
EXHIBIT A

Bridget Kessler

From: Bridget Kessler [bkessle1@yu.edu]
Sent: Tuesday, August 31, 2010 9:08 AM
To: Connolly, Christopher (USANYS)
Cc: Bridget Kessler; Sunita Patel; Gitanjali Gutierrez; Peter L Markowitz; phillipstarkweather@gmail.com; hannahweinstein@gmail.com; james.f.horton@gmail.com
Subject: NDLO v. ICE -1:10-cv-3488

Dear Chris,

I am writing about the remaining portions of the Rapid Production List. Since our agreement was reached on July 7, 2010, ICE asked for an additional two weeks beyond the agreed upon production date of July 30, 2010, to process and produce the responsive records. I understood from our phone conversation on August 13, 2010 that ICE would set a date for that production sometime last week. It has been over four weeks since the agreed upon date for production, however, and ICE has neither produced the records nor set a date for the production. Please let us know, per the agreement reached on July 7, 2010, the date which ICE will produce the remainder of the Rapid Production List to Plaintiffs.

Redacted

Best,

Bridget P. Kessler
Clinical Teaching Fellow
Immigration Justice Clinic
Benjamin N. Cardozo School of Law
55 Fifth Avenue
New York, New York 10003
Tel: 212-790-0213

Fax: 212-790-0256

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EXHIBIT B



Phillip Starkweather <phillipstarkweather@gmail.com>

NDLON v. ICE -1:10-cv-3488

Bridget Kessler <bkessle1@yu.edu>

Wed, Sep 1, 2010 at 1:11 PM

To: "Connolly, Christopher (USANYS)" <Christopher.Connolly@usdoj.gov>

Cc: Peter L Markowitz <pmarkowi@yu.edu>, Sunita Patel <SPatel@ccrjustice.org>, Gitanjali Gutierrez <ggutierrez@ccrjustice.org>, "Weinstein, Hannah" <hannahweinstein@gmail.com>, "Starkweather, Phillip" <phillipstarkweather@gmail.com>, James Horton <james.f.horton@gmail.com>

Hi Chris,



Redacted

In our meeting with ICE OPLA on July 27, 2010 and again yesterday, we provided some guidance as to where ICE might locate records related to the issue of whether states or localities can opt out of Secure Communities. We identified several states and localities that have raised the issue of opt out, thereby possibly generating communications related to the question, including Washington D.C. and San Francisco and Santa Clara, California. In the cover letter to the California Secure Communities Memorandum of Agreement there is a reference to the signing of "Statements of Intent" (SOIs) with local jurisdictions. We explained that any records containing a discussion of the signing of SOIs or the decision to abandon the signing of SOIs with local jurisdictions would be relevant to the question of opt out. As you know, ICE has an obligation not to construe our request too narrowly and a simple search for the words "opt out" would be inadequate.



Redacted

Redacted

Sincerely,

Bridget P. Kessler

Clinical Teaching Fellow

Immigration Justice Clinic

Benjamin N. Cardozo School of Law

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New York, New York 10003

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Fax: 212-790-0256

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EXHIBIT C

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

Status of Plaintiffs' Rapid Production List

On July 7, 2010, Defendants agreed to produce records listed in Plaintiffs' Rapid Production List by July 30, 2010. After reviewing the records produced to Plaintiffs pursuant to the July 7, 2010 agreement,¹ it is clear that Defendants have not yet produced many of the records identified by Plaintiffs' Rapid Production List. We summarize in this document and in the attached appendix the Rapid Production List records that Defendants have not yet produced.



Redacted

¹ ICE productions on August 3, 2010 and September 8, 2010, and FBI production on August 13, 2010.

² See *Secure Communities: A comprehensive Plan to Identify and Remove Criminal Aliens, Strategic Plan*, July 21, 2009, released on June 10, 2010, ICEFOIA.10.121.000035.

Summary of Rapid Production List Records that Defendants Have not Produced

Redacted

Redacted In Section II, Plaintiffs requested records related to the ability of states or localities to opt-out or limit their participation in Secure Communities. We received a model Statement of Intent, but have not received any records regarding the decision to abandon the use of these agreements with local jurisdictions.³ Defendants have not produced national policy memoranda, legal memoranda, or communication relating to states' or localities' ability to opt-out or limit their participation in Secure Communities.

Redacted

³ In the Statement in Public Affairs Guidance, dated March 22, 2010, and ICE's *Setting the Record Straight* memorandum, posted to their website, there is limited information relevant to this request.

10/1/2010

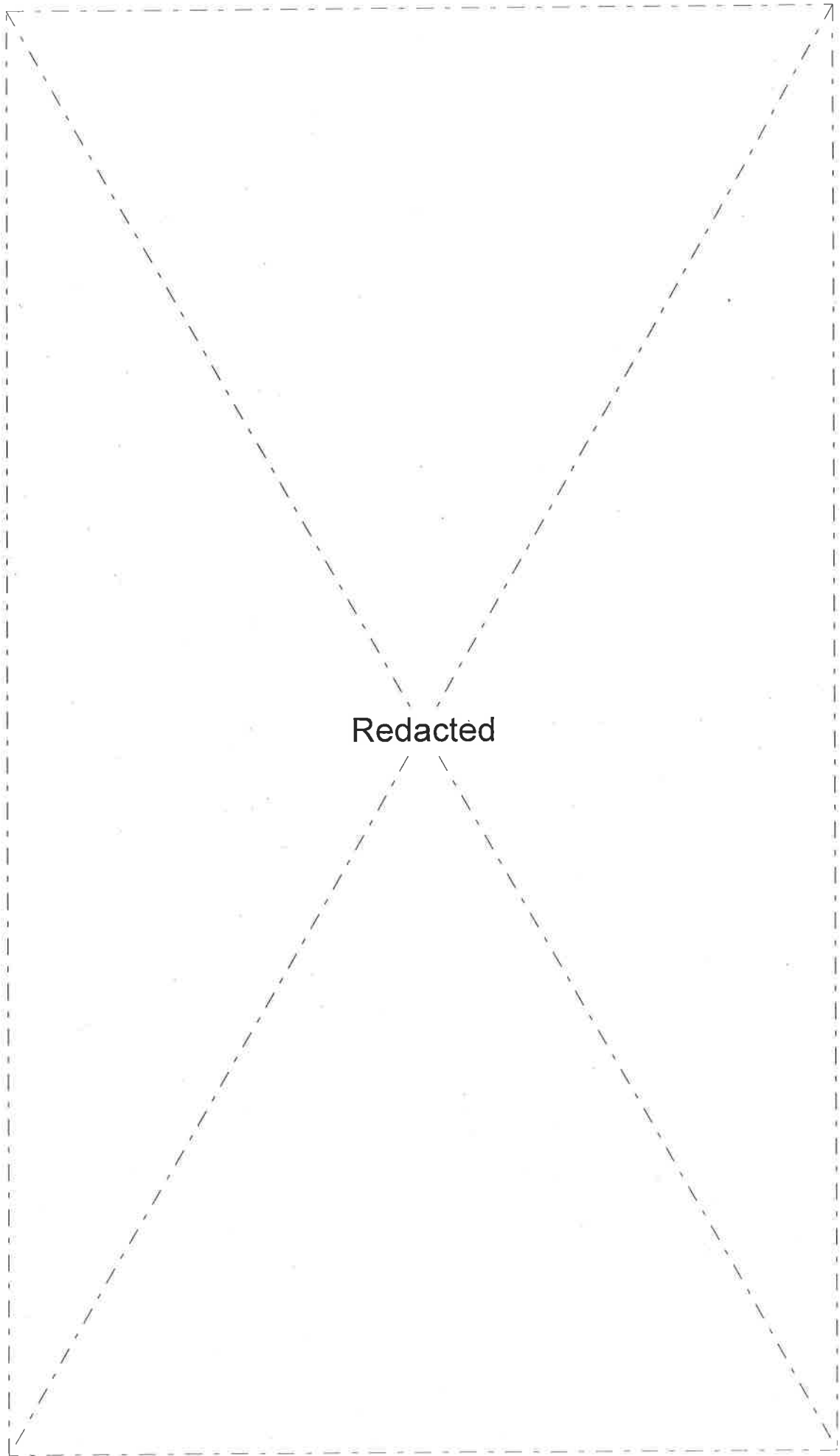
Redacted



Redacted

a

10/1/2010



Redacted

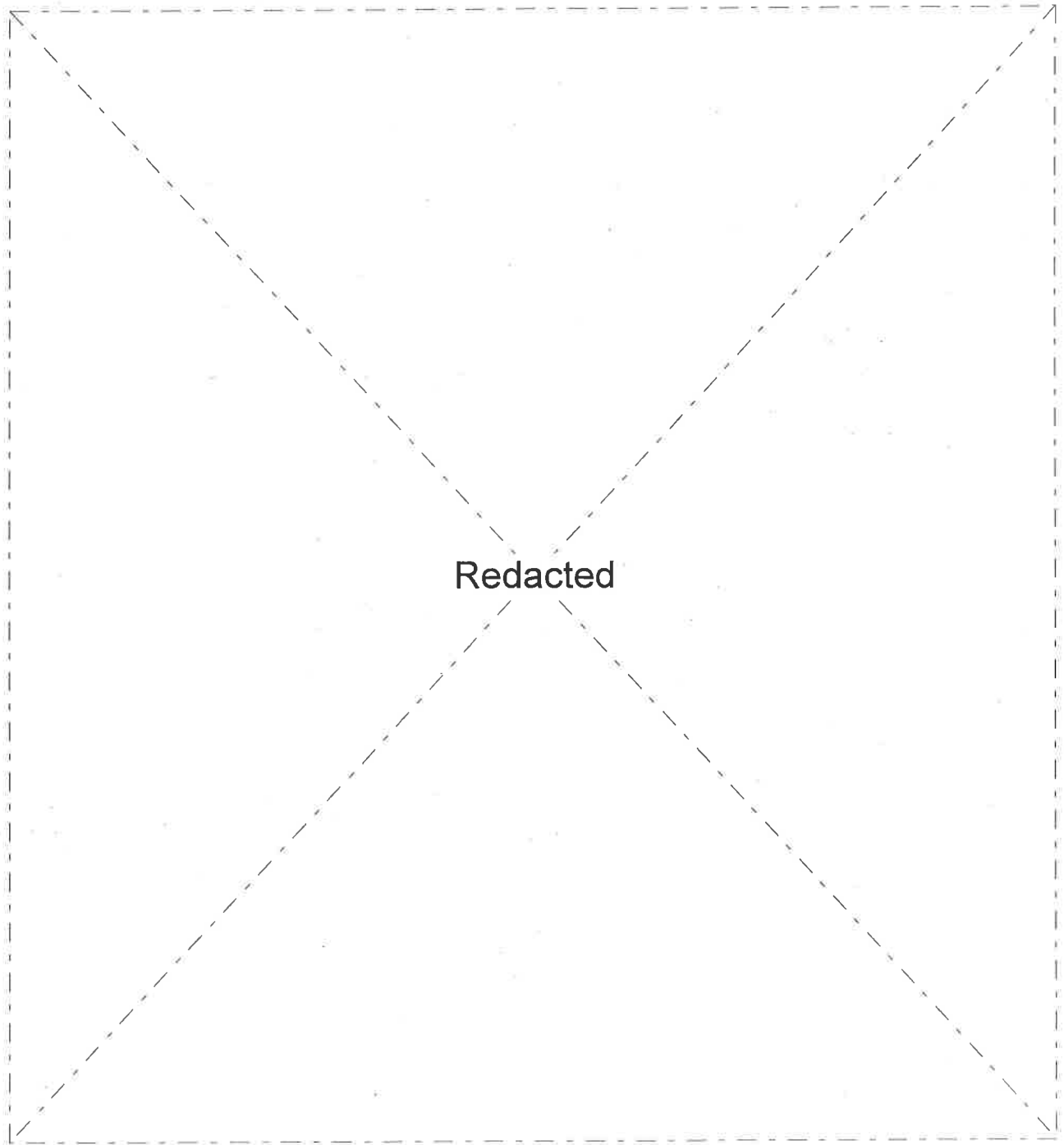
10/1/2010

EXHIBIT D

NDLON, et al., v. ICE, et al., 10-cv-3844

PLAINTIFFS' PROPOSED SEARCH TERMS

This document is for the purposes of settlement negotiations only and does not in any way narrow or limit the scope of Plaintiffs' FOIA request.



NDLON, et al., v. ICE, et al., 10-cv-3844

PLAINTIFFS' PROPOSED SEARCH TERMS

This document is for the purposes of settlement negotiations only and does not in any way narrow or limit the scope of Plaintiffs' FOIA request.

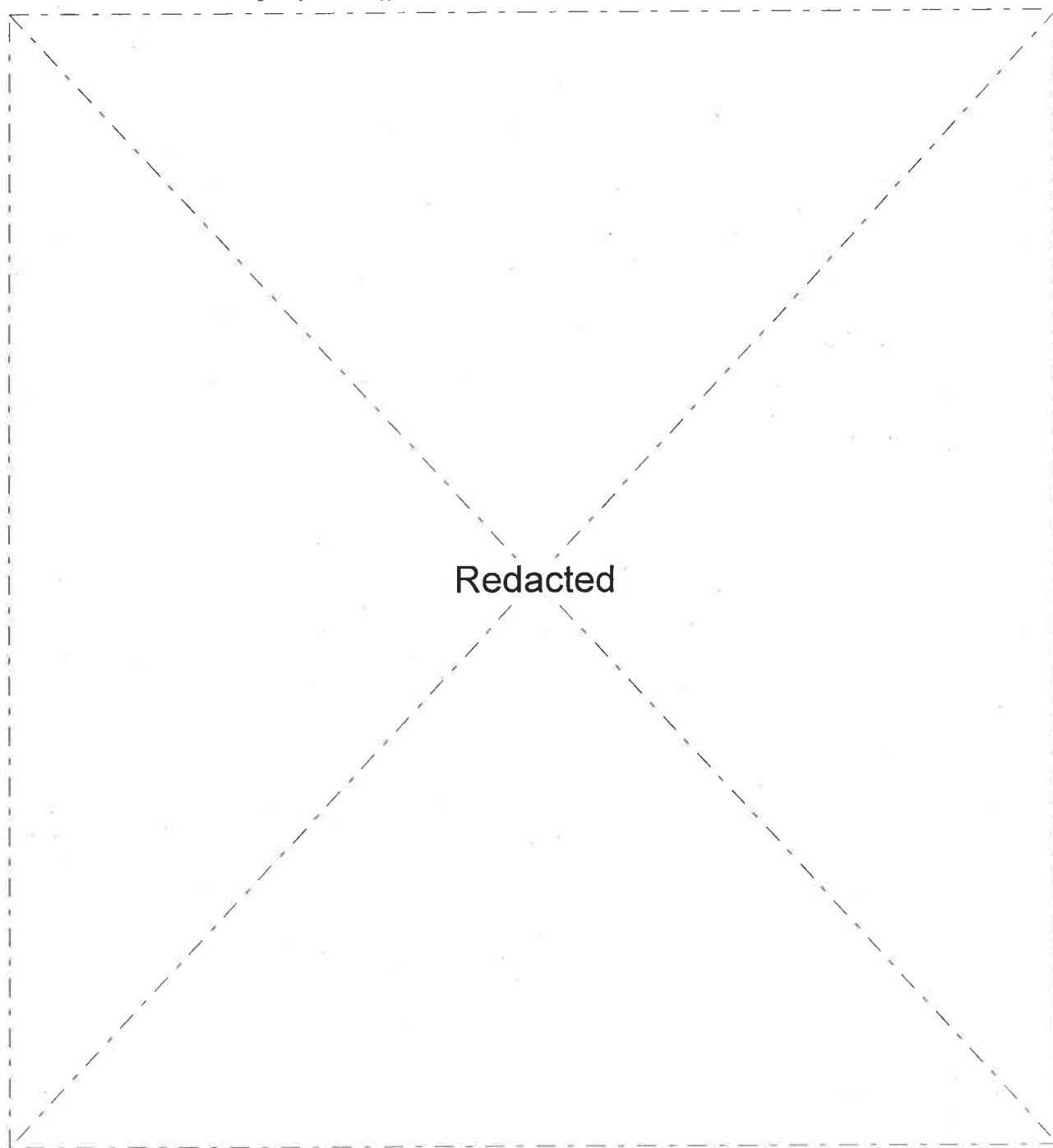


EXHIBIT E

ADDENDUM

General Questions for All Agencies

- 1) Which offices are being searched?
- 2) How much of the initial search has been completed?
- 3) What are the current results of the search? (Please include the number of pages or documents.)
- 4) What types of documents have been identified? (Please be as specific as possible to facilitate efficient prioritization.)
- 5) What is the amount and status of referrals to other components for direct response and referrals for consultation?
- 6) What percentage of the processing has been completed for the initial responsive documents?
- 7) When will rolling production begin?
- 8) What are the estimated search, processing and production completion dates for each agency?
- 9) Please explain the specific method and terms used by each agency in its searches thus far.
- 10) Please provide a technical explanation of all databases containing responsive information; including:
 - a. a list of all databases that contain information about individuals that are identified through Secure Communities;
 - b. a list of all databases that contain data and statistics that ICE monitors related to Secure Communities;
 - c. a list of all databases that may contain other information responsive to the request; and
 - d. a list of all the fields contained in each database, for example, pages excerpted from a technical manual that list the fields.

Agency-Specific Questions

Immigration and Customs Enforcement

- 1) Please clarify the exact nature of records that have been identified, and whether produced for external or internal processes.
- 2) What types of searches did ICE use to locate the identified records, such as keyword searches? Which databases has ICE searched?
- 3) You mentioned that ICE suggested that we identify specific topic areas of interest. It may be more efficient for to ICE compile a list of possible topic areas related to Secure Communities that correspond with the way their records are organized.
- 4) We mentioned that the DHS Office of the Inspector General had referred 308 pages of responsive records to ICE. Please clarify whether ICE has begun to process the referred records and provide an estimated date of production.

Federal Bureau of Investigation

- 5) Are local field offices and communications with local field offices being searched for responsive records?
- 6) You mentioned that the FBI had identified some potentially responsive email records on a server. What is the range of dates of the emails contained in this server? Would it be possible to obtain a sampling of the emails from the server? Can you confirm that only emails are contained on the server in question?
- 7) You mentioned that the FBI had identified a substantial number of documents at Criminal Justice Information Services (CJIS). What is the nature of these records? Please be specific.

Department of Homeland Security

- 8) What offices are being searched in addition to the DHS OIG and US-VISIT? Other subcomponents that are likely to have responsive records are the Office of the Secretary, the Office of the General Counsel, the Office of Policy, the Office of the Chief Financial Officer, and the Office of Public Affairs.

EXHIBIT F



Detailed Results

Tracking no.: 793353994577

Select time format: 12H

Delivered
Delivered
 Signed for by: S.HARRIS

Shipment Dates

 Ship date Mar 15, 2010
 Delivery date Mar 16, 2010 10:16 AM

Destination

 WASHINGTON, DC
 Signature Proof of Delivery

Shipment Facts

Service type	Standard Envelope	Delivered to	Shipping/Receiving
Weight	0.5 lbs./2 kg	Reference	DHS

Shipment Travel History

Select time zone: Local Scan Time

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Mar 16, 2010 10:16 AM	Delivered	WASHINGTON, DC	
Mar 16, 2010 8:09 AM	On FedEx vehicle for delivery	WASHINGTON, DC	
Mar 16, 2010 6:47 AM	At local FedEx facility	WASHINGTON, DC	
Mar 16, 2010 4:01 AM	Departed FedEx location	NEWARK, NJ	
Mar 15, 2010 10:51 PM	Left FedEx origin facility	NEW YORK, NY	
Mar 15, 2010 8:08 PM	Picked up	NEW YORK, NY	
Mar 15, 2010 11:33 AM	Shipment information sent to FedEx		

EXHIBIT G



STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
Four Tower Place
Albany, New York 12203-3764
<http://criminaljustice.state.ny.us>

DAVID A. PATERSON
GOVERNOR

SEAN M. BYRNE
ACTING COMMISSIONER
(518) 457-1260
(518) 457-3089 FAX

August 23, 2010

Angela Fernandez, Esq.
Executive Director
Northern Manhattan Coalition for Immigrant Rights
685 West 182nd Street (at Broadway)
New York, New York 10033

Dear Ms. Fernandez:

I enjoyed meeting with you and your colleagues on Wednesday, August 11, 2010 regarding the federal government's "Secure Communities" initiative and New York State's role in helping to facilitate that program. I hope that you found our discussion productive.

As we discussed, Secure Communities is a program of the United States Department of Homeland Security designed to implement a comprehensive, integrated approach to identify and remove criminal aliens from the United States. The Secure Communities program targets individuals in our jails and prisons – primarily those who have been convicted or charged with a "level one" offense, such as homicide, kidnapping, sex offenses and offenses impacting national security. Under the program, when a local law enforcement agency in New York State, which has decided to participate in the initiative, makes an arrest and submits fingerprints to the state identification bureau, an expanded check takes place at the federal level.

As you may know, individuals arrested in New York State for fingerprintable crimes already have their fingerprints searched against both the New York State and the Federal Bureau of Investigation criminal history databases. Also, DCJS maintains deportation data on criminal aliens who were deported after release from State prison. Secure Communities simply allows the fingerprints that New York State sends to the FBI to be checked against the United States Department of Homeland Security (DHS) database, if a local law enforcement agency has agreed to participate in the program. The fruits of this search are then simultaneously shared with ICE and the local arresting agency.

As we discussed, I recently signed a Memorandum of Agreement (MOA) that permits local law enforcement agencies to participate in this information-sharing initiative if they choose to do so. The State is not requiring localities to participate. The MOA that I executed with the federal government simply makes it possible for localities to become involved in the Secure Communities initiative.

While we in New York State government are very cognizant of the civil rights of immigrants, we are equally cognizant of the fact that this State is a premier target for terrorism


(note the World Trade Center attack of September 11, 2001; the arrests of the "Lackawanna Six" in 2002; the 2006 plot to bomb train tunnels; the 2007 attempt to bomb fuel pipelines near JFK Airport; and the Times Square bombing incident of May 1, 2010). In fact, of all the attacks in the United States from 1970-2007, more (284) occurred in New York City during this period than in the next four most frequently targeted U.S. cities combined. The Secure Communities initiative is an essential tool to identify individuals who could be a threat to public safety and, I believe, strikes an appropriate balance between civil liberties and public protection. I would note that the Secure Communities program reduces the opportunity for racial and ethnic profiling because the fingerprints of each and every individual arrested are checked against immigration records, not just those manually submitted based upon subjective indicators. Hopefully this provides you with an understanding of why I thought it was important to provide local communities with an opportunity to participate.

With regard to the follow-up information that I said I would provide, I have enclosed a July 23, 2010 email between Joe Morrissey and Dan Cadman from ICE which notes that DCJS has premised its participation on local agreement. You will note that ICE agreed that the decision whether to participate is left to local option and "no jurisdiction will be activated if [a locality] oppose[s] it." We are still in the process of finalizing how DCJS will be notified of a local entity's decision to participate; notably, no jurisdictions have been "activated" to date. We have, however, been advised that outreach has been completed in the following counties: Genesee, Orleans, Wayne, Oswego, Onondaga, Oneida Herkimer, Hamilton and Madison. ICE is scheduled to conduct outreach in Niagara, Monroe, Livingston, Ontario, Yates, Seneca, Cayuga and Wyoming counties in the next few months. In order to get to this stage of the agreement process, Joe Morrissey discussed this with Dan Cadman at ICE; you may wish to contact Mr. Cadman for further information.

Finally, while I do not recall agreeing that there was a lack of clarity regarding when fingerprint submissions would be run against the databases, it makes the most sense to have them submitted at arrest; I do, however, believe ICE follow-up should be balanced and prudent. Also, at this point in time I believe that issues and complaints regarding Secure Communities should be discussed and resolved between ICE and the local law enforcement agency which has decided to be a participant.

I trust that this is responsive to your inquiry and the information I have provided is helpful.

Very truly yours,



Sean M. Byrne
Acting Commissioner

Enclosure

cc: Gina L. Bianchi, Esq.
Joseph Morrissey
Dan Cadman, ICE

From: Cadman, Dan [Dan.Cadman@dhs.gov]
Sent: Friday, July 23, 2010 4:46 PM
To: Morrissey, Joe (DCJS)
Cc: Lisa Forinash; Christina Minor; Archibeque, Vincent E; Penney, Susan E; Webb, Thomas O
Subject: RE: Secure Communities Program

Joe,

Thanks for taking the time to speak with me a while ago, I really appreciate it. I'll keep this short—

Let me cut to the chase and speak to the issue of voluntary participation: When a local jurisdiction expresses a desire to opt out, we look to the state for guidance. With regard to New York, we fully comprehend the State's premise for agreeing to go forward with Secure Communities in the first place: no jurisdiction will be activated if they oppose it. There is no ambiguity on that point. We get it. And we would do nothing to jeopardize our great working relationship with DCJS. We will do everything we can to work with a NY law enforcement agency to satisfy its concerns but at the end of the day, if they are opposed, we won't go forward.

Re the ORI validation process: It has been our experience that in most states, the validations have been done by the state identification bureau because they are accustomed to being the link in the chain between local LEAs and CJIS—and in some places they are absolutely insistent on performing that role rather than let themselves be sidelined. In those places, we have tread carefully so as not to insert ourselves between SIBs and their client LEAs. New York State has been a novel experience for us in that regard. I imagine it has been difficult for CJIS because it is different from the way they're accustomed to doing business (Lisa / Christina: I am sorry about that), but we are slowly working our way through it.

If there is anything at all that you want to discuss further, please don't hesitate to let me know. I hope we get a chance to meet in person at the upcoming New York State Sheriff's Association conference.

As always, best regards,
Dan

Dan Cadman
ICE Secure Communities
Regional Coordinator
202-595-4309
dan.cadman@dhs.gov

EXHIBIT H



Northern Manhattan

COALITION FOR IMMIGRANT RIGHTS

October 13, 2010

Sean M. Byrne
Acting Commissioner
State of New York, Division of Criminal Justice Services
Four Tower Place
Albany, New York 12203-3764

VIA FACSIMILE and U.S. Mail

RE: ICE's Contradictory Information about "Secure Communities"

Dear Mr. Byrne:

We are writing on behalf of the New York Working Group Against Deportation because we are extremely concerned about Immigration and Customs Enforcement (ICE)'s inconsistency and lack of clarity with regard to its Secure Communities (S-Comm) program. Within the past several weeks, ICE has changed its position several times on whether localities can opt out of S-Comm. Just last Friday, the Director of ICE stated that local governments cannot opt out.¹ Because of ICE's widespread inconsistencies in this matter, we want to continue discussing how DCJS can ensure that local New York jurisdictions can exclude themselves from participating in S-Comm. These developments have contributed to our growing concern about ICE's lack of transparency and accountability. We continue to believe that ICE-law enforcement partnerships will create serious negative consequences that will be borne wholly by localities. For these reasons, we reiterate our request that the S-Comm Memorandum of Agreement (MOA) between New York State and ICE be rescinded or suspended immediately.

In making this request, we are hoping to get some clarity regarding ICE's assurances to you this past July that S-Comm would not be a mandatory program, especially in light of ICE Director John Morton's recent declaration that localities cannot choose whether to participate because the program is between states and ICE. In your August 23, 2010 letter to Angela Fernandez, you wrote, "The State is not requiring localities to participate. The MOA that I executed with the federal government simply makes it possible for localities to become involved in the Secure Communities initiative." In fact, you received assurances from ICE that in order to participate in S-Comm, local jurisdictions needed to individually and affirmatively opt in; without opting in, there would be no "activation" of S-Comm in any particular jurisdiction. As Dan Cadman of ICE stated in his email to DCJS in July, 2010, "When a local jurisdiction expresses a desire to opt

¹ Potter, Dena, "ICE: No opt-out for program checking legal status" Associated Press, October 8, 2010

out, we look to the state for guidance. . . *no jurisdiction will be activated if they oppose it*. There is no ambiguity on that point." We also note that Mr. Cadman used the term "opt out" rather than "opt in," and wonder if you could clarify whether his understanding of the process is that the State would be activated and those who do not want to participate would need to request to opt out, rather than the process you explained to us whereby localities would only be activated by agreeing to "opt in."

We are especially worried that New York's agreement to participate in S-Comm is not in fact premised on an opt-in procedure in light of ICE's contradictory statements regarding opt-outs for localities in other states. For a long time, advocates across the country could not get ICE to affirmatively confirm or deny the possibility of an opt-out from S-Comm. Then, on September 7, 2010, Homeland Security Secretary Janet Napolitano stated that local jurisdictions *could* opt out in response to a request about this opt-out procedure from Congresswoman Zoe Lofgren, Chairwoman of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law. Napolitano specifically clarified that "a local law enforcement agency that does not wish to participate in the Secure Communities deployment plan must formally notify the Assistant Director for the Secure Communities program."² The Secretary then detailed opt-out instructions. The following day, Ronald Weich, Assistant Attorney General of the United States, reiterated this same procedure to Chairwoman Lofgren.³

In accordance with the procedure prescribed by the Department of Homeland Security, Arlington, Virginia, and two cities in California (Santa Clara and San Francisco) renewed efforts to opt-out of their statewide S-Comm MOAs. None of these jurisdictions have succeeded. Within just a few weeks of Napolitano's September statement, *The Washington Post* quoted her on September 30, 2010, as saying "we do not see this as an opt-in, opt-out program."⁴ This article continued to establish ICE's miscommunication of S-Comm by quoting a senior ICE official who maintained, "Secure Communities is not based on state or local cooperation in federal law enforcement. The program's foundation is information sharing between FBI and ICE. State and local law enforcement agencies are going to continue to fingerprint people and those fingerprints are forwarded to FBI for criminal checks. ICE will take immigration action appropriately." And again, John Morton's statement from last Friday reinforces ICE's most recent position that localities cannot opt out.

These divergent explanations of S-Comm, we're afraid, cast doubt on New York's MOA. We note, too, that our colleagues in California have reported that ICE had similarly informed their State Identification Bureau that the arrangement would be an opt-in one, only to later discover the contrary. Because ICE seems to unpredictably shift its policy for allowing local jurisdictions to opt out of S-Comm, it is unclear how it will now treat MOAs such as the one that you signed, which you understand to only allow local jurisdictions in New York to opt in.

² Letter from Janet Napolitano, Secretary of the Department of Homeland Security, to the Honorable Zoe Lofgren, Chairwoman of the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (September 7, 2010)

³ Letter from Ronald Weich, Assistant Attorney General, to the Honorable Zoe Lofgren, Chairwoman of the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law (September 8, 2010)

⁴ Shankar Vedantam, *Local jurisdictions find they can't opt out of federal immigration enforcement program*. WASH. POST, Sept. 30, 2010.

Inconsistent policies, we have found, are not uncommon when dealing with ICE. Here's just one other example. As you described in your August 23, 2010 letter, ICE has made assurances to local law enforcement that S-Comm primarily targets individuals convicted or charged with "level one" offenses, such as homicide, kidnapping, sex offenses and offenses impacting national security. However, a recent Freedom of Information Act (FOIA) request unequivocally shows that the vast majority (79 percent) of people deported due to S-Comm are people with no criminal convictions or with lower level offenses.⁵

Given the extent to which ICE has acted in ways contrary to its previous assurances in implementing S-Comm, our communities are justifiably confused and disturbed. We continue to be concerned about the wide net this program will cast and the grave consequences it will have on our civil and human rights, especially given the lack of transparency and accountability within ICE. For these reasons, we respectfully request that you rescind the MOA with ICE. At a minimum, since ICE's most recent position that opting out is not possible violates the basic premise under which you signed the MOA and arguably supports a breach of the contract entered into between DCJS and DHS, we request that you suspend the MOA until you gain further clarity about ICE's intention to allow New York jurisdictions to opt into the program.

We look forward to your response to this letter. In that regard, please contact Angela Fernandez at 646-734-4932 or afernandez@nmcir.org with any questions, or to provide additional information.

In closing, we want to reiterate our appreciation for meeting with us in August and for your response letter and to thank you for your ongoing consideration of these important issues.

Yours sincerely,

Angela Fernandez
Executive Director
Northern Manhattan Coalition for Immigrant Rights

Michelle Fei
Co-Director
Immigrant Defense Project

⁵ Immigration and Customs Enforcement, Secure Communities, IDENT/IAFIS Interoperability, Monthly Statistics through June 30, 2010, prepared on July 9, 2010, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000079, at ICE FOIA 10-2674.000086. This statistic reflects the number of individuals deported through S-Comm from October, 2008 through June 2010. *Id.* The cumulative number of individuals deported through S-Comm in that time period is 46,929, while the total number of non-criminals and low level, Level II and Level III offenders deported through S-Com is 37,107. *Id.*

EXHIBIT I

To: Peter Kiernan, Counsel to the Governor
From: Angela Fernandez, Northern Manhattan Coalition for Immigrant Rights
Michelle Fei, Immigrant Defense Project
Date: November 11, 2010
Re: Secure Communities in New York

On behalf of the organizations that met with you and Commissioner Sean Byrne on November 1, 2010, we would like to thank you again for meeting with us and listening to our communities' problems with Secure Communities. We also want to provide you with the attached documents, which provide additional information on the real costs of S-Comm and on the program's alleged role in fighting terrorism. And we want to share some new developments and reiterate our request that your office rescind the S-Comm MOA.

More Proof that ICE Won't Keep its Word

In light of the recent article published in the *New York Times*, "Confusion Over Program to Spot Illegal Immigrants," on November 9, 2010,¹ we are increasingly concerned that the promise of "opt-in" in New York is yet another example of ICE's deceptive and non-transparent practices.

As stated to us by Commissioner Sean Byrne, and reinforced in the memo from Dan Cadman of ICE to Joe Morrissey, it is clear that New York agreed to participate in S-Comm because ICE guaranteed "with no ambiguity" that "no jurisdiction will be activated if they oppose it." But the *New York Times* article and reports across the country reveal that ICE has been outright lying to states and municipalities. The fact that DCJS spokesperson John M. Caher had to issue conflicting information about DCJS's own understanding of the agreement it signed demonstrates both ICE's deceitfulness and its expectation that supposed partner states will bend to its ever-changing directives. We eagerly await a response to our October 13, 2010 letter to Commissioner Byrne about, among other things, New York State's mechanism to opt in or out of S-Comm.

Governor Paterson has all the power to reestablish New York as a place that prioritizes sensible law enforcement and public safety. Given ICE's continued duping and bullying of the very jurisdictions it claims to be working in partnership with, we simply cannot allow S-Comm to move forward without clear mechanisms for transparency and accountability of ICE and all its collaborations with local enforcement agencies. ICE has shown again and again its disregard for our safety as it continues to fail to provide racial profiling protections, public input, oversight, transparency, or redress measures.

Other Jurisdictions Have Had Enough of ICE

ICE's deceitful practices have caused great frustration to others across the country that were promised that their localities would be need to affirmatively "opt in" if they chose to participate, only to later find out – after numerous contradictory statements from ICE – that they had already been automatically joined and could not then opt out. These jurisdictions are doing everything possible to free themselves from S-Comm's grasp. One prominent

¹ Available at <http://www.nytimes.com/2010/11/10/nyregion/10secure.html?partner=rss&emc=rss>

example comes from California's Santa Clara County following their latest meeting with ICE's David Venturella. Here's an excerpt from the attached press release:

"Secure Communities Director Venturella met with County Counsel Márquez on Tuesday. When Márquez informed Venturella that the County would like to be removed from the Secure Communities program, Márquez says Venturella went back on his word that counties would be allowed to opt out of the program.

'ICE now insists that there was never any avenue for the County to opt out, Márquez said. 'This is clearly inconsistent with our written communication with ICE, as well as what ICE has told the public and congressional representatives about this program.'

'When ICE repeatedly denied the obvious discrepancy between their past and present statements and made clear that they had not come to offer the County any meaningful options, we ended the meeting,' Márquez said. 'It is clear that ICE is not interested in hearing about the program's impact on communities or engaging with localities in good faith.' "

As you can see, New York is far from alone in getting the runaround by ICE. New York, like Santa Clara, needs to take affirmative steps to show ICE and the American public that good law enforcement and public safety cannot happen when ICE runs amok through programs like S-Comm.

Governor Paterson's Concern for Human and Civil Rights

Clearly, Governor Paterson's pardon for Qing Wu and his establishment of the pardon panel for immigrants reflects his understanding that even those with criminal convictions should not necessarily be subject to mandatory deportation. Regarding the pardon panel, he stated, "Some of our immigration laws, particularly with respect to deportation, are extremely inflexible. In some small way, we hope this initiative will help set an example for how to soften the blow in those cases of deserving individuals caught in the web of our national immigration laws. We hope it will prove that justice can always find a way."²

Governor Paterson statement below suggests that he continues to be worried about immigrants getting caught in the dysfunctional immigration system, and that his decision to join S-Comm was based on misinformation fed to New York by ICE. We are heartened that he has publicly stated that evidence of ICE getting information on low-level offenders would cause him to reconsider New York's participation. Specifically, he told Luis Medina of Telemundo the following regarding S-Comm:³

"This program that the Federal Government asked us to be a part of, in which municipalities have a choice of whether or not they can opt in or not – which is what New York State was able to receive as opposed to other states – guarantees that this is only high level security threats whose information will be transferred. I think there's some confusion here. These organizations have to come forward and show us definitively that they have proof that the

² Available at <http://www.state.ny.us/governor/press/050310Deportation.html>

³ Jamarillo, Catalina, "More Confusion Over Secure Communities: Did NY Make A Special Deal with Washington?" *Feet In 2 Worlds*, October 22, 2010 available at http://news.feetintwoworlds.org/2010/10/22/more-confusion-over-secure-communities-did-ny-make-a-special-deal-with-washington/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+feetintwoworlds%2Fnews+%28Feet+in+2+Worlds%2C+immigration+news%29

information was sent to INS (sic) on low-level offenders, which is not what the intent of the memorandum of understanding is. If they can establish it, I will be happy to reconsider.”

In our meeting with you, we provided numerous examples – both orally and in our substantial packet – of low-level offenders and people without criminal records getting caught up in S-Comm. These examples further back up what recent FOIA litigation has revealed: ICE’s own records show that the vast majority (79%) of people deported due to S-Comm are not criminals or were picked up for lower level offenses. While boasting record-breaking numbers of deportations this year – 392,000 people, 8000 people shy of the quota of 400,000 stated by ICE’s James Chaparro on February 22, 2010⁴ – it is clear that ICE’s priority is simply to broaden its enforcement apparatus and amplify unjust deportations.

In fact, ICE has been unapologetic even about the significant number of non-criminals deported through S-Comm. In an article about the pending deportation of an undocumented woman from Maryland who called police for help after a fight with her partner, the *Washington Post* quotes ICE spokesman Brian Hale saying, " While ICE's enforcement efforts prioritize convicted criminal aliens, ICE maintains the discretion to take action on any alien it encounters."⁵

Let’s Get New York Out of This Mess

We cannot continue to let ICE continue its double-talk. New York must hold ICE accountable for being duplicitous and going back on its word. New York needs to show that we both will not stand for ICE’s lack of accountability and that we will proactively work to ensure that human and civil rights are safeguarded and upheld. By stopping S-Comm, New York would take a principled stand in defense of human and civil rights that will have national repercussions. Again, we urge you to rescind the MOA.

Attachments:

- Press release from Santa Clara, November 10, 2010. “County of Santa Clara Denied Opt-Out of Immigration Enforcement Program”
- Secure Communities and Public Safety Annotated Bibliography
- Secure Communities Fails to Promote “National Security”
- Fiscal Costs Fact Sheet
- Press release “ACLU Sues Jefferson County Sheriff for Illegally Imprisoning Colorado Resident Suspected of Immigration Violations.” April 21, 2010

⁴ 15 Spencer S. Hsu and Andrew Becker, “ICE Officials Set Quotas to Deport More Illegal Immigrants,” *Washington Post*, March 27, 2010 available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110103073.html>

⁵ Shankar Vedantam “Call for help leads to possible deportation for Hyattsville mother,” *The Washington Post*. November 1, 2010 available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/01/AR2010110103073.html>

EXHIBIT J

**Press Release for:
Tuesday, November 9, 2010**

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Arlington, Santa Clara, and San Francisco: The Fight to Opt Out of S-Comm Rages On

Arlington, San Francisco, and Santa Clara – Two months ago, ICE repeatedly outlined a path to opt out of a biometric data sharing program known as “Secure Communities” or “S-Comm.” Since then, ICE has flip-flopped. Civil rights groups are confident that Arlington’s meeting with ICE last Friday and San Francisco and Santa Clara’s meetings with ICE today are not the last word on whether counties can opt out of this deeply flawed program. If our nation’s capital, Washington D.C. can refuse to participate in the police/ICE entangling program, these protesting counties can as well. Civil rights organizations will continue to fight the criminalization of immigrant communities, especially in light of the absence of imminent just and humane immigration reform. Our opposition to S-Comm is not going away.

Still more questions than answers. The National Day Laborer Organizing Network, the Center for Constitutional Rights and the Cardozo Law School Immigration Justice Clinic have sued the Department of Homeland Security in federal court to demand answers to basic questions about a program that has been shrouded in secrecy and has no accountability. They are now seeking a preliminary injunction requiring ICE to release documents that shed light on how counties can opt out of S-Comm. A hearing on the motion is scheduled in federal court on December 6, 2010 in New York. Unless and until the federal government stops withholding basic information about the program, S-Comm should be suspended.

No legal authority to support S-Comm being mandatory. ICE has not provided any specific legal authority that allows forced participation of counties in S-Comm, especially in light of the fact that this program interferes with community policing and burdens local resources. ICE is fueling fear in immigrant communities, thereby compromising public safety for all residents, by compelling local police to conduct immigration enforcement through data sharing at the point of arrest. Immigrant victims and witnesses to crime are afraid of coming forward to help solve crimes. The program also cannot be mandatory because counties are not wholly reimbursed for the mounting costs of using more jail space to hold increasing numbers of individuals purely for civil immigration enforcement purposes under S-Comm.

No more Arizonas. Arizona’s SB 1070 underscores the human rights crisis and brazen racial profiling caused by the criminalization of immigrants and people of color through the entanglement between police and ICE. Especially with the recent news of domestic violence victims being targeted by “inSecure Communities,” we are more determined than ever to keep families together by keeping police and ICE separate.

Broken immigration laws should not be multiplied. Secretary Napolitano has consistently acknowledged the failure of status quo immigration laws. However, at the same time, she also has praised S-Comm as a “force multiplier” of these laws. Our police should not be used to compound the problems caused by an admittedly broken immigration system.

For more information and the latest updates on the fight against S-Comm, visit <http://uncoverthetruth.org>.

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EXHIBIT K



OFFICE OF THE COUNTY MANAGER

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Memorandum

To: County Board Members
From: Barbara M. Donnellan, County Manager 
Subject: Secure Communities Meeting with ICE
Date: November 5, 2010

Today, along with Police Chief Doug Scott and Sheriff Beth Arthur, I met with representatives from U.S. Immigrations and Customs Enforcement (ICE) regarding the Secure Communities program. In addition to the information I received today, ICE has agreed to provide a written response to my Oct. 7 letter to them, which I will make available publicly when I receive it.

Per your direction, I requested clarification from ICE on the ability of local communities to withdraw from participation in Secure Communities. ICE stated clearly – and with finality – that local activated communities do not have the option of withholding information from the program, although communities can opt not to learn the results of immigration queries. ICE stated that Secure Communities is a federal information-sharing program – which links two federal fingerprint databases. The program does not require state and local law enforcement to partner with ICE in enforcing federal law. State and local law enforcement do not have any role in enforcing immigration law.

We learned from ICE that communities have two options.

First option: All jurisdictions have the option of not receiving the results of ICE's database inquiries. (This option is what ICE officials were referring to as the "opt-out" for localities, and they acknowledged the confusion these statements have created.) Opting out of receiving the result of federal database inquiries would result in Arlington law enforcement not receiving information that could be crucial to effective law enforcement, information such as the arrestee's identity, known aliases, and criminal history. Therefore, we are choosing to receive the information.

Second option: Under Secure Communities, if activated jurisdictions choose to prevent their fingerprint submissions from being shared with ICE, they also elect to not share them with the FBI and its national criminal database. In Virginia, this is not possible. Under long-standing state law, all localities are required to collect fingerprints and submit them to the Virginia State Police – to be checked against both the state criminal database as well as the FBI's national criminal database. Therefore, Arlington has no ability to prevent our fingerprint submissions from being checked against the criminal database, and subsequently, ICE's immigration database. The County has never and will not consider this because utilizing the national criminal database is a public safety necessity to help us identify dangerous criminals.

Our discussion today did not focus on federal immigration policy ... rather, we focused on how the implementation of Secure Communities is affecting our highly diverse community. Seven months into its implementation in Arlington, the program is impacting the way we interact with our immigrant community, which represents one-quarter of Arlington's residents.

While Arlington understands and supports ICE in its mission to enforce our nation's immigration laws, we are concerned that Secure Communities may foster fear and mistrust of local law enforcement officers. The implementation of Secure Communities – and the lack of clarity from ICE regarding the details of the program – has impaired effective communication and cooperation with our residents. Open communication is vital to successful community policing and fulfillment of our public safety mission.

Arlington County is not alone in expressing these concerns. ICE agreed to continue the dialogue with us and we look forward to working them to develop solutions that will enable federal authorities and local public safety officers to fulfill their respective missions without forsaking either.

If Arlington determines it would be helpful, ICE also agreed to participate with our community in a public meeting in the future. We will continue to share information with the community, including updating our [Secure Communities web page](#) and [Frequently-Asked Questions](#).

Finally, I want to clearly state that while Arlington will continue to comply with all federal and state laws related to immigration, no resident or visitor should fear interacting with Arlington County law enforcement officers. Their mission is to provide for the safety and security of all people, and everyone's cooperation and support are vital if we are to continue to be one of the safest, most welcoming and inclusive communities in the country.