' FOIA request. In addition, each of the 22 employees within the IIU at the time the search memorandum was received was requested to search his or her paper files, e-mail and personal drives for files related to Secure Communities. Of these employees 17 were FBI employees and 5 were FBI contractors. The FBI employees who searched for records held the following titles: Management and Program Analyst, Supervisory Management and Program

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indicated that he had no records responsive to plaintiffs' FOIA request.

Analyst, and the Acting Unit Chief of the IIU. The FBI contractors who searched for records held the following titles: Technical Writer, Senior Program Management Specialist, Program Management Specialist, and Principal Program Management Analyst. Although RIDS did not provide specific instruction as to how the individual searches were to be performed, each employee conducted a manual review of his or her records to locate potentially responsive documents. If any employee identified a potentially responsive file, he or she was instructed to place a copy of the file in a “Secure Communities” designated folder on the shared drive on the Unclassified and Secret systems created specifically as a result of the FOIA request.

(20) With respect to former IIU employees who worked on Secure Communities, the IIU did not undertake a search of their individual records. However, given the unit’s practice of saving records on the IIU shared drives, the manual search of the shared drives would have likely retrieved most of the former IIU employee’s records.<sup>7</sup> Also, because of this practice, RIDS was informed that IIU personnel do not actively archive records as information that would typically be archived is saved to the shared drives. As such, no search of archived records of then current or former employees was conducted.

(21) Although not part of CJIS, the Assistant General Counsel within the Access Integrity Unit (AIU)<sup>8</sup> who served as the AIU legal advisor for the IIU during the time period relevant to plaintiffs’ FOIA request, also conducted a manual search of his records to locate all

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<sup>7</sup> At the time the search memorandum was received, there were a total of 7 former IIU employees who had worked on matters related to Secure Communities – one FBI employee and six FBI contractors. The FBI employee held the title of Criminal Records Examiner and the contractors held the following titles: Technical Writer, Cost/Budget Analyst, Program Management Support, Program Management Specialist, and IT/System Engineer.

<sup>8</sup> AIU is a unit within the FBI’s Office of the General Counsel that is imbedded within CJIS to provide legal counsel.

records potentially responsive to plaintiffs' FOIA request.

(22) CJIS's searches located an exceptionally large volume of potentially responsive material – two CD-Roms and three DVDs, containing approximately 9 gigabytes of potentially responsive information in the aggregate. Many of the data files were “zipped,” meaning that the true volume of the content was not evident. CJIS also sent one box of hard copies of potentially responsive documents to RIDS. (See [First] Hardy Declaration ¶¶ 24-29.)

(23) While RIDS was in the process of scoping the large volume of potentially responsive information it received from CJIS, on June 25, 2010 plaintiffs submitted their RPL designating ten subjects from its FOIA request that it deemed most important. (See **FBI-Exhibit A.**) Because the RPL is a subset of plaintiffs' FOIA request and because the FBI reasonably believed it had identified all potentially responsive documents to the FOIA request, the FBI did not conduct a separate search for documents responsive to the RPL. Rather, it began reviewing the potentially responsive records it had already received for materials responsive to the RPL.

(24) The FBI released five RPL-responsive documents in August 2010. Due to continued uncertainty concerning the scope of plaintiffs' FOIA request in the late summer and fall of 2010, the FBI continued its review and processing of thousands of documents identified as responsive to the FOIA request in its entirety. The FBI made a second release of 11 documents responsive to the original FOIA request on November 18, 2010. In addition, in conjunction with its February 25, 2011 release of all documents responsive to the RPL as required by the Court's December 17, 2010 Order, the FBI released nearly all of the documents it had previously

identified as responsive to plaintiffs' FOIA request.<sup>9</sup> This February release consisted of approximately 5398 documents, in excess of approximately 29,000 pages that included approximately 89 Excel spreadsheets responsive to the RPL. Although RIDS is unaware of the amount of time spent by divisions or offices other than IIU in searching for records potentially responsive to plaintiffs' FOIA request, IIU estimates that it spent approximately 265 hours searching for potentially responsive material.

### **SEARCH FOR "OPT-OUT" RECORDS**

(25) By order dated December 17, 2010 as a result of a December 9, 2010 hearing, the Court directed the defendants to produce "opt-out" records by January 17, 2011, using a search cut-off date of October 15, 2010. In response to this Order, RIDS conducted a search of the e-mails and PowerPoint documents previously collected as potentially responsive to the FOIA request using the terms "opt-out" and "opt out." In addition, CJIS personnel manually reviewed all previously collected records, other than e-mails and PowerPoint documents, to identify responsive opt-out records.

(26) Because the Court's order required the production of records created after the cut-off date used for the FBI's initial search, the FBI conducted a new search specifically for opt-out records that were created during the time period not covered by the original search for records responsive to the FOIA request, i.e. between March 2, 2010 and October 15, 2010. RIDS conducted this new search via a search memorandum circulated on December 15, 2010 to CJIS and two offices within the Director's Office: the Office of Public Affairs ("OPA") and the Office

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<sup>9</sup> RIDS identified but did not process approximately 2700 Excel spreadsheets responsive to the original FOIA request but not responsive to the RPL.

of Congressional Affairs (“OCA”). The new search memorandum requested all records from February 4, 2010 (the day after Plaintiffs’ FOIA request) through October 15, 2010 (the search cut-off date established by the Court). The FBI searched within CJIS for opt-out records because CJIS maintains IAFIS, and Secure Communities is an ICE initiative which relies upon the framework of interoperability between IAFIS and DHS’s IDENT system, and because all documents previously identified as responsive to plaintiffs’ FOIA request were provided by CJIS personnel. However, in an effort to be as thorough as possible, RIDS also addressed the search memorandum to OPA and OCA due to the increased public interest in the opt-out issue at the time of the new search. As with the search memorandum seeking records responsive to plaintiffs’ FOIA request, the opt-out search memorandum did not mandate the manner in which the search had to be conducted but sought all opt-out related records. Again, the search memorandum provided the following examples of agency records:

- All records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, faxes, files, guidance, evaluations, instructions, analysis, memoranda, agreements, notes, rules, technical manuals, technical specifications, training manuals or studies;
- Electronic records maintained on computers, or audio or video tapes;
- E-mails (regardless of whether they have been designated as a “record” or “non-record” in Microsoft Outlook;
- Any other portable media (CD-Roms, diskettes, etc.);
- Any other standalone database created for the purpose of particular investigation(s).

The search memorandum did not specify that archived records be searched. Each division or office was instructed to forward all potentially responsive documents to RIDS for processing or to provide a “no records” response. Again, RIDS tracked the responses received from the point



of contact at each division or office in the FDPS. OCA identified one page of responsive information. OPA did not have any responsive records.

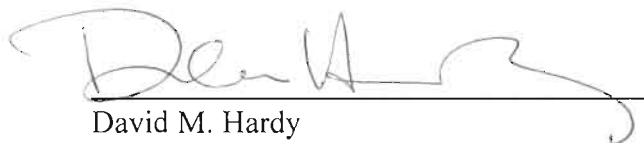
(27) As with the search for records responsive to plaintiffs' FOIA request, RIDS coordinated its search efforts to locate "opt-out" records with the subject matter experts, the employees of the IIU within CJIS. In order to identify "opt-out" records, CJIS initially searched its records using the term "opt-out" on both the Unclassified and Secret systems using the Microsoft search functionality. All records located as a result of this search were provided to RIDS for review and processing. For reasons stated earlier, archived records were not searched for then current or former employees. (See supra ¶ 20).

(28) However, as the subject matter experts, the IIU recognized that states working with the FBI in matters related to Secure Communities would not always use the term "opt-out" in discussions with CJIS and that any "opt-out" discussions would be state specific. Within the IIU, responsibility for communication with states is divided into four geographic regions, and each region is assigned a point of contact. As such, the four regional points of contact within the IIU each conducted an additional manual review of his or her records in his or her possession and on the IIU shared drives, including emails, for opt-out related documents created or modified between February 4, 2010 and October 15, 2010.

(29) Pursuant to the Court's December 17, 2010 Order, the FBI produced 2112 pages of "opt-out" related records to plaintiffs on January 17, 2011.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of March, 2012.

A handwritten signature in dark ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief  
Record/Information Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
Winchester, Virginia

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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FBI-EXHIBIT A

# CARDOZO

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

**IMMIGRATION JUSTICE CLINIC**

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June 25, 2010

**VIA OVERNIGHT MAIL AND EMAIL**

Christopher Connolly  
Assistant United States Attorney  
United States Department of Justice  
Southern District of New York  
86 Chambers Street  
New York, NY 10007

RE: *NDLON v. ICE* -1:10-cv-3488  
**CONFIDENTIAL AND FOR THE PURPOSE OF SETTLEMENT ONLY**

Dear Mr. Connolly,

Thank you for taking the time to meet with us yesterday. We also appreciate your willingness to work with us in the coming weeks on developing a schedule for moving forward.

As you know, ICE is rapidly implementing Secure Communities nationwide and our client's and the public's need for the information sought grows each day. Therefore, it is of the utmost importance that production of records responsive to the administrative FOIA request begin immediately. At the same time, we understand the Defendants' position that they are uncertain how to move forward on portions of the FOIA request and we welcome their suggestion to meet in mid-July to gain an understanding of the way ICE stores information. Without this understanding, it is difficult for us to discuss narrowing the request and forfeiting Plaintiffs' rights under FOIA to the government's full compliance with the request. Accordingly, we propose the following path forward: (1) the parties enter into an immediate initial stipulation to rapidly produce a modest list of easily identifiable documents, (2) then the parties meet in mid-July to discuss ICE's data/information structure and efficient ways to narrow the search, and (3) promptly enter into a comprehensive stipulation to narrow the request and set forth a timetable for full production.

JACOB BURNS INSTITUTE FOR ADVANCED LEGAL STUDIES

BROOKDALE CENTER • 55 FIFTH AVENUE • NEW YORK, NY 10003-4391

In order to move quickly, we have enclosed the attached list of discrete documents we would like to include in the initial stipulation for rapid production ("rapid production list"). We provided a preliminary draft of this list yesterday during our meeting.

We have also carefully considered your suggestions for narrowing the request and, in consideration for Defendants' initial agreement to produce the listed documents by Thursday, July 8, 2010, Plaintiffs would agree to narrow the request partially now. Since the rapid production list includes only a small number of documents central to Plaintiffs' request, we intend to work on the majority of the narrowing in the comprehensive stipulation. In the initial stipulation, however, we would be willing to agree that only originating agencies would need to process and produce the responsive records. It remains important to us that each agency conduct a search for all documents in its possession, regardless of origin. The reason for this is to ensure that originating agencies do not miss critical documents in their search. All Defendants would provide a list of identified documents and originating agency, but would not need to expend time and resources to process and produce them.

We hope that Defendants will be agreeable to this process: entering into an initial stipulation immediately for rapid production of the listed documents, meeting in mid-July with agency representatives, and then entering into a comprehensive stipulation to significantly narrow the request and set a schedule for processing and production. Please let us know as soon as possible, but certainly before July 2, 2010, whether Defendants agree in principle to this process or whether we should seek the intervention of the court to assist in scheduling production.

Please do not hesitate to get in touch if you have questions. We look forward to speaking with you again soon.

Best regards,

s/  
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Encl.:  
Plaintiffs' Rapid Production List and Attachments

06-25-2010

*NDLON et al v. ICE et al*, 10-cv-3488

**Plaintiffs' Rapid Production List**

**I. Data and statistics**

- a. Copies of all regularly generated statistical reports on S-Comm (monthly reports, bi-weekly reports, regional, national, etc.)
- b. Copies of any cumulative statistics compiled on S-Comm at any juncture

**II. Opt-Out Records - National policy memoranda, legal memoranda or communication relating to the ability of states or localities to opt-out or limit their participation in S-Comm**

**III. Copies of executed agreements related to S-Comm**

- a. Agreements between ICE/DHS and FBI
- b. Agreements between DHS/FBI and local government or local law enforcement agencies

**IV. Records that contain a technical explanation of all databases controlled or used by defendants which may contain data enumerated in Sections 2 & 3 of the request, including records that contain,**

- a. a list of all databases that contain information about individuals that are identified by S-Comm
- b. a list of all databases that contain data and statistics that ICE monitors related to S-Comm
- c. a list of all the fields contained in each database (for example, pages from a manual that list the fields)
- d. any records that indicate how interoperability functions, including how responses are coded and routed, Originating Agency Identifier (ORI) coding, any other coding by geography or type, which databases are searched, and screen shots of Immigrant Alien Queries (IAQs) and Immigrant Alien Responses (IARs)

**V. DHS-OIG Documents Identified in Response to the FOIA Request but Referred to ICE for Direct Response**

**VI. Records Related to the Creation or Revision (including drafts, memoranda, correspondence, and communications) of Certain Enumerated Media Documents:**

- a. U.S. Department of Homeland Security, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce That Secure Communities Initiative Identified More than 111,000 Criminal Aliens in Its First Year*, November 12, 2009 (attached).
- b. U.S. Department of Homeland Security, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce that the Secure Communities Initiative Identified More than 111,000 Aliens Charged or Convicted of Crimes in its First Year*, also dated November 12, 2009 (attached).



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- c. U.S. Department of Homeland Security, Immigration Customs Enforcement, *Get the Facts: Secure Communities Media Plan for April 26-30*, April 23, 2009 (attached).
- VII. All Reports & Memoranda Reporting on the Secure Communities Program to the Secretary of the Department of Homeland Security or to the Assistant Secretary of Homeland Security in Charge of Immigration and Customs Enforcement or to the White House.**
- VIII. Specific enumerated records related to Secure Communities and racial profiling:**
  - a. Records created in relation to the drafting of Section 1.0 of the Secure Communities Standard Operating Procedures (SOP) or Section VIII of the standard Secure Communities Memorandum of Agreement
  - b. Records containing ICE plans to monitor for racial profiling or other Constitutional violations in local jurisdictions pursuant to Section 1 of the SOP or Section VIII of the MOA
  - c. Records related to the evaluation of any state or jurisdiction pursuant to Section 1 of the SOP or Section VIII of the MOA
- IX. Records of ICE communications with the State of California, the State of Florida, or the State of Texas related to costs, reimbursements, monetary agreements, or monetary incentives related to Secure Communities**
- X. Specific enumerated documents referenced in ICE FOIA reading room documents (see appendix)**