

Exhibit F



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August 8, 2011

VIA 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

Dear Mr. Connolly,

We write to confirm that Plaintiffs have found the searches for the Rapid Production List (RPL) and for the Opt-Out Records conducted by Defendants Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), Department of Homeland Security (DHS), Executive Office for Immigration Review (EOIR) and Office of Legal Counsel (OLC) (collectively "Defendants") to be inadequate.

As you know, Defendants bear the burden of establishing that the searches they conducted were adequate. 5 U.S.C. § 552(a)(4)(B); *Carney v. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). Plaintiffs have conducted an initial review of Defendants' RPL Record productions¹ and Opt-Out Records productions,² as well as the initial description of Defendants' searches provided in Defendants' prior declarations in this FOIA action and in a letter to Plaintiffs dated January 26, 2011. *See* Ltr from C. Connolly to B. Kessler, Jan. 26, 2011 ("Defs. Ltr."). Based on this review, and for the reasons outlined below, Defendants have not met their burden with respect to either the search for Opt-Out Records or the RPL. With respect to the RPL, while the search was inadequate for all categories of the request, for the sake of efficiency, Plaintiffs are limiting their challenge to searches for RPL Sections III and VII-IX, the specific categories of the RPL with more egregious deficiencies and a higher priority for Plaintiffs and the public.

Defendants indicated in their January 26, 2011 letter that if Plaintiffs challenged the adequacy of the search for the Opt-Out Records, Defendants would provide a more comprehensive description of the searches. Defs. Ltr. at 1 n.1. In the hopes of narrowing the issues for

¹ The RPL Records productions include records produced by ICE on August 3, 2010, September 8, 2010, October 22, 2010 and February 25, 2011; DHS on February 25, 2011; and the FBI on August 13, 2010, November 19, 2010 and February 25, 2011.

² The Opt-Out Records productions include records produced by DHS, ICE, FBI and EOIR on October 22, 2010, December 6, 2010, January 17, 2011 and February 25, 2011.

litigation, we have set forth below Plaintiffs' objections to the Opt-Out Records searches based on Defendants' letter. Furthermore, Plaintiffs have very limited information about the nature of Defendants' searches for the RPL Records but have identified apparent gaps in the searches.

I. OPT-OUT RECORDS SEARCH

A. Additional Custodians

According to public information, the custodians discussed below were involved in work that appears to relate to opt-out issues. The agencies should have known that these custodians have or are likely to have responsive documents. Nothing, however, indicates that Defendants searched the records of custodians for responsive materials.

Defendants must demonstrate that they "follow[ed] through on obvious leads to discover requested documents," *Valencia-Lucena v. U.S. Coast Guard*, 10 F.3d 321, 325 (D.C. Cir. 1999), "including leads that emerge during [their] inquiry," *Campbell v. Dep't of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998). Further, Defendants must be able to show that the agencies did not limit the office or custodians searched when there are other locations where the requested information is likely to be found, see *LeCedra v. Exec. Office for U.S. Attys*, 317 F.3d 345, 34 (D.C. Cir. 2003). Please inform Plaintiffs by August 12th whether the offices listed below were searched, or if they were not searched, whether Defendants are willing to search them for responsive Opt-Out Records and provide a report of the search results by September 1, 2011.

1. ICE:

- a. *Law Enforcement Support Center ("LESC")*: As stated in one of ICE's Quarterly Reports to Congress in 2010, the LESC is the "single national point of contact for providing timely immigration status and threat level determination, identity information and real time assistance to federal, state and local [law enforcement agencies] regarding suspected [noncitizens] charged with or convicted of criminal activity."³ As such, the LESC has a "significant role in supporting the ICE Secure Communities Program by producing alien status determinations based on [fingerprint submissions]."⁴ Since the number of jurisdictions operating Secure Communities directly impacts the volume of queries LESC handles, the LESC was likely to have been aware of the decision about whether Secure Communities deployment would be voluntary or mandatory.⁵ Moreover, the immigration status determination response messages generated by the LESC were central to the revised definition of "opting-out" of Secure Communities that ICE provided to

³ See Immigration and Customs Enforcement, *Law Enforcement Support Center*, available at <http://www.ice.gov/lesc/> (last visited Aug. 7, 2011).

⁴ See, e.g., ICE FOIA 10-2674-0016157- ICE FOIA 10-2674-0016166, at ICE FOIA 10-2674-0016162 (Decl. of David C. Palmatier, Unit Chief for the Law Enforcement Support Center).

⁵ *Id.* at ICE FOIA 10-2674-0016162.

jurisdictions that attempted to opt-out.⁶ Given that the LESC responses were essential to this “new” definition of opt-out, it seems logical that ICE would have consulted officials from the LESC about this policy.

- b. *Homeland Security Investigations (HSI) and Homeland Security Investigations Intelligence (HSI-Intel)*: ICE states that the division is a “critical asset in the ICE mission, 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.”⁷ While HSI’s precise relationship with Secure Communities is unclear, an email exchange between unnamed officials from New York State and ICE confirms that HSI participated in negotiations with states and localities about Secure Communities activation.⁸ Specifically, it appears that HSI was involved in discussions related to the New York Secure Communities Memorandum of Agreement and the special “opt-in” arrangement for jurisdictions in New York.⁹
- c. *Deputy Director*: Based on the information in Defendants’ letter, it does not appear that ICE searched the office of the ICE Deputy Director. However, given the Deputy Director’s role as the “chief operating officer” of ICE, it is likely that this official would have been involved in higher-level policy discussions about the Secure Communities opt-out policy.¹⁰ Moreover, a recent ICE newsletter shows that the Deputy Director has conducted outreach to states and localities on behalf of the Secure Communities program.¹¹ Although the particular briefing referenced in the newsletter did not occur in the timeframe of the Opt-Out Request, it is also reasonable to infer that the Deputy Director participated in communications with state and local officials about Secure Communities policies on earlier dates.
- d. *Executive Associate Director and Assistant Director of Field Operations of Enforcement and Removal Operations*: Defendants’ letter does not make clear whether the Executive Associate Director or Assistant Director of Field Operations of Enforcement and Removal Operations (“ERO”) were searched. If

⁶ See Shankar Vedantam, *Federal immigration program is applied inconsistently in region*, Wash. Post, Feb. 26, 2011 (noting that agencies could opt-out of receiving immigration status determination back from the LESC, but not sending the fingerprints in the first instance).

⁷ Immigration and Customs Enforcement, *HSI Information Overview*, <http://www.ice.gov/about/offices/homeland-security-investigations/> (last visited July 17, 2011).

⁸ See Email chain between unnamed officials, 10/20/2010-11/1/2010, ICE FOIA 10-2674.0008248-10-2674.08250.

⁹ *Id.*

¹⁰ See ICE, *Deputy Director, Kumar Kibble*, <http://www.ice.gov/about/leadership/deputy-dir-bio/kumar-kibble.htm> (last visited Aug. 4, 2011).

¹¹ See DHS, Office for Civil Rights and Civil Liberties (CRCL), *Newsletter*, June 2011, available at www.aila.org/content/default.aspx?docid=36057 (noting ICE Deputy Director Kibble to conduct Secure Communities Outreach in Houston on June 27, 2011).

they were not, these custodians should have been searched because, as Defendants point out, ERO houses the Secure Communities program office. ERO was “the focal point” of the opt-out search for this reason. Higher-level ERO officials such as the Executive Associate Director or Assistant Director of Field Operations were likely to have been involved in Secure Communities opt-out policy discussions. It is also likely that these officials were involved in communicating those policies to the public, and state and local officials.¹²

- e. *Office of Professional Responsibility (“OPR”)*: OPR is the ICE office that “upholds the agency’s standards for integrity and professionalism.”¹³ In addition, OPR “inspects and reviews ICE offices, operations and processes in an effort to provide executive management with an independent review of the agency’s organizational health.”¹⁴ In particular, OPR has been involved with monitoring issues related to Secure Communities’ deployment and the implementation of the Secure Communities MOAs.¹⁵ Given OPR’s responsibility to investigate allegations of agency employee misconduct and conduct independent reviews of the agencies operations, it is probable that ICE officials informed OPR about, or that OPR investigated, the communications issues and inconsistencies related to the Secure Communities opt-out policies.
- f. *Office of State, Local and Tribal Coordination (“OSLTC”)*: The 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.”¹⁶ OSLTC is specifically responsible for “build[ing] awareness and understanding of the ICE Agreements of Cooperation in Communities to Enhance

¹² See, e.g., Latin America News Dispatch, *Immigration Reform Activists and ICE Reach Impasse Over Secure Communities*, July 24, 2011 <http://latindispatch.com/2011/07/24/immigration-reform-activists-and-ice-reach-impasse-over-secure-communities/> (noting that ICE Executive Associate Director attended meeting with advocates about Secure Communities); Memorandum from Margo Schlanger, Officer for Civil Rights and Civil Liberties, DHS and Gary Mead, Executive Associate Director, ICE to All ICE and CRCL Personnel, *Secure Communities Complaints Involving State or Local Law Enforcement Agencies*, at 1 (June 14, 2011), available at <http://www.ice.gov/doclib/secure-communities/pdf/complaintprotocol.pdf> (crediting the Executive Associate Director with drafting the Secure Communities complaint protocol).

¹³ See ICE, *Office of Professional Responsibility*, <http://www.ice.gov/about/offices/leadership/opr/> (last visited Aug. 4, 2011).

¹⁴ See id.

¹⁵ See, e.g., ICE FOIA-10-2674.007637-007639, at ICE FOIA 10-2674.0007639 (“Secure Communities works with the Department of Homeland Security Office of Civil Rights and Civil Liberties (DHS CRCL) and other appropriate authorities (e.g., DHS OIG, OPR) to ensure that allegations of misuse [under MOA] are handled in accordance with laws and DHS policy.”).

¹⁶ ICE, *Office of State, Local and Tribal Coordination (OSLTC)*, <http://www.ice.gov/about/offices/leadership/osltc/> (last visited Aug. 4, 2011).

Safety and Security (ICE ACCESS) program.”¹⁷ Notably, Secure Communities is an ICE Access program and therefore within the OSLTC portfolio.¹⁸ ICE did search the offices of two OSLTC employees (OSLTC Deputy Director and Special Assistant on Outreach). *See* Defs. Ltr. at 2. However, ICE gave no explanation for the failure to search the offices of other OSLTC employees, including the OSLTC Assistant Director, even though, consistent with its mission, this office routinely handles communications with state and local officials related to Secure Communities.¹⁹ As a result, OSLTC was directly involved in communications and messaging about the opt-out issue. For example, in an email chain on Santa Clara’s opt-out vote, an ICE Office of Public Affairs official writes: “perhaps tomorrow we can brainstorm on how OPA and OSLTC can help make our position on participation clear.”²⁰ Not surprisingly, in its role as liaison with state and local officials, OSLTC also routinely responded to inquiries from state and local officials relating to Secure Communities and the agencies’ opt-out policy.²¹

- g. *Privacy Office*: The ICE Privacy Office “provides agency guidance and oversight regarding the collection, maintenance, use and dissemination of personal information on individuals.”²² ICE likely consulted the Privacy Office about the privacy implications of the policy decision to force unwilling states and localities share the fingerprints of their residents through Secure Communities.

¹⁷ *Id.*

¹⁸ *See* ICE, *ICE ACCESS*, <http://www.ice.gov/access/> (last visited Aug. 4, 2011).

¹⁹ *See*, e.g. ICE FOIA-10-2674.0004984- ICE FOIA 10-2674.004987, at ICE FOIA-1026740004985, September 17, 2010 (noting that National Governor’s Association Secure Communities meeting notes shared with OSLTC).

²⁰ Email chain, ICE FOIA 10-2674.0003375-ICE FOIA 10-2674.0003378, at ICE FOIA 102674.0003376 (discussing OSLTC’s involvement in response to a reporter related to Santa Clara’s request to opt-out); *see also* Recommendations for Outreach on Required Activation of Secure Communities, ICE FOIA 10-2674.0003859 (noting that “SC Partners include: ICE/DHS leadership, The White House, FBI CJIS, *OSTLC*, OC and IGA); Stakeholder Outreach to Coincide with October Announcement: National & State Law Enforcement Associations, ICE FOIA 10-2674.0004974-4983, at ICE FOIA 10-2674.0004976- ICE FOIA 102674.004983 (listing OSLTC as one of the offices that is tasked with conducting outreach regarding the requirement to participate in Secure Communities); ICE FOIA 102674.0005696- ICE FOIA 10-2674.005699 (commenting on Washington Post article by Shankar Vedantam first publicly stating mandatory policy, ICE official writes: “Wow! Well, at least it’s out there...” and an ICE official responds: “Yes –I agree. But it’s going to be such an undertaking for you, ocr, osltc, and opa to manage now. Here we go. :)”).

²¹ *See*, e.g., ICE FOIA 10-2674.0008234- ICE FOIA 10-2674.0008235 (forwarding email to Chief of the Office of State, Local and Tribal Coordination from Boston Mayor Menino’s Director of Intergovernmental relations about mandatory participation in Secure Communities).

²² ICE, *Privacy Office*, <http://www.ice.gov/about/offices/management-administration/privacy/> (last visited Aug. 4, 2011) (noting that the Privacy Office “[e]nsures that ICE technology systems have appropriate privacy protections in place.”).

- h. *Office of Policy*: “The [ICE] Office of Policy identifies, develops and effectively communicates ICE’s organizational priorities and policies to internal and external stakeholders.”²³ As such, the Office of Policy must have been involved in higher-level discussions in the agency about the Secure Communities opt-out policy, and whether the program should be voluntary or mandatory.
- i. *Divisions of Secure Communities Program Management Office (PMO) Executive Director, Chief of Staff, Staff Assistant Deputy Director, Program Analysis and Evaluation*. Defendants’ letter does not clarify which custodians within the Secure Communities program office were searched. The above-listed higher-level officials within that office should have been searched.²⁴
- j. *Secure Communities Contractors including but not limited to Omega Secure Solutions BoozAllen, BAI Systems, Fleishman and Hillard*: The Secure Communities program contracts with numerous private firms to assist with tasks central to the program. A letter from a former ICE contractor illustrates the important role that private contractors had in communicating with state and local officials.²⁵ In particular, all four Secure Communities regional coordinators responsible for coordinating state and local deployment, were employees of—and reported to—the private security firm Omega Secure Solutions.²⁶ Therefore, private contractors responsible for developing or communicating Secure Communities policies should have been searched.

2. DHS:

- a. *Office of Public Affairs (“OPA”)*: The DHS OPA is “the primary point of contact for news media, organizations and the general public seeking information about Department of Homeland Security’s programs, policies, procedures, statistics, and services.”²⁷ OPA “assists the Secretary on all public affairs, as well as strategic and internal communications matters.”²⁸ Given its broad responsibility for DHS

²³ ICE, *Office of Policy*, <http://www.ice.gov/about/offices/management-administration/policy/> (last visited Aug. 4, 2011).

²⁴ See Secure Communities Crash Course, 2009, Secure Communities Presentations, at 10, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiespresentations.pdf (describing management structure of Secure Communities Program Office).

²⁵ See Letter from Dan Cadman to Marc Rapp, Apr. 12, 2011, attached to Letter from Representative Zoe Lofgren to Department of Homeland Security, Acting Inspector General, Charles K. Edwards. May 17, 2011, attached as Ex. E to Pls. June 2, 2011 Letter to the Court (Dkt. 95).

²⁶ Id.

²⁷ DHS, *About the Office of Public Affairs*, available at http://www.dhs.gov/xabout/structure/gc_1297696505985.shtm (last visited Aug. 8, 2011).

²⁸ Id.

programs and communications, DHS OPA was closely involved in Secure Communities opt-out messaging and responding to media inquiries about the policy.²⁹ Given the OPA's responsibility for *internal* communications, it is also possible that the office was involved in some of the well-documented internal communications related to the opt-out issue.

- b. *Office of General Counsel ("OGC")*: Although DHS OGC has 1750 lawyers,³⁰ DHS has provided no explanation of why only two were searched. *See* Defs. Ltr at 5. However, DHS OGC was, at minimum, closely involved in the legal analysis underlying the agencies' decision to make Secure Communities mandatory, and the October announcement in the changed policy.³¹ It is unconvincing that only two attorneys within that office would have responsive records.
- c. *Homeland Security Advisory Council ("HSAC")*: According to DHS, the "[HSAC] provides advice and recommendations to the Secretary on matters related to homeland security. The Council comprises leaders from state and local government, first responder communities, the private sector, and academia."³² An HSAC Task Force is currently involved in reviewing and providing recommendations for the Secure Communities program.³³ As a result, it is likely that the HSAC provided advice and recommendations on the Secure Communities opt-out policy, particularly because this policy impacts HSAC members.

3. FBI:

- a. *Director, Deputy Director and Associate Deputy Director*: The FBI did not search these custodians. Defs. Ltr. at 3-4. However, these high-level FBI officials likely

²⁹ See, e.g., ICE FOIA 10-2674.0002632-ICE FOIA 102674.0002644, at ICE FOIA 102674.0002633 (noting that "Setting the Record Straight" document is needed by ICE and DHS Office of Public Affairs to respond to time sensitive media inquiries).

³⁰ See DHS, *Office of the General Counsel: Overview*, available at http://www.dhs.gov/xabout/structure/ge_1193248570775.shtm.

³¹ See, e.g., ICE FOIA 10-2674.0002651- ICE FOIA 102674.0002656, October 4, 2010 (Email chain discussing sending Mandatory in 2013 memo to David Martin at DHS OGC); ICE FOIA 10-2674.0003699- ICE FOIA 10-2674.0003671 (Email chain from September 2010 confirming OGC's involvement in opt-out question); ICE FOIA 102674.0007083- ICE FOIA 102674.0007085 (Email chain from October 6, 2010 discussing how to staff call about Secure Communities "opt-out" with "high-level" OGC staff); ICE FOIA 10-2674.0002176- ICE FOIA 10-2674.002180 (August 25, 2010 email regarding OGC attending meeting to discuss Secure Communities opt-out policy).

³² See DHS, *About HSAC*, http://www.dhs.gov/files/committees/editorial_0331.shtm. Also, the Advisory Committee is submitting results to the Advisory Council, indicating that they have had some role in the development of Secure Communities policy.

³³ See Department of Homeland Security, *Homeland Security Advisory Counsel (HSAC)*, available at http://www.dhs.gov/files/committees/editorial_0331.shtm (last visited Aug. 7, 2011) (listing HSAC Secure Communities task force membership).

made, discussed, or approved high-level policy decisions about the mandatory or voluntary nature of Secure Communities. For example, in response to a question on December 9, 2010 from the New York State Identification Bureau (“SIB”) about whether the FBI can filter Integrated Automated Fingerprint Identification System (“IAFIS”) submissions to only include those individuals who have convictions, an FBI official responded “[t]he SIB can submit a paper to the CJIS APB [Advisory Policy Board] for formal processing and if recommended by the committees and *approved by the FBI Director*, then CJIS would comply with the approved request.”³⁴ This response implies that the FBI Director approved the current CJIS policy of automatic submissions recommended by the APB in 2009 or other policy decisions related to whether Secure Communities would be voluntary or mandatory.³⁵

- b. *Operational Technology Division*: This office has specific responsibility to assist partners in state and local law enforcement with technological matters.³⁶ Therefore, the office is likely to have communications related to the technological capacity to facilitate an “opt-out” of Secure Communities, or to limit the use of data provided by states and localities.
- c. *Office of the General Counsel (“OGC”) and, specifically, the Privacy and Civil Liberties Unit*: Documents produced by ICE and DHS set forth various analyses of the legal basis for making Secure Communities voluntary or mandatory.³⁷ We have not, however, received any similar analysis from the FBI, despite the fact that the FBI appears to have had an independent decision-making process related to the Secure Communities opt-out policy.³⁸ Moreover, numerous documents related to interoperability or the Next Generation Identification program produced by the FBI and found on the public domain include discussions of privacy rights.³⁹ This indicates that the FBI considered questions related to the legality of different formulations of state-federal fingerprint disclosures.
- d. *Office of Law Enforcement Coordination (“OLEC”)*: “[T]he OLEC serves as the FBI’s primary liaison for the law enforcement community, particularly law

³⁴ FBI-SC-FPL-43 (emphasis added).

³⁵ See FBI-SC-1333-1336 (CJIS Advisory Policy Board, *Staff Paper*, June 4, 2009).

³⁶ FBI, *Operational Technology Division*, available at <http://www.fbi.gov/about-us/otd> (last visited Aug. 4, 2011).

³⁷ See, e.g., ICE FOIA 10-2674.0003008-.0003022 (Memorandum for Beth Gipson, Assistant Deputy Director, from Deputy Principal Legal Advisory, Mandatory in 2013, Ovt. 2, 2010); ICE FOIA 10-2674.0009132- ICE FOIA 10-2674.0009145 (same); ICE FOIA 10-74.0002534-.0002547 (same).

³⁸ See, e.g., FBI-SC-1333-1336 (CJIS Advisory Policy Board, *Staff Paper*, June 4, 2009).

³⁹ See, e.g., FBI, *Fingerprints and Other Biometrics, Next Generation Identification*, http://www.fbi.gov/about-us/cjis/fingerprints_biometrics/ngi; FBI-SC-13771-13777 (“Q: How do DHS and DOJ protect this information? A: DHS and DOJ/FBI ensure that all information exchanges comply with the Privacy Act and existing privacy policies.”).

enforcement associations, representing the perspectives of chiefs, sheriffs, and law enforcement associations within the FBI” and “and serves as an information broker of FBI capabilities to include Bureau programs, resources, and services.”⁴⁰ Questions from state and local law enforcement about Secure Communities’ voluntary or mandatory nature fall squarely within OLEC’s mandate. Therefore, OLEC must have responded to Secure Communities-related queries.

- e. *Special Technologies and Applications Office and Executive Assistant Director for Information and Technology Branch*: The Special Technologies and Applications office falls within the Science and Technology Branch. It is “charged with developing and deploying unique and innovative technical and analytical tools and capabilities for the FBI.”⁴¹ This office is likely to have analyzed and developed the technology used to implement Secure Communities, and therefore would have been consulted about whether states or localities could opt out of or limit participation in the information-sharing component of the program. Moreover, the Executive Assistant Director for Information and Technology is likely to have information relevant to the technical ability of states or localities to opt-out of Secure Communities, or the technological capacity to create an opt-out option or allow other limitations of participation.⁴²

B. Missing Documents

Based on the public record and a review of productions in this case, Plaintiffs have also identified the following documents or categories of documents which are responsive to the Opt-Out Request but which Defendants did not produce. *See Defenders of Wildlife v. U.S. Dep't of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004) (“[T]he appearance of additional documents after its search is certainly probative that the search may not have been adequate.”) (internal citations omitted). To narrow the scope of litigation, please provide an explanation by August 12th of why these records were not produced and whether Defendants are willing to search them for responsive Opt-Out Records and provide a report of the search results by September 1, 2011 with a production deadline of September 15th.

1. *Correspondence to and from DHS Secretary Janet Napolitano and other high-level DHS or ICE officials*. Public statements quoting DHS Secretary Janet Napolitano have made clear that she was involved in formulating the opt-out policy and communicating it to state officials and the public.⁴³ Yet, neither DHS nor ICE produced emails to or from

⁴⁰ See FBI, *Office of Law Enforcement Coordination*, <http://www.fbi.gov/about-us/office-of-law-enforcement-coordination>.

⁴¹ See FBI, *Louis E. Grever – Executive Assistant Director, Science and Technology Branch*, available at <http://www.fbi.gov/about-us/executives/grever/> (last visited Aug. 7, 2011).

⁴² *Id.*

⁴³ See, e.g., Shankar Vedantam, Wash. Post, *U.S. Deportations Reach Record High*, Oct. 7, 2010 (quoting Secretary Napolitano’s statement: “We do not see [Secure Communities] as an opt-in, opt-out program.”).

Secretary Napolitano or other records, including records containing meeting or call notes, of the Secretary's communications related to opt-out. Neither DHS nor ICE produced emails originating from ICE Director John Morton or the ICE Executive Director for Secure Communities, David Venturella. Mr. Morton, among other tasks, has "sought to prioritize ICE's immigration enforcement efforts around the removal of criminal offenders."⁴⁴ Mr. Venturella's title should have made him an obvious custodian for any opt-out related search and he has made numerous public statements related to Secure Communities.⁴⁵

2. *April 2, 2009 Question For the Record and related correspondence.* An ICE official testified to Congress about Secure Communities on April 2, 2009, and specifically addressed the question of whether states and localities could opt-out of the program.⁴⁶ Moreover, during that hearing on April 2, 2009, David Venturella, then-Executive Director of Secure Communities for ICE also stated that "the local law enforcement officials, as well as the local governments can opt out of participating in this type of program. So [Secure Communities] is not a mandatory program, it is certainly voluntary." *Id.* at 994. Based on Plaintiffs' review, however, the only record of the oral and written testimony, or preparations for the ICE's testimony at that hearing was a question for the record attached to an email between unnamed ICE personnel dated August 26, 2010.⁴⁷ There must have been discussions related to the preparations for the April 2, 2009 hearing that led Executive Director Venturella to state unequivocally that state *and* local governments could opt-out of Secure Communities. It is also likely that there was correspondence related to the formulation of the appropriate response to the question for the record submitted by Representative David Price in connection with that hearing, and possibly other follow-up.

3. *Additional Records Related to the Congressional Briefings.*

Several congressional briefings specifically addressed the issue of opt-out. ICE has not established that an adequate search was conducted for records created in connection with these briefings:

- August 4, 2010 Briefing for the staff of the office of Senator Diane Feinstein (D-CA), Senator Barbara Boxer (D-CA), Representative Jack Speier (D-CA), and Representative Ann Eshoo (D-CA) on Secure Communities and how jurisdictions

⁴⁴ ICE, *Director, John Morton*, available at <http://www.ice.gov/about/leadership/director-bio/john-morton.htm>.

⁴⁵ See, e.g., Dep't of Homeland Security Appropriations for 2010: Hearing on Priorities Enforcing Immigration Law Before the H. Appropriations Comm. Subcommittee On Homeland Security, 111th Cong. 917-1280, at 1238 (2009) ("Appropriations Hearing") (Testimony of David Venturella).

⁴⁶ *Id.*

⁴⁷ See ICE FOIA 10-2674.001831-ICE FOIA 10-2674.001832.

can opt-out of Secure Communities with ICE Secure Communities Director David Venturella;⁴⁸

- November 30, 2009, December 11, 2009, March 12, 2010 and May 21, 2010 briefings for Representative Zoe Lofgren's (D-CA) staff;⁴⁹
 - October 1, 2011 House Judiciary Committee Majority Staff briefing;⁵⁰
 - October 14, 2010 briefing for staff of Senator Mark Warner (D-VA) and Representative James Moran (D-VA) and staff on Arlington, VA request to opt-out;⁵¹ and
 - September 24, 2010 Secure Communities Briefing for the New York Congressional Delegation.⁵²
4. *Responsive ICE correspondences prior to July 2009.* Based on Plaintiffs' review of the Opt-Out Records, ICE did not produce any correspondence from earlier than July 2009. The Defendants' Letter and the agencies' declarations, *see* note 3, do not provide information about a search start-date. The absence of ICE documents relating to opt-out from earlier than July 2009, when the issue of opt-out was clearly discussed within the agency and with Congress as early as April 2, 2009, however, indicates that ICE might have unjustifiably failed to search for records created before July 2009 when searching for the Opt Out Records.
5. *Correspondence to and from State and Local Officials.* An email that was obtained by advocates indicates that there was correspondence between the Washington D.C. Metropolitan Police Department, and possibly other state or local officials, discussing ICE's policy that Secure Communities would be mandatory. Yet this correspondence was not produced in the Opt-Out Productions. *See* Email from Amy Loudermilk, D.C. Coalition Against Domestic Violence, to Matthew Bromeland, Washington D.C. Metropolitan Police Dep't, dated Mar. 24, 2010 ("Loudermilk Email"), Ex. H to Horton Decl. (filed Feb. 11, 2011) [dkt. 48-19]. Records discussing the absence of an opt-out policy are equally encompassed by the definition of Opt-Out Records and Defendants' searches should have been constructed to identify such records, in addition to records discussing an affirmative opt-out procedure. It is equally unconvincing that ICE communicated its position that Secure Communities "would be" mandatory in 2013 to Chief Lanier, but not to other state or local officials.
6. *The "San Francisco Memo" and records related to the "San Francisco Memo."* An email produced as part of the Opt Out Production refers to a final San Francisco strategy

⁴⁸ See ICE FOIA 10-2674.0004494-ICE FOIA 10-2674.0004496, at ICE FOIA 10-2674.0004496 (ICE Office of Congressional Relations, *Close of Business Report*, Jul. 30, 2010).

⁴⁹ See ICE FOIA 10-2674.0004828- ICE FOIA10-2674.0004446; ICE FOIA 10-2674.0004494-ICE FOIA 102674.004496, at ICE FOIA 10-2674.0004495.

⁵⁰ ICE FOIA 10-2674.0005473- ICE FOIA 10-2674.0005475, at ICE FOIA 10-2674.0005475 (ICE Office of Congressional Relations, *Close of Business Report*, Sept. 28, 2010).

⁵¹ See ICE FOIA 10-2674.0005873- ICE FOIA 10-2674.0005875 (ICE Office of Congressional Relations, *Close of Business Report*, Oct. 7, 2010).

⁵² ICE FOIA 10-2674.0005384- ICE FOIA 10-2674.0005387.

memo.⁵³ The strategy memos for New York and Cook Country that were produced specifically discuss opt out and the manner in which to address opt out requests with the localities and State. San Francisco was equally as important in the opt out debate and the San Francisco strategy memo can only discuss the approach ICE, FBI and DHS will take with the locality and state when responding to the various opt out questions. The underlying memo, along with correspondences related to the drafting and use of the memo, were not produced with the Opt Out Production.

7. *Agreements supplementing DHS-DOJ-DOS Interoperability Memorandum of Understanding.* A Memorandum of Understanding among the Department of Homeland Security, Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, and the Department of State Bureau of Consular Affairs for Improved Information Sharing Services dated July 1, 2008 (“Interoperability MOU”),⁵⁴ produced by Defendant ICE to Plaintiffs on October 22, 2010, establishes procedures for interoperability—the technical linking of DHS and FBI databases that supports the Secure Communities program. The Interoperability MOU references the Joint Configuration Item List (CIL), which contains “other agreed-upon technical and business documents” allowing the exchange of data among the signatory agencies. Defendants have given no indication that DHS, FBI or ICE searched the joint CIL, or produced any documents contained therein, despite the fact that the CIL is likely to contain “documents, memoranda, manuals, and communications referencing the technological capacity of ICE and the FBI to honor requests to opt-out, opt-in or limit participation in Secure Communities.” See Dec. 17, 2011 Order.
8. *Records relating to FBI Record-Linking “Option 2” Decision.* A 2010 FBI Advisory Policy Board (APB) Briefing Paper identifies two options—one resulting in automatic (or mandatory) Secure Communities checks, the other allowing the state or local law enforcement agency to choose whether Secure Communities immigration checks would be run for a particular arrestee or category of arrestees.⁵⁵ Later documents indicate that the APB voted for “Option 2”—to recommend that the FBI make Secure Communities checks automatic (or mandatory) and that the FBI director adopted the APB recommendation.⁵⁶ Both ICE and FBI officials subsequently cited this APB recommended policy as the reason why Secure Communities was mandatory and there could be no opt-out for localities or states.⁵⁷ Despite the central importance of the APB vote to the opt-out question, the Opt-Out Production does not include any record of the actual APB vote, any discussion of that vote, the FBI Director’s decision to adopt the APB recommendation or the FBI’s communication of the APB decision to DHS or ICE.
9. *Records referencing Chief of Police George Gascon of the City and County of San Francisco and his proposed Enhanced Public Safety (EPS) Pilot Program.* Chief

⁵³ ICE FOIA 10-2674.0012669.

⁵⁴ ICE FOIA 10-2674-001718-ICE-FOIA 10-2674.001736.

⁵⁵ See CJIS Advisory Policy Board, *Staff Paper*, June 4, 2009, FBI-SC-1333-1336.

⁵⁶ See, e.g., CJIS Joint Records Linking Meeting, Oct. 21, 2010, FBI-SC-1885-1889.

⁵⁷ *Id.*

Gascon's EPS Pilot Program proposed a more limited version of Secure Communities. Chief Gascon wrote on July 8, 2010 that he intended to submit the proposal to ICE.⁵⁸ To the extent that there are communications related to allowing a state or locality to limit participation in Secure Communities (for example, by limiting the categories of offenders whose fingerprints are checked against DHS databases, or to otherwise limit the application of the program), such as the Gascon EPS proposal, these records should have been produced with the Opt-Out Production. However, no records related to the Gascon proposal were produced.

10. *"Filter" Documents.* A December 8, 2009 Email from Rachel Canty to Randi Greenberg mentions a document that was produced for the "filter."⁵⁹ Based on a recently produced document, this "filter" refers to a variation of an opt-out request. The New York State Information Bureau asked on December 9, 2010 if the FBI could filter the IAFIS submissions in order to only submit transactions for convicted persons.⁶⁰ Therefore, the filter documents discussed in the December 8, 2009 ICE email should have been produced, including any emails or documents related to the technological capacity to filter submissions.
11. *Documents from ICE or DHS responsive to definition of "Opt-Out Record"-- "technical capacity of ICE and the FBI to honor requests to opt-out, opt-in or limit participation in Secure Communities."* Several documents produced by the FBI discuss in detail the technical capacity of the FBI and other agencies to implement Secure Communities and interoperability, yet few records were produced from DHS or ICE which discuss the technical side of implementing Secure Communities.⁶¹

⁵⁸ See Letter from George Gascon, Chief of Police of San Francisco, to Major Cities' Chiefs, July 8, 2010 (attached) (proposing a "more restricted" version of Secure Communities).

⁵⁹ See ICE-FOIA 10-2674.0013464.

⁶⁰ See FBI-SC-FPL-43. See also ICE FOIA-10-2674.131418-13423, ICE-FOIA10-2674.0013419.

⁶¹ For example, as September 3, 2006 interim Data Sharing Model (iDSM) served as a precursor to Secure Communities interoperability. One record explained that "[t]he iDSM supplied increased data sharing capabilities as additional Interoperability enhancements were implemented." See FBI-SC-1347-1355, FBI-SC-1348. The agencies' ability to share data is directly related to the technical capacity of ICE and the FBI to honor opt-out requests. Similarly, a June 2008 Informational Topic Paper explains that to "incrementally establish record links" the "transactions are directed to the alternate agency." FBI-SC-1333-1336, at FBI-SC-1335 (CJIS Advisory Policy Board, *Staff Paper*, June 4, 2009). This record further references DHS: "[W]hen DHS removes a record, a delete request will be sent to NGI and the link will be removed. Additionally, audits will be conducted periodically on both systems to ensure that proper maintenance actions are being performed." DHS, however, did not produce records related to record linking, the agency's technical capacity or its process for maintaining accurate records. *Id.*

C. Documents Plaintiffs have Requested and Defendants Stated Do not Exist.

1. *District of Columbia paper submitted to the CJIS Advisory Policy Board proposing to omit the fingerprints of certain individuals from being forwarded from CJIS to ICE.* Although ICE represented it never received such a paper in response to Plaintiffs' email inquiry in April, an email dated July 27, 2010 from Randi Greenberg states, "We need to discuss the paper [Washington D.C.] originally *submitted* to CJIS requesting to filter out simple assault domestic violence. . . ." ⁶² Additionally, an email from Randi Greenberg on May 18, 2010 stated "Correct- DC *has submitted* a paper to the CJIS Advisory Policy Board proposing to omit simple assault domestic violence cases from being forwarded from CJIS to ICE. The board will review and vote at an upcoming meeting." ⁶³

2. *Any version of a memorandum entitled "Secure Communities - Mandatory in 2013" that was relied on for agency policy.* Plaintiffs requested in an email to Defendants on April 15, 2011 a final version of this memorandum, drafts of which were included in the Opt-Out Production at Bates ranges:

ICE FOIA 10-2674.0002509 - ICE FOIA 10-2674.0002521
 ICE FOIA 10-2674.0002522 - ICE FOIA 10-2674.0002533
 ICE FOIA 10-2674.0002534 - ICE FOIA 10-2674.0002547
 ICE FOIA 10-2674.0002548 - ICE FOIA 10-2674.0002555
 ICE FOIA 10-2674.0003146 - ICE FOIA 10-2674.0003148
 ICE FOIA 10-2674.0010795 - ICE FOIA 10-2674.0010803
 ICE FOIA 10-2674.0010842 - ICE FOIA 10-2674.0010849
 ICE FOIA 10-2674.0012494 - ICE FOIA 10-2674.0012503

Defendants indicated that no final memorandum exists. It is unlikely that a memo related to such a critical policy decision was never finalized or provided to any custodians within ICE or DHS.

3. *Letter from the Boston Police Commissioner to Marc Rapp.* According to one document produced in the Opt Out Production, the Boston Police Commissioner wrote a letter to Assistance Secretary John Morton on August 5, 2010 to express concerns with the Secure Communities program. ⁶⁴ The document indicates that the letter was not "officially" received by ICE's Secure Communities office, but ICE was working to respond to the Boston Police Department's concerns. ⁶⁵ Even if the letter was received by a custodian outside of the Secure Communities program office, the description of the letter provided in the released record references concerns with removals of non-citizens with minor convictions, a concern often related to a local jurisdictions' interest in opting out. Thus, it is directly responsive to the Court's December 17, 2010 Order.

⁶² ICE FOIA-10-2674.131418-13423, ICE-FOIA10-2674.0013419 (emphasis added).

⁶³ ICE FOIA-10-2674.0007274-7276, ICE-FOIA10-2674.0007274 (emphasis added).

⁶⁴ ICE-FOIA-10-2674.0002142-2144, at ICE-FOIA 10-2674-0002144.

⁶⁵ Id.

D. Additional Descriptions of Information Systems and Files Structure

Defendants' January 26, 2011 letter provided insufficient information about the agencies' file structures and information systems for Plaintiffs, and ultimately the Court, to understand the adequacy of the search. Each agency must provide reasonably detailed information that "identif[ies] the searched files and describe[s] at least generally the structure of the agency's file system' which renders any further search unlikely to disclose additional relevant information." *Katzman v. CIA*, 903 F. Supp. 434, 438 (E.D.N.Y. 1995) (quoting *Founding Church of Scientology v. IRS*, 792 F.2d 146, 151 (D.C. Cir. 1986), *aff'd*, 484 U.S. 9 (1987)). Defendants' descriptions of the information systems and file structures do not satisfy this standard. Specifically, Plaintiffs request the following information:

1. ICE:

- a. General overview of the agency's file structure including database document retention;
- b. Explanation of the file systems searched by the five general departmental custodians (ERO, OPLA, OSLTC, OCR and OPA);
- c. Specific nature of the email files searched (incoming, outgoing, archived, etc.); and
- d. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

2. FBI

- a. Specific file structure and information systems;
- b. Specific divisions and offices that actually conducted searches;
- c. Specific types of communications that were manually reviewed by CJIS; and
- d. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

3. DHS:

- a. Specific file structure and information systems;
- b. Specific branches within PIMS that were actually searched; and
- c. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

4. OGC:

- a. Specific file structure and information systems;
- b. Specific nature and results of the Immigration Division's attempted search;
- c. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

5. EOIR

- a. Specific file structure and information systems;
- b. Specific databases that were actually searched;
- c. Specific nature of the emails files searched (incoming, outgoing, archived, etc.);
- d. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

6. **OLC**

- a. Specific file systems and databases that were searched; and
- b. Whether any SharePoint data sites, or other collaborative or shared file shares or websites, were searched and, if so, in what manner those SharePoint data sites were searched.

D. Search Terms

Defendants' January 29, 2011 letter provided extremely limited information about the search terms each agency or office used. Please provide a reasonably detailed and specific explanation of the actual search terms used by each office, including variation used by only certain custodians. The level of specificity Defendants provide must be "reasonably detailed" to include the search terms and the type of search performed, and "aver that all files likely to contain responsive materials were searched." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). Such level of detail, specifically including a list of the search terms, affords Plaintiffs a fair opportunity to challenge the adequacy of the search and allows the Court to determine if the search was adequate. *Id.*

II. RAPID PRODUCTION LIST

A. Additional Custodians

According to the Pavlik-Keenan Declaration, ¶ 31, ICE only identified four offices that it searched for the RPL Records: the Secure Communities Program office, the Office of Congressional Affairs, the Office of Public Affairs and the Office of the Chief Financial Advisor. ICE also stated that its RPL production included records previously located during its initial search, but did not indicate which custodians this included. *Id.* Finally, none of the other Defendants explained which offices were searched. In light of the scope of the RPL, as well as multiple relevant offices within the Defendant agencies, it is facially inadequate for the Defendants to assert that only four ICE offices held responsive records. Moreover, the other agencies must identify which offices were searched in order for Plaintiffs, and the Court, to evaluate the adequacy of their searches.

B. Missing Records

Based on a review of the public records and productions in this case, Plaintiffs have also identified documents or categories of documents, which are responsive but have not been produced. Please provide an explanation of why these items are missing from the RPL Records productions by August 12th to narrow the scope of litigation.

1. Copies of agreements “related to” Secure Communities.

- a. The Defendants produced few specific agreements in the RPL Productions governing the inter-agency data sharing, technical capacity, and civil rights protections. Secure Communities has been in place, formally or through a test pilot program, since 2006. The two agreements produced—(1) an October 3, 2008 Interface Control Agreement between DHS and FBI;⁶⁶ and (2) the July 1, 2008 Memorandum of Understanding between DHS, FBI and DOS governing interoperability⁶⁷—are unlikely to encompass the full range of agreements between the federal agencies that participate in Secure Communities.
 - b. Agreements supplementing DHS-DOJ-DOS Interoperability Memorandum of Understanding. *See infra*, I.B.6.
 - c. Copies of participation agreements by pilot program jurisdictions. The FBI produced an agreement that establishes an agreement between a pilot site and the FBI to allow the FBI to share fingerprint information with DHS. Based on Plaintiffs’ review, only one agreement was produced, yet Secure Communities was tested on a pilot basis in 20 jurisdictions in Texas and several other jurisdictions nationally.⁶⁸
 - d. The only agreements between states and the FBI that were produced as part of the RPL (or Opt Out) Productions were the state agreements with CJIS governing fingerprinting. Likewise, supplemental agreements, subsequent modifications or amendments should have been produced. Additionally, any other agreements governing information sharing with the States and the FBI, DHS or ICE that provide for limitations on information sharing or the technical ability to limit information sharing, are covered within the RPL’s provision for agreements related to Secure Communities.
2. Although some correspondences with the states and ICE or FBI were produced that included draft Memorandums of Agreements (MOA), it does not appear that records or communications specifically discussing Section 1.0 of the Secure Communities Standard Operating Procedure or Section VIII of the MOA were produced. *See* RPL, VIII.
 3. ICE produced some records that relate to appropriations, committee reports and cost of Secure Communities, interoperability technology and grant options, generally, for states and localities considering the program. These records are not directly responsive to Section IX of the RPL, requesting: “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.” It does

⁶⁶ FBI-SC-11241-11346.

⁶⁷ ICE FOIA 10-2674-001718- ICE FOIA 10-2674-1736.

⁶⁸ See FBI-SC-17174.

not appear that records specifically responsive were produced, perhaps because the relevant Field Offices were not searched.

C. Records Identified But Not Produced

Based on a review of the RPL Production, Plaintiffs have identified a number of records that are described in the existing documents but which were not produced. Defendants have an obligation to locate and produce records that are clearly identified the existing production and Defendants cannot, in good faith, ignore leads to responsive records that are both clear and certain. *See Kowalczyk v. Dep't of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996). Please inform Plaintiffs by August 12, 2011 whether Defendants will locate and process responsive records that are described in the existing RPL Production but which were not produced. Examples of these records include the following:

1. *Preliminary NGI Documents*. An email discussing opt-out and NGI refers to "preliminary documents" circulated for comment and track-change editing to "BAE/BAH team." No records with this description, likely date range or custodian were produced.⁶⁹
2. *Intra-Agency Records Related to Record-Linking*. The document states that CJIS will forward a copy of the Advisory Policy Board Record Linking document to ICE and US-VISIT. Plaintiffs did not receive from ICE, or the FBI, correspondence between the FBI, ICE and US-VISIT with the record linking subject matter.⁷⁰
3. *"Participation Option Language."* An email from ICE references "Participation Option Language" provided to Secure Communities disseminated during a July 29, 2010 conference call to participants.⁷¹ The document to which the email refers seems directly related to the ability for States or localities to participate in Secure Communities and thus directly responsive to the Opt Out request.
4. *Trip Reports*. A January 29, 2010 Memo entitled "A Strategic Approach to Encourage New York City to Participate in Secure Communities" mentions a June 18, 2009 meeting between ICE Secure Communities Headquarters and New York's DCJS.⁷² Footnote 1 states "trip reports were filed for each of these meetings, in accordance with standard operating procedures," but none have been produced related to the New York meetings nor the numerous other trips that ICE and DHS staff have participated in as part of the agencies' Secure Communities outreach. This request for records overlaps with the Opt Out Records.
5. *Revisions to Colorado MOA*. This document refers to an attachment with proposed revisions to the MOA aimed to address the concerns of Colorado residents that the

⁶⁹ ICE FOIA10-2674.13456

⁷⁰ FBI-SC-1241-1245:

⁷¹ ICE FOIA 10-2674.0006416- ICE FOIA 10-2674.0006417.

⁷² ICE FOIA 10-2674.0012735- ICE FOIA 10-2674.0012748, ICE FOIA 10-2674.0012738.

program would be mandatory without an option to opt out.⁷³ The attachment was not included with the original document, nor have we been able to locate it in our review of the productions.

D. Search Terms

Defendants have provided extremely limited information about the search terms each agency or office used for the RPL Records searches. Please provide a reasonably detailed and specific explanation of the actual search terms used by each office, including variation used by only certain custodians. *See Oglesby*, 920 F.2d at 68.

E. Additional Descriptions of Information Systems and Files Structure

Defendants have also provided insufficient information about the agencies' file structures and information systems to understand the adequacy of the search. Defendants must provide, as relevant, further information regarding the information systems and file structures, as detailed *supra* in section I.C.

* * *

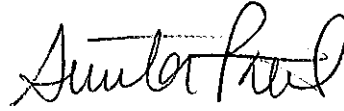
In light of the time sensitive nature of these records as well as the public advocates and state and local officials currently waiting for the requested information,⁷⁴ by August 12, 2011, please provide a comprehensive account of Defendants' search terms used and additional descriptions of information systems and file structures for both the Opt Out Production and RPL Production. Second, to avoid or narrow further litigation, inform us by August 12th which, if any, new searches the agencies are willing to conduct based on the deficiencies Plaintiffs have identified and whether the Defendants will agree to a September 1st deadline to complete the agreed upon new searches and provide a report to Plaintiffs on the results of the searches with a deadline of September 15th for production of the new records.

Plaintiffs are also available to discussion these issues by phone this week.

⁷³ ICE FOIA 10-2674.0003235.

⁷⁴ *See, e.g., 7/27/2011 Hr'g Tr.*, at 7-8 (explaining recent developments confirming the public need for information about Secure Communities, including the Immigration and Customs Enforcement advisory committee hearings being scheduled in cities across the country this month, an advisory committee meeting scheduled for August 29, 2011, and ongoing Department of Homeland Security Office of the Inspector General and Government Accountability Office reviews of Secure Communities, specifically addressing the subject matter of the disclosures ordered in the Court's July 11, 2011 Order); Plaintiffs' July 19, 2011 Letter to the Court (describing continuing public need for information related to Secure Communities based on several factors, including the DHS OIG review of the misrepresentation made in connections with the opt-out policies and the ongoing debate between states that have opted out of Secure Communities and the federal government).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sunita Patel".

Sunita Patel

cc: Joseph Cordaro, Assistant United States Attorney
United States Department of Justice *(by e-mail)*

Anthony J. Diana, Therese Craparo, Lisa Plush, Jeremy D. Schildcrout, Mayer Brown
LLP *(by e-mail)*

Peter L. Markowitz, Bridget P. Kessler, Immigration Justice Clinic Benjamin N. Cardozo
School of Law *(by e-mail)*

Gitanjali Gutierrez, Center for Constitutional Rights *(by e-mail)*