

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

NATIONAL DAY LABORER ORGANIZING :  
NETWORK; CENTER FOR CONSTITUTIONAL :  
RIGHTS, and IMMIGRATION JUSTICE :  
CLINIC OF THE BENJAMIN N. CARDOZO :  
SCHOOL OF LAW, :

Plaintiffs,

v.

UNITED STATES IMMIGRATION :  
AND CUSTOMS ENFORCEMENT AGENCY, :  
UNITED STATES DEPARTMENT OF :  
HOMELAND SECURITY, FEDERAL BUREAU :  
OF INVESTIGATION, EXECUTIVE OFFICE :  
FOR IMMIGRATION REVIEW, and OFFICE OF :  
LEGAL COUNSEL, :

Defendants.

No. 10 Civ. 3488 (SAS)

**DECLARATION OF  
CRYSTAL RENE SOUZA**

I, Crystal Rene Souza, depose and say as follows:

1. I am the Supervisory Freedom of Information Act (FOIA) Specialist at the U.S. Department of Justice (Department or Agency), Executive Office for Immigration Review (EOIR). This declaration supplements and hereby incorporates my three prior declarations submitted in this case with regard to the FOIA procedures for processing of documents.

2. EOIR is comprised of seven components: the Office of the Chief Immigration Judge (OCIJ); the Board of Immigration Appeals (BIA); the Office of the Chief Administrative Hearing Officer (OCAHO); the Office of the General Counsel (OGC), which houses the FOIA Service Center; the Office of Management Programs (OMP); the Office of Planning, Analysis and Technology (OPAT), which houses the Office of the Chief Information Officer (CIO); and the Administration Division. EOIR is not a litigating component of the DOJ. The mission of EOIR is to conduct immigration hearings in accordance with the regulations at 8 C.F.R. 1001.

3. EOIR has a centralized processing FOIA Service Center, which processes all FOIA requests. In fiscal year 2010, EOIR received 17,498 requests and processed 17,313.

4. When EOIR receives a FOIA request, an OGC staff member opens and date-stamps the request. The FOIA request is then placed in the incoming FOIA request box of the FOIA Service Center. Upon receipt of the request, the FOIA Service Center scans the request into EOIR's computer database system as a Portable Document Format (PDF) image, and designates a control number for the request. PDF is a file format that reproduces a document as an electronic image, and is typically viewed with Adobe Acrobat software. In essence, a PDF is a static "snapshot" of a particular document.

5. The FOIA Clerk enters into the FOIA database the FOIA requester's name and address as well as the name and number of the alien that is the subject of the request. If the FOIA request is not for a Record of Proceeding ("ROP") involving a particular alien, then a brief description of what is being requested is entered into the FOIA database.

6. Most FOIA requests seek copies of ROPs located at the Immigration Courts. In such cases, a FOIA specialist conducts an electronic search for a ROP using the FOIA database, which cross-references the information entered into the FOIA system against the EOIR Case Access System for EOIR (CASE) database. If the request seeks information other than an ROP, the step of cross referencing the information against the CASE database does not occur.

7. At this point, the FOIA staff notes the FOIA control number on the original FOIA request and generates an acknowledgement of receipt with one of the following responses: 1) a processing request letter; 2) a no record letter; or 3) a letter requesting additional information. The response letter contains the FOIA control number and signature of the individual that

entered the FOIA request into the FOIA database. The FOIA Service Center then mails the response letter to the FOIA requester and maintains a photocopy with the original FOIA request.

8. Requests for information other than ROPs are tasked to the component point(s) of contact (POC) most likely to have possession over the documents requested. The POC receives a copy of the FOIA request and a cover memo describing the specific information it should provide to the FOIA Service Center. Unless the FOIA request specifically designates production in an electronic format, the FOIA Service Center requests that the POC provide a photocopy of relevant information to the FOIA Service Center. Requests for electronic format documents usually specify the desired format for the production of the responsive material. If EOIR possesses the capacity to provide the response in the requested format the material is processed in accordance with the request. If EOIR does not have the ability to produce the information in the requested format, it contacts the requester to see if an alternate method of production is acceptable. For example, if the request involves statistics or other data from the EOIR CASE database, which contains the Immigration Court and the Board of Immigration Appeals computer tracking system, the FOIA Service Center obtains the information in an electronic format (often Excel) and provides the information on a CD to the requester.

9. POCs provide potentially responsive material to the FOIA Service Center for processing. Upon receipt, the FOIA Service Center scans the information into the FOIA database, generating a PDF copy of the material. FOIA Specialists review the documents, remove non responsive material, identify information exempt from disclosure under section 552(b) of FOIA, and use Adobe 8 or Nuance to apply redactions. The FOIA specialists then redact any exempt information from the PDFs by the use of a command that replaces the exempt information with a black box. EOIR then provides the redacted PDFs to the FOIA requester.

10. The process of creating a PDF flattens the original document and eliminates the metadata therein. This is true regardless of whether the PDF was created from a paper or an electronic record. For FOIA purposes there is no way to “redact” material on a native document; instead, the FOIA specialist would be required to *replace* the exempt information, thereby creating a new document. A PDF document can be made text searchable through the use of an Optical Character Recognition (OCR) function, which recognizes letters and numbers in the PDF and renders it searchable. The FOIA Staff currently scans the documents in Adobe Acrobat 8 then uses Nuance Professional PDF Converter 6 (Nuance) to convert the scanned copies into a searchable format. Redactions can be made using either Adobe 8 or Nuance. Until EOIR adopted Nuance, however, it did not use the OCR function in Adobe 8 because the software often dropped and failed to properly convert text; therefore, responsive PDFs were not searchable.

11. In early November 2010, EOIR adopted Nuance. This new tool allows the FOIA Service Center to create stable, searchable PDFs with OCR capability. Furthermore, Nuance allows FOIA Service Center personnel to import electronic records directly into the FOIA processing system without producing a paper copy that has to be scanned as a PDF. When the records are imported into Nuance, a PDF document is created, thus eliminating pre-existing metadata. Nuance contains tools whereby FOIA Service Center personnel redact information on PDFs pursuant to FOIA exemptions.

12. On or about February 12, 2010, EOIR received a FOIA request from National Day Laborer Organizing Network (NDLON), dated February 3, 2010. On or about February 19, 2010, EOIR mailed a response stating that it was processing the request for documents under assigned FOIA control number 2010-5934.

13. EOIR initially interpreted, or “scoped,” the FOIA request to focus on items for which it possessed potentially responsive material. In accordance with its routine practices, the FOIA Service Center sent requests to EOIR POCs and directed them to conduct a search for all correspondence and e-mail communications involving Secure Communities. The FOIA Service Center requested that component POCs forward a photocopy of all responsive documents to the FOIA Service Center. In addition, the FOIA Service Center requested that OPAT search the EOIR databases for any responsive information.

14. Prior to EOIR completing its processing of the FOIA request, on or about May 6, 2010, EOIR received notice that the plaintiffs had filed a Federal lawsuit regarding the request. EOIR issued a litigation hold directing preservation of all information related to Secure Communities. EOIR then reviewed the material collected to that point and determined that the largest amount of potentially responsive information consisted of e-mail. Accordingly, EOIR began exploring the possibility of collecting the material electronically.

15. At the time plaintiffs commenced their lawsuit, EOIR did not have access to any e-discovery tools. EOIR thus sought to collect information using the Microsoft products already used by its employees. Because the responsive information largely consisted of e-mails contained within the program Microsoft Outlook, EOIR developed instructions for its employees to collect responsive emails as Personal Storage Table (PST) files. A PST file is a file folder within Microsoft Outlook that contains e-mails, contacts, calendars, and other Outlook data.

16. Although plaintiffs’ FOIA request did not request metadata, the collection of e-mails in PST format preserved the underlying metadata. Alternatively, if EOIR had directed its employees to forward responsive e-mails to the FOIA Service Center, the underlying metadata would have been altered. To facilitate processing and assist with reviewing the collected PSTs,

the FOIA Service Center created a new Microsoft Outlook box that could be used to load all electronic responses. By collecting PST files and storing them in the new Outlook box, EOIR was able to maintain the responsive emails without altering the underlying metadata.

17. On or about December 9, 2010, the Court directed EOIR to produce to plaintiffs, by January 17, 2011, records relating to the ability of states or localities to decline or limit participation in Secure Communities ("opt-out records"). The order included a search cut-off date of October 15, 2010.

18. In response to the "opt-out" order, the FOIA Service Center directed employees to conduct a new search for responsive material and provided specific instructions regarding the collection of responsive electronic information. After reviewing the paper documents that EOIR employees produced in response to the original search, the FOIA Service Center identified a list of custodians to conduct a new electronic search for opt-out records. The FOIA Service Center sent out instructions to these custodians directing them to collect and download all electronically stored e-mail data from this search in a PST format. Using the PST format, EOIR uploaded the files with their metadata into the new Outlook mailbox for review and processing.

19. The FOIA Service Center used the Nuance software to process the opt-out records. However, EOIR does not possess any tool that allows for the application of redactions to an Outlook PST file. EOIR thus initiated the process by creating a scanned PDF image with its Nuance software. While the generating of a PDF through the Nuance program allowed EOIR to apply FOIA's exemptions, the process eliminated the underlying metadata, which had been retained when the custodian collected the information in PST format.

20. EOIR's current resources do not allow for viewing, much less redacting, the metadata contained in the PST file. Thus, EOIR is not able to meet its statutory obligation to

redact exempt information from the metadata itself, such as custodian and source names, which might be exempt under 5 U.S.C. § 552(b)(6). Additionally, despite reasonable efforts, EOIR has not been able to locate or test other software that could allow it to process its responsive material in accordance with the Court's order.


21. EOIR and its components do not have access to software that captures metadata and allows for production as a separate "load file" to accompany a static image of a particular document, such as a Tagged Image File Format (TIFF) document, which the FOIA requester could load into a document management software such as Concordance or Opticon.

22. EOIR's Nuance software allows for the production of a TIFF; however, when EOIR tested the Nuance application it discovered that the initial step in this process is the same as the PDF creation process, which means that the conversion removes the metadata that is preserved in the PST format. The TIFF becomes a flat file with its own metadata that is not associated with the original metadata contained in the PST files. Moreover, EOIR's attempts to convert emails into a TIFF format revealed that conversion to TIFF takes a multiple page e-mail and breaks each page into a separate TIFF file. Complicating the matter further, the pages are not saved as one grouped TIFF document. To remedy this problem, EOIR must perform twenty-six additional steps to take a multi-page PDF document, convert it to a TIFF, and back into one document. Moreover, as discussed above, unlike a PDF document, a TIFF document is not OCR searchable.

23. As a result of the timing of plaintiffs' request for metadata, which was over ten months after the submission of their FOIA request, EOIR has spent additional time and resources reviewing the responsive material. The collection of data with metadata intact, subsequent to the original collection, has resulted in the collection of duplicate and nonresponsive material.

Furthermore, because the data was initially collected in paper, EOIR has had to cross-reference the material to ensure that custodians produced the electronic versions of the paper documents. Additionally, some material only existed in paper copy, which resulted in the FOIA Service Center having to convert these documents into scanned PDF documents. As a result, EOIR has already committed hundreds of hours to review the documents manually.

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



Crystal Rene Souza  
Supervisory FOIA Specialist  
Executive Office for Immigration Review

3/24/11  
Date