

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

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

ECF CASE

1:10-cv-3488 (SAS) (KNF)

Plaintiffs.

[Rel. 10-CV-2705]

v.

DECLARATION

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT AGENCY;
UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; FEDERAL BUREAU
OF INVESTIGATION; and OFFICE OF
LEGAL COUNSEL,

Defendants.

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**DECLARATION OF SAMEERA HAFIZ IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

I, SAMEERA HAFIZ, declare, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. My name is Sameera Hafiz. I am the Policy Director of the Rights Working Group (RWG). RWG is a national coalition of over 320 civil rights, immigrant rights, national security and human rights organizations formed after September 11th to restore due process, civil liberties and human rights. RWG leads the Racial Profiling: Face the Truth Campaign, which works to end racial profiling in the United States, including racial profiling which results from

immigration enforcement. RWG is particularly concerned with national security and immigration enforcement policies and programs, such as Secure Communities.

2. RWG advances its mission through policy advocacy, supporting community organizing, communications and media messaging. RWG has advocated for transparency and oversight of the Secure Communities program since its inception. RWG, through its policy, field and communications work has sought to ensure Secure Communities operates only with civil rights and civil liberties protections in place. As information has come to light through the plaintiffs' FOIA litigation, RWG now calls for the termination of Secure Communities in all jurisdictions that wish to opt out of the program, and in jurisdictions where the Department of Justice (DOJ) is actively investigating patterns or practices of discriminatory policing. The plaintiffs' FOIA litigation has been important for RWG's understanding of Secure Communities and galvanizing our national and local advocacy efforts.

Importance of October 2 Memo

3. The October 2 Memo is vital to RWG's mission and our campaign goal of ending state and local collaboration in immigration enforcement. This memo, which appears to contain an explanation of U.S. Immigration and Customs Enforcement's (ICE) understanding of their legal authority to mandate Secure Communities, is urgently needed to inform our policy, field and communications work. Currently, our advocacy efforts must respond to many unknown factors and conflicting information provided by DHS. Government officials have provided different answers when inquired about the legal justification for creating a mandatory Secure Communities program.

4. Until we know the legal basis that DHS has relied on for mandating Secure Communities we cannot successfully develop legal arguments and community strategies against

this rapidly expanding program. We need answers now, as Secure Communities is already active in 52 percent of law enforcement jurisdictions in the United States, and according to DHS, will be active in 100 percent of jurisdictions by the end of 2013. Right now, in light of the rescission of the agreements between the states and DHS, our members and elected officials are seeking ways to limit the harm of the program before it becomes too late. RWG firmly believes that Secure Communities, and similar programs, promote racial profiling by local law enforcement agencies. We are also deeply troubled by the two-tiered criminal justice system fostered by Secure Communities, one in which non-citizens are denied due process and equal protection under the law. In order to prevent further erosion of public trust in local police and government and develop alternative strategies, we urgently need to fully understand the legal basis underlying Secure Communities.

Meetings with Government Officials

5. As part of its policy advocacy work, RWG meets regularly with Congressional staff and government officials with regard to Secure Communities. For example, in 2011, RWG met with staff of the House Subcommittee on Immigration Policy and Enforcement, House Subcommittee on Border and Maritime Security, Senate Judiciary Committee, and House and Senate Appropriations Committee staff to discuss various aspects of Secure Communities. In these meetings we have highlighted the dangers of Secure Communities, including reduced community safety and increased racial profiling, and have asked for eliminating or reducing appropriations for the Secure Communities program. In each of these instances, the October 2 Memo would further have informed our education efforts. During several conversations with Hill staff, to better understand and explain the program, RWG discussed the lack of transparency regarding the legal basis for the program. The need for the October 2 Memo is integral for this

policy work. RWG will submit a letter for the record in conjunction with November 30th House of Representatives Senate Judiciary, Subcommittee on Immigration Policy and Enforcement, hearing on Secure Communities. To provide comprehensive information to the Subcommittee, we would like to review the October 2 Memo. RWG cannot properly educate federal policy makers about the program without a comprehensive understanding of its legal basis.

6. RWG further advances its policy advocacy through its role as co-chair of the Civil Rights and Civil Liberties (CRCL) Committee, a group of immigrant rights and national security organizations that meet quarterly with the DHS Office for Civil Rights and Civil Liberties (OCRCL) and twice a year with the DHS Office of the Inspector General (OIG) to raise systemic issues of concern to committee members. In 2011 CRCL Committee meetings with both OCRCL and OIG, the question of the legal authority to mandate Secure Communities was discussed.

7. The DHS OIG is currently reviewing the Secure Communities program following a request by Representative Zoe Lofgren, D-California. The October 2 Memo is directly relevant to the review, which will focus, in part, on the opt out issue and the change in the voluntary and mandatory policies. The OIG is currently engaged in research and investigation and will likely release its draft report in January. A delay in obtaining the October 2 Memo could be detrimental to the OIG's ability to ensure transparency and public accountability for the past actions of DHS and Immigration and Customs Enforcement.

8. Recently, select CRCL Committee members met with the Government Accountability Office (GAO) officials responsible for the current review of the Secure Communities program by that office. Although the full scope of the GAO review is not known to me, during this meeting, questions regarding the legal basis for mandating Secure

Communities were raised and discussed. If the October 2 Memo is released soon, RWG, its members and allies can rely on it to advocate for the GAO to research the legal authority to implement Secure Communities without the explicit agreement of states and local jurisdictions.

9. In September, RWG members and allies also met with representatives from the DOJ Civil Rights Division and the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services Division (CJIS) to discuss Secure Communities. These meetings hinged on the legal basis for mandating Secure Communities. I left the meeting with CJIS with an understanding that from the FBI's perspective there may not be legal authority for the mandatory implementation of Secure Communities.

10. For RWG's work with government officials, obtaining the October 2 Memo immediately will support our education efforts and clarify large misunderstandings that remain.

RWG Public Outreach and Field Work

11. With regard to RWG's field work, the October 2 Memo is particularly instrumental and important to our work with our local members as they continue their local campaigns and develop strategies that can be effective in combating the program. Before DHS publicly changed its position on the mandatory nature of the program, RWG actively supported our members' local work against Secure Communities. RWG played a leading role in the Arlington, Virginia opt-out campaign, as well as the DC opt-out campaign. These efforts stemmed from the understanding that localities could opt out of the Secure Communities program, an understanding derived from DHS. NDLOM, local advocates, RWG and elected officials spent countless hours and resources to support a democratic process to eliminate Secure Communities from D.C. and Arlington, and then again for States to opt-out, before DHS informed the public states were not permitted to opt out of the program.

12. Around the country, our members are developing policy strategies and meeting with local police and elected officials to educate them about ways to limit Secure Communities' impact. Questions arise regarding the legal basis for creating a mandatory program and whether such justification allows States or local governments any opportunities to protect immigrant communities. Our local partners need the October 2 Memo to determine if restricting the use of detainees (or ICE holds) is the primary mechanism that will be available to limit the impact of Secure Communities. In addition, our member organizations need the October 2 Memo to determine whether to initiate litigation against Secure Communities or take other legal action.

13. We are very concerned that without the October 2 Memo and full disclosure of other documents, we will develop new strategies and policy objectives only to have the terms changed again. Delaying the release of the October 2 Memo thus harms these and other efforts to hold the government accountable—waiting months for the appellate process, after more jurisdictions have been activated and thousands more fingerprints are shared with the immigration authorities, will only damage public policy and public safety.

14. RWG's media messaging have focused on seeking transparency and oversight of the Secure Communities program. Coalition members often look to RWG to help shape and guide media strategy that parallels other advocacy efforts. RWG promptly responded to various 2011 DHS announcements regarding Secure Communities and worked with our members to develop their response to these announcements, including the August 2011 announcement that Memoranda of Agreements (MOAs) with states regarding Secure Communities had no legal effect. The October 2 Memo is vital to informing this work and responding effectively to DHS' implementation of this program. RWG needs to inform its members about why DHS believes the program is legally mandated and how it is meeting its constitutional burdens.

15. Overall, the release of the October 2 Memo is essential to RWG's policy advocacy, field and community organizing, and messaging work and to further our mission and campaign goals. As an organization focused on ending racial profiling and examining the intersections of the criminal justice system, immigration enforcement, and national security policies, full government transparency with regard to Secure Communities is critical. This is especially true as Secure Communities calls into question the interests of all our members including those focused on immigrant rights, privacy protections, national security policies and criminal justice reform. Our members need the October 2 Memo urgently to properly respond to this rapidly expanding program.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: Washington, D.C.
November 18, 2011



SAMEERA HAFIZ