

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

<hr/>)	
NATIONAL DAY LABORER ORGANIZING)		
NETWORK, <u>et al.</u>)		
)		
Plaintiffs,)		
)		
v.)		
)	Civil Action No.10-cv-3488 (SAS)	
U.S. IMMIGRATION AND CUSTOMS)		
ENFORCEMENT AGENCY, <u>et al.</u>)		
)		
Defendants.)		
<hr/>)	

DECLARATION OF DAVID M. HARDY

I, David M. Hardy, declare as follows:

(1) I am currently the Section Chief of the Record/Information Dissemination Section (“RIDS”), Records Management Division (“RMD”), formerly at Federal Bureau of Investigation Headquarters (“FBIHQ”) in Washington, D.C., and currently relocated to Winchester, Virginia. I have held this position since August 1, 2002. Prior to joining the FBI, from May 1, 2001 to July 21, 2002, I was the Assistant Judge Advocate General of the Navy for Civil Law. In that capacity, I had direct oversight of Freedom of Information Act (“FOIA”) policy, procedures, appeals, and litigation for the Navy. From October 1, 1980 to April 30, 2001, I served as a Navy Judge Advocate at various commands and routinely worked with FOIA matters. I have been licensed to practice law in the state of Texas since 1980.

(2) In my official capacity as Section Chief of RIDS, I supervise approximately 280 employees who staff a total of ten (10) FBIHQ units and two field operational service center units whose collective mission is to effectively plan, develop, direct, and manage responses to requests for access to the Federal Bureau of Investigation (“FBI”) records and information

pursuant to the FOIA, as amended by the OPEN Government Act of 2007; the Privacy Act; Executive Order 13526; Presidential, Attorney General, and FBI policies and procedures; judicial decisions; and other Presidential and Congressional directives. The statements contained in this declaration are based upon my personal knowledge, upon information provided to me in my official capacity, and upon conclusions and determinations reached in accordance therewith.

(3) I am familiar with the procedures followed by the FBI in responding to requests for information from its files pursuant to the provisions of the FOIA, 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a. I am aware of the FBI's response to plaintiffs' FOIA request for information regarding the U.S. Department of Homeland Security ("DHS")/U.S. Immigration and Customs Enforcement ("ICE") agency program "Secure Communities."

(4) The purpose of this Declaration is to provide the Court and plaintiffs with an overview of the FBI's efforts to respond to plaintiffs' FOIA request, and to support the Defendants' Opposition to the Plaintiffs' Motion for Preliminary Injunction.

CORRESPONDENCE RELATED TO PLAINTIFFS' FOIA REQUEST

(5) By letter dated February 3, 2010 to FBIHQ, plaintiffs requested seven categories of records pertaining to Secure Communities: "Policies, Procedures and Objectives," "Data and Statistical Information," "Individual Records," "Fiscal Impact of Secure Communities," "Communications," "Secure Communities Program Assessment Records," and "Secure Communities Complaint Mechanisms and Oversight." Plaintiffs requested a "waiver of all costs" and expedited processing. **(See FBI-Exhibit A.)**

(6) By letter dated March 2, 2010, the FBI acknowledged plaintiffs' FOIA request and assigned it FOIPA Number 1143784-000. The FBI also notified plaintiffs that their request for expedited processing had been granted. **(See FBI-Exhibit B.)**

(7) By letter dated March 5, 2010 to FBIHQ, plaintiffs requested confirmation of receipt of the FOIA request. **(See FBI-Exhibit C.)**

(8) By letter dated March 9, 2010, FBIHQ notified plaintiffs that their fee waiver request had been denied. The FBI stated that the plaintiffs had “not proven [their] ability to disseminate information to the general public.” The FBI also notified plaintiffs of their right to appeal the denial of the fee waiver request to the U.S. Department of Justice, Office of Information Policy (“OIP”). **(See FBI-Exhibit D.)**

(9) By letter dated March 15, 2010 to OIP, plaintiffs appealed the FBI’s denial of the fee waiver request. **(See FBI-Exhibit E.)**

(10) By letter dated April 2, 2010, OIP notified plaintiffs that it had received the appeal letter and had assigned it Appeal Number 2010-1415. **(See FBI-Exhibit F.)**

(11) The FBI was searching for records responsive to plaintiffs’ FOIA request when they filed suit on April 27, 2010, seeking injunctive and declaratory relief.

(12) By letter dated June 11, 2010, OIP notified plaintiffs that it was closing Appeal Number 2010-1415 because of the pending lawsuit, in accordance with 28 C.F.R. §16.9(a)(3) (2009). **(See FBI-Exhibit G.)**

**THE FBI MISSION AND ITS ROLE IN THE
SECURE COMMUNITIES PROGRAM**

(13) The FBI is a law enforcement agency whose mission is to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners. The FBI works with both government and private sector partners every day and at every level — local, state, federal, tribal, and

international. In some cases, these partnerships directly support FBI investigations and operations. In other cases, they enable mutually beneficial information sharing for recognition of emerging threats and fostering of crime prevention initiatives. The FBI's partnership with DHS/ICE and the U.S. Department of State ("DOS"), within ICE's Secure Communities Program, is an example of such a partnership.

Integrated Automated Fingerprint Identification System ("IAFIS")

(14) IAFIS is a national fingerprint and criminal history database system that responds to requests 24 hours a day, 365 days a year to assist local, state, and federal partners — and FBI investigators — solve and prevent crime and catch criminals and terrorists. IAFIS provides automated fingerprint search capabilities, latent search capabilities, electronic image storage, and electronic exchange of fingerprints and responses. Prior to the launch of the IAFIS system in 1999, the processing of ten-print fingerprint submissions was largely a manual, labor-intensive process, taking weeks or months to process a single submission. Today IAFIS enables these searches to be conducted on average in ten minutes.

(15) IAFIS also contains corresponding criminal histories; mug shots; scars and tattoo photos; physical characteristics such as height, weight, and hair and eye color; and aliases. The system also includes civil fingerprints, mostly of individuals who have served or are serving in the U.S. military or have been or are employed by the Federal Government. The fingerprints and criminal history information are submitted by state, local, and federal law enforcement agencies.

(16) IAFIS is the largest biometric database in the world, housing the fingerprints and criminal histories for over 66 million subjects in the criminal master file, along with more than 25 million civil prints. This database includes fingerprints from 73,000 known or suspected terrorists processed by the U.S. or international law enforcement agencies working with the FBI.

Biometric Interoperability

(17) Biometric Interoperability was initiated in 2005 to facilitate the exchange of biometrics, e.g., 10-print rolled and flat fingerprints, and associated biographics between IAFIS and the DHS's Automated Biometric Identification System (IDENT). The goal of Biometric Interoperability is to improve information sharing between IAFIS and the biometric systems of other federal and international partners. These partnerships enhance the identification of criminals and terrorists to secure the nation's streets and borders.

(18) In September 2006, the FBI, DHS, and DOS deployed the interim Data Sharing Model ("iDSM") to share limited data subsets from IAFIS and IDENT in near real-time. Authorized users of each system access the others' records to determine if an encountered subject is located within the shared records, allowing them to make more informed decisions. In October 2008, participating stakeholders gained access to the full IDENT repository for the first time, enabling an authorized IAFIS or IDENT user to access certain biometric and biographic information retained in the other system. As a result of Biometric Interoperability, more state and local law enforcement agencies are using IAFIS to gain access to the full IDENT repository through DHS/ICE's Secure Communities Program.

SEARCH FOR RECORDS RESPONSIVE TO PLAINTIFFS' FOIA REQUEST

(19) The FBI has employed several mechanisms in order to search for and identify documents responsive to plaintiffs' request. Due to the extraordinary breadth and depth of plaintiffs' FOIA request, the request does not lend itself readily or naturally to the searches that the FBI routinely conducts in response to FOIA requests seeking access to FBI investigative files.

(20) The Secure Communities program is an initiative of DHS/ICE, and as such, is not the subject of a specific investigative file. The standard FBI search for responsive records pursuant to a FOIA request involves using terms indexed in the FBI's Central Records System ("CRS"), a repository of the FBI's vast collection of documents, accessed through the Automated Case Support System ("ACS"), and which is an investigative tool primarily managed and used by Special Agents to aid them in investigations. The files are indexed in ACS by Special Agents and FBI support personnel, using search terms useful to an investigation such as names of individuals, organizations, companies, publications, activities, or foreign intelligence matters (or programs). The index therefore might not contain terms that one would use in a more generalized search such as the search in this case for Secure Communities-related material.

(21) Nonetheless, the FBI has conducted a standard search of the CRS. On or about March 2, 2010, FBI staff initiated a search in the CRS for records responsive to plaintiffs' request. Specifically, RIDS ran a search inquiry using the term "Secure Communities." This search yielded no responsive files.

(22) RIDS then conducted an individualized inquiry (outside of the CRS system) of certain FBI divisions and FBI offices which were reasonably likely to have potentially responsive records. On April 6, 2010, RIDS prepared and circulated an Electronic Communication ("EC") (internal memorandum) to FBIHQ divisions most likely to possess responsive records, including the Counterterrorism, Criminal, Criminal Justice Information Services ("CJIS"), Cyber, and Inspection Divisions, as well as the Intelligence Directorate, Office of the General Counsel, and the Director's Office. The EC requested the personnel of the designated divisions to conduct a

thorough search for any potentially responsive documents in their possession in response to plaintiffs' request for records created from January 1, 2007 through February 3, 2010.

(23) With the exception of CJIS, which is the largest FBI division, all offices and divisions contacted reported having no documents responsive to plaintiffs' FOIA request.

COMPLEXITIES INVOLVED IN PRODUCTION OF CJIS DOCUMENTS

(24) The FBI's efforts to respond to plaintiffs' FOIA request have been complicated by the vast number of responsive documents and the unique types of documents pertaining to the IAFIS system. In May 2010, CJIS sent RIDS five computer disks, consisting of 2 CD-Roms and 3 DVDs, which contain almost 9 gigabytes of information in the aggregate. Moreover, many of the data files were "zipped," meaning that the true measure of the volume of the content was not evident. CJIS also has sent boxes of hard copies of potentially responsive documents.

(25) RIDS and RMD have spent five months analyzing and organizing the CJIS-originated documents into easily-identifiable file types, so that the documents could be scoped for responsiveness. The following are some of the computer file types forwarded by CJIS for analysis and scoping: Microsoft ".pst" or "Outlook" files; Microsoft "Excel" spreadsheets; Microsoft "Access" databases; Microsoft "Word" documents; Corel "WordPerfect" documents; Microsoft "PowerPoint" presentations; and Adobe "Acrobat" documents. The initial estimate of a page count of documents contained in these files was approximately half a million pages.

(26) The file types which represent the highest page counts include the Excel spreadsheets, estimated at over 2,400 spreadsheets, some of which contain upwards of 80,000 line items. Additionally, RIDS identified over 200 PowerPoint presentations as containing responsive material. Finally, at last count over 32,000 e-mails have been uploaded for analysis

and scoping. Although many of these items might later be deemed unresponsive, FBI staff is required to look at every page to make that determination.

**UPLOADING OF DOCUMENTS INTO THE
FBI'S FOIPA DOCUMENT PROCESSING SYSTEM ("FDPS")**

(27) The FBI developed the FOIPA Document Processing System ("FDPS") in 1999. FDPS enables RIDS to manage and process FOIA/PA requests by storing scanned images of FOIA/PA requests and responsive FBI file and other documents. It consists of a series of workflows which allow for the progression of images associated with particular FOIA/PA requests from one RIDS unit to another. RIDS staff redact the images and apply exemptions in accordance with the FOIA and Privacy Act statutes.

(28) Documents are scanned into FDPS in the Tagged Image File Format ("TIFF"). FBI staff must first convert documents from other formats, such as Excel, to TIFF, for upload into FDPS. To date RMD has spent well over 500 hours on the conversion process of CJIS files and documents in response to plaintiffs' extremely broad FOIA request. As of November 12, 2010, almost 32,000 pages have been uploaded into FDPS for processing. The most complicated task relating to this FOIA request has been the conversion of Excel spreadsheets to TIFF format. With the goal of reducing page counts by increasing how much spreadsheet data appears on one printed page, RMD staff has developed a computer program which converts data into multi-page TIFF format. This process alone has required four weeks of one employee's part-time efforts.

SUMMARY OF POTENTIALLY RESPONSIVE DOCUMENTS

(29) All potentially responsive documents originated from within CJIS, due to the fact that CJIS maintains IAFIS and the role of IAFIS within the Secure Communities Program.

(30) As of this date, the potentially responsive material consists of the following categories and estimated document/item and/or page counts: (1) E-mails - over 30,000; (2) PowerPoint presentations - over 200, or approximately 3,300 pages; (3) Excel spreadsheets - over 2400, estimated to consist of 187,000 pages; (4) Access data and reports; the FBI is working diligently to quantify the volume involved as it resolves technical challenges; and (5) all other documents - estimated to be approximately 20,000 pages. This material is likely to contain some duplication, but until it is reviewed further, the FBI cannot provide a precise page count estimate.

RELEASES MADE

(31) The FBI made its first release to plaintiffs by letter dated August 13, 2010. The FBI notified plaintiff that it had identified five documents, consisting of a total of 51 pages, and informed plaintiffs of their right to appeal any denials in the release. (**See FBI-Exhibit H.**) A second set of documents is currently undergoing review and RIDS will be releasing it soon.

IDENTIFICATION OF RECORDS SPECIFIC TO "OPT-OUT"

(32) In response to plaintiffs' motion for preliminary injunction, RIDS has had to switch gears and divert its efforts to conducting computerized word searches of the potentially responsive records it has received to date from CJIS, utilizing the terms "opt-out" and "opt out." RIDS has identified 54 potentially responsive pages in documents uploaded to FDPS and over 500 potentially responsive e-mails which contain one of those terms. RIDS has not yet examined each item to ascertain responsiveness. Certain file types, namely, Excel and Access, have not been searched as they are collections of data and as such would not be expected to contain those terms. RIDS has also searched the PowerPoint presentations and has not identified any slides which include the terms; however, RIDS, RMD, and CJIS continue to review, analyze, scope and

sort the universe of responsive information, including the materials potentially responsive to plaintiffs' carved out subset of information related to "opt-out" and "opt out."

**PROPOSED SCHEDULE FOR PRODUCTION OF
"OPT-OUT"-RELATED MATERIALS**

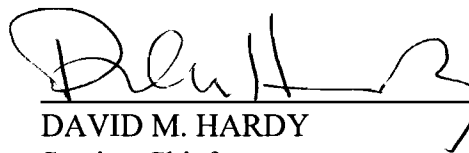
(33) The FBI estimates it will take approximately two months to complete the processing of the "opt-out" responsive material identified to date, with an estimated completion date of January 14, 2011. As a direct result of plaintiffs' preliminary injunction, RIDS is now forced to switch gears and abandon its on-going scoping and processing efforts in order to search for a new smaller "subset" of documents. The likelihood that this smaller universe of documents is situated among the enormous volume of documents turned over by CJIS to RIDS and which are potentially responsive to the FOIA request is high. However, there is no guarantee that plaintiffs will receive "true" "opt-out" material or the types of documents in which plaintiffs are purportedly focused on in their preliminary injunction motion. "Opt-out" or "opt out" terms may appear randomly in this larger universe of documents, but they may be only a passing reference in an e-mail, for example, with no additional substance or discussion of merit.

**PROPOSED SCHEDULE FOR PRODUCTION OF
REMAINING MATERIALS**

(34) In response to each and every part of plaintiffs' February 3, 2010 FOIA request, the FBI estimates that it can review and process approximately 500 pages per month beginning forthwith. In the absence of any progress to substantially narrow the scope of the request, the universe of potentially responsive pages will remain in the hundreds of thousands, and as a result, the FBI estimates it would require numerous years to process the responsive records.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that Exhibits **A** through **H** attached hereto are true and correct copies.

Executed this 12th day of November, 2010.

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

DAVID M. HARDY

Section Chief

Record/Information Dissemination Section

Records Management Division

Federal Bureau of Investigation

Winchester, Virginia

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

NATIONAL DAY LABORER ORGANIZING)
NETWORK, et al)

Plaintiffs,)

v.)

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

Defendants.)

Civil Action No. 10-cv-3488

FBI-EXHIBIT A



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February 3, 2010

Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Attn. David M. Hardy, Chief

Re: Freedom of Information Act Request

To Whom It May Concern:

This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 ("FOIA"), on behalf of the National Day Laborer Organizing Network ("NDLON"), the Center for Constitutional Rights ("CCR"), and the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic") (collectively "the Requesters") for information regarding the U.S. Immigration and Customs Enforcement agency ("ICE") program Secure Communities ("Secure Communities"). We ask that you please direct this request to all appropriate offices and departments within the agency.

Purpose of Request

The purpose of this request is to obtain information for the public about the Secure Communities program and its impact on the relationship between local law enforcement and immigration enforcement in local communities. This information will enable the public to monitor the impact of the program. ICE announced the Secure Communities program in March 2008 as a program to facilitate the automatic sharing of fingerprints between federal immigration authorities and local and state enforcement agencies.¹ Secure Communities' purported objective is to "target" individuals who have committed crimes and "prioritize" removal of the most dangerous criminals. ICE has since implemented Secure Communities in over 95 jurisdictions and plans to expand it nationwide by 2013.² In spite of this unprecedented large-scale cooperation between federal immigration authorities and state and local agencies, ICE has promulgated no regulations and released minimal information about the program's operation.

¹ The program introduces automatic interoperability between FBI and immigration databases.

² David Sherfinski, *ICE plans expansion of immigration database program*, WASHINGTON EXAMINER, Jan. 28, 2010, available at <http://www.washingtonexaminer.com/local/ICE-plans-expansion-of-immigration-database-program-82809177.html#ixzz0ePOriSz2>.

The sometimes contradictory materials that ICE has released leave significant gaps in the public's understanding of the program's purpose, procedures, and potential impact on local communities.³ Information unavailable to the public includes, but is not limited to, ICE's policies, procedures, and training materials related to Secure Communities and the subsequent detention and removal of individuals identified by Secure Communities, agreements between ICE and state or local entities, and the projected fiscal impact of Secure Communities. No information clarifies whether ICE takes action to protect citizens from erroneous detention and removal, to identify and protect vulnerable groups, or prevent racial profiling in local communities. The minimal data released from jurisdictions where Secure Communities has been implemented indicates that ICE has not effectively prioritized the most dangerous criminals. It is also unclear the extent to which individuals identified by the Secure Communities process are experiencing due process violations and other abuses when they are swept through ICE's costly, dangerous, and inefficient detention and removal system.

A. Definitions

- 1) **Secure Communities Jurisdiction(s)**. In this request, the term "Secure Communities Jurisdiction(s)" is defined as all jurisdictions where Secure Communities has been implemented.
- 2) **Potential Secure Communities Jurisdiction(s)**. In this request, the term "Potential Secure Communities Jurisdiction(s)" is defined as all jurisdictions where ICE is negotiating the implementation of Secure Communities or is in the process of finalizing an agreement.
- 3) **Designated Jurisdiction(s)**. In this request, the term "Designated Jurisdiction(s)" refers to the following jurisdictions:
 - Florida, all jurisdictions
 - Washington, D.C.
 - Harris County, TX
 - San Diego County, CA
 - Los Angeles County, CA
 - Maricopa County, AZ
 - Philadelphia County, PA
 - Wake County, NC
- 4) **Secure Communities Query**. In this request, the term "Secure Communities Query" is defined as a Criminal Answer Required ("CAR"), Criminal Print Identification ("CPI") File Maintenance Query, or any other mechanism by which a Law Enforcement Agency submits a fingerprint query to be run through the Secure Communities' system to be checked against FBI and any DHS databases.⁴
- 5) **Secure Communities Match**. In this request, the term "Secure Communities Match" is defined as an interoperability hit following a Criminal Answer Required ("CAR") or

³ See Secure Communities Standard Operating Procedures, §§ 2.1.1 – 2.1.4, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

⁴ Secure Communities Standard Operating Procedures, §§ 2.1.1 – 2.1.4, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

Criminal Print Identification (“CPI”) File Maintenance Query including, but not limited to, any instance in which a Secure Communities Query matches an individual to a record in any DHS database.

- 6) **Immigration Detainer.** In this request the term “Immigration Detainer” refers to the Form I-247, Immigration Detainer - Notice of Action (attached at Tab B) or any other similar request by ICE to detain an individual in state or local custody upon their release.
- 7) **ICE Field Offices.** In this request the term “ICE Field Offices” refers to all ICE Field Offices, including, but not limited to, ICE Sub-Field Offices, and any other ICE office involved in immigration enforcement.⁵
- 8) **Law Enforcement Agency.** In this request the term “Law Enforcement Agency” includes, but is not limited to, any state, city, county, or local police agency, department of corrections, sheriff’s office, jail, or other holding facility.
- 9) **Vulnerable Groups.** In this request the term Vulnerable Groups includes, but is not limited to, such groups as minor children, the elderly, pregnant or breastfeeding woman, individuals with chronic or acute medical or mental health conditions, victims of human trafficking or other crimes, individuals with T, U, or S visas or pending visa applications, individuals who express a fear of persecution if removed, and individuals with dependent minor children in the United States.
- 10) **Record(s).** In this request the term “Record(s)” includes, but is not limited to, all Records or communications preserved in electronic or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, technical manuals, technical specifications, training manuals, studies, or any other Record of any kind.

B. Acronyms⁶

Department of Justice	DOJ
Federal Bureau of Investigation	FBI
Criminal Justice Information Services	CJIS
Integrated Automated Fingerprint Identification System	IAFIS
Department of Homeland Security	DHS
Immigration and Customs Enforcement	ICE
United States Visitor and Immigrant Status Indicator Technology	US-VISIT
Automated Biometric Identification System	IDENT
State Identification Bureau	SIB
Memorandum of Agreement	MOA
Local Law Enforcement Agency	Local LEA
National Fingerprint File	NFF
Criminal Ten-Print Submission (Answer Required)	CAR transaction
National Crime Information Center	NCIC
Automatic Immigration Alien Query	IAQ

⁵ Jacqueline Stevens, *America’s Secret ICE Castles*, THE NATION, Dec. 16, 2009, available at <http://www.thenation.com/doc/20100104/stevens>; List of Immigration and Customs Enforcement Subfield Offices, attached at Tab C.

⁶ See also Appendix B, attached at Tab D.

ICE Law Enforcement Support Center	LESC
Immigration Alien Response	IAR
IDENT Data response	IDR

C. Request for Information

1) Policies, Procedures and Objectives

Any and all Records, received, maintained, or created by any government agency or subdivision, related to the policies, procedures or objectives of Secure Communities, including documents created prior to March 28, 2008. Such Records include but are not limited to:

- a. **Overview Documents:** policies, operating procedures, rules, internal policy guidance, training materials and legal opinions or memoranda referencing Secure Communities or discussing the mandate, goals, objectives, function responsibility, purpose, implementation, deployment strategy of Secure Communities and any procedures for state or local jurisdictions to opt-out of Secure Communities.
- b. **State and Local Agreements:** agreements, including Memoranda of Agreement, Memoranda of Understanding, and drafts of agreements between ICE and any partner, including State Identification Bureaus ("SIBs"), local Law Enforcement Agencies ("local LEAs") or other state or local agencies related to Secure Communities.
- c. **Secure Community's Inquiry & Response Procedures:** any and all Records related to policies and procedures governing the initiation of Secure Communities Queries in Secure Communities Jurisdictions and policies and procedures governing ICE's responses to Secure Communities Queries, including, but not limited to:
 - i. Any Record containing guidance or procedures governing when local LEAs may generate a Secure Communities Query, including any Records providing for mandatory Secure Communities Queries or discretionary Secure Communities Queries.
 - ii. Any Record related to any past, current, or future practice of automatic generation of a Secure Communities Query ("automated IAQ processing") when "unknown" or "other than the United States" is entered as an individual's place of birth.⁷
 - iii. Any Records that contain lists or otherwise identify any databases checked as a result of a Secure Communities Query, including, but not limited to, all national, state and local databases.
 - iv. Any Records containing standard notices or computer screen shots generated in response to a Secure Communities Query.
- d. **Detainer Procedures:** any and all Records containing guidance, procedures, or standards governing the issuance or lifting of Form I-247, Immigration Detainer - Notice of Action ("Immigration Detainer"), by the Law Enforcement Support Center ("LESC"), the

⁷ Secure Communities Standard Operating Procedures, § 2.2.7, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

Criminal Alien Program (“CAP”), or ICE Field Offices on individuals who are subject to a Secure Communities Query, including any Records related to the Secure Communities “risk-based approach”⁸ or the “Secure Communities’ levels and offense categories” by National Crime Information Center (“NCIC”) Code.⁹

- e. **State Training or Explanatory Materials:** any and all Records containing training, briefing, guidance, procedures, rules, or other informational materials developed for local LEAs, SIBs, or other state or local entities.
- f. **Relationship Between Secure Communities and Other ICE Enforcement Programs:** any and all Records indicating the interface or relationship between Secure Communities and other ICE programs, including but not limited to the Criminal Alien Program (“CAP”), 287(g) arrangements, and other ICE Agreements of Cooperation in Communities to Enhance Safety and Security (“ICE ACCESS”).
- g. **Racial Profiling Policy:**
 - i. Any and all Records related to ICE monitoring or plans to monitor Secure Communities Jurisdictions for racial or ethnic profiling or other due process violations;¹⁰
 - ii. Any and all Records related to local LEAs’ racial profiling or anti-racial profiling policies or procedures from Secure Communities Jurisdictions or Proposed Secure Communities Jurisdictions;
 - iii. Any and all Records evaluating, reviewing, compiling or otherwise discussing compliance with racial profiling or anti-racial profiling policies and procedures, including, but not limited to, Section 1.0 of the Secure Communities Standard Operating Procedures.
- h. **Vulnerable Groups:** Any and all Records containing policy or procedures concerning the treatment of Vulnerable Groups targeted by Secure Communities, including, but not limited to, the issuance of Immigration Detainers, parole, or other exercise of prosecutorial discretion.

2) Data & Statistical Information

Any and all Records, excluding Records from individual Alien files, containing data or statistics prepared, compiled, or maintained by ICE or any agency or subdivision thereof related to or pertaining to Secure Communities or to Secure Communities Jurisdictions beginning the last full

⁸ Secure Communities Fact Sheet, U.S. Department of Homeland Security, Immigration and Customs Enforcement, September 1, 2009, *available at* www.ICE.gov/secure_communities, attached at Tab E.

⁹ Secure Communities Standard Operating Procedures, Appendix A, *available at* http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

¹⁰ Secure Communities Standard Operating Procedures, Introduction, § 1.0, *available at* http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A (stating that “[u]se of IDENT/IAFIS for the purpose of racial and/or ethnic profiling or other activity in violation of the Fourth Amendment of the United States Constitution is not permitted and may result in the suspension of the local jurisdiction engaged in the improper activity”).

fiscal year prior to the implementation of Secure Communities in each jurisdiction through the present (except as otherwise specified). Such Records should include, but not be limited to:

- a. **Criminal Answer Required (“CAR”) and Criminal Print Identification (“CPI”) File Maintenance Messages:** Records that contain data or statistical information on CARs and CPI File Maintenance Messages originating in each Secure Communities Jurisdiction and cumulatively (including Records that contain data or statistical information on any and all fingerprints transmitted through interoperability), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain statistics or data drawn from such CARs and CPIs, including any analysis or breakdown thereof.
- b. **Automatic Immigration Alien Queries (“IAQs”):** Records that contain data or statistical information on IAQs triggered by inquiries from each Secure Communities Jurisdiction (including Records that contain data or statistical information on any and all matches or hits in IDENT), from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IAQs, including any analysis or breakdown thereof.
- c. **Immigrant Alien Responses (“IARs”) and IDENT Data Responses (“IDRs”):** Records that contain data or statistical information on IARs and IDRs triggered by Secure Communities Queries from each Secure Communities Jurisdiction, from the implementation of Secure Communities through the present, or any sub-period thereof. Any Records that contain data drawn from such IARs and IDRs, including any analysis or breakdown thereof.
- d. **Form I-247, Immigration Detainers (Immigration Detainers):**
 - i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Immigration Detainers lodged in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Immigration Detainers lodged through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;

- v. **Secure Communities Detainers:** Records that contain data or statistical information on the number of Immigration Detainers lodged on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - vi. Any Records that contain data drawn from any such Immigration Detainer forms, including any analysis or breakdown thereof.
- e. **Form I-213, Record of Deportable/Inadmissible Alien:**
- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-213 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-213 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - v. **Secure Communities I-213s:** Records that contain data or statistical information on the number of Forms I-213 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - vi. Any Records that contain data drawn from any such I-213 forms, including any analysis or breakdown thereof.
- f. **Form I-286, Notice of Custody Determinations:**
- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number Forms I-286 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;

- iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-286 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-286 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - v. **Secure Communities I-286:** Records that contain data or statistical information on the number of Forms I-286 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - vi. Any Records that contain data drawn from any such I-286 forms, including any analysis or breakdown thereof.
- g. **Form I-862, Notice to Appears (NTA):**
- i. **Pre-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - ii. **Pre-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 - iii. **Post-Secure Communities:** Records that contain data or statistical information on the number of Forms I-862 issued in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - iv. **Post-Secure Communities through CAP:** Records that contain data or statistical information on the number of Forms I-862 issued through the Criminal Alien Program in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - v. **Secure Communities I-862:** Records that contain data or statistical information on the number of Forms I-862 issued on individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, from the implementation of Secure Communities through the present, or any sub-period thereof;
 - vi. Any Records that contain data drawn from any such I-862 forms including any analysis or breakdown thereof.

h. Criminal Records in Secure Communities Jurisdictions:

- i. **Pre-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals identified through the Criminal Alien Program dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Post-Secure Communities:** Records that contain data or statistical information on criminal history or records and/or pending charges of individuals who are subject to a Secure Communities Query in each Secure Communities Jurisdiction and cumulatively, since the implementation of Secure Communities;
- iii. Any Records that contain any analysis or breakdown of the aforementioned data and statistical information on criminal history, records, or pending charges.

i. Offense Level Determinations:

Any records that contain data or statistical information disaggregated by any categorization of criminal history or other risk-based assessment including, but not limited to, the "Secure Communities' levels and offense categories"¹¹ for the following periods:

- i. **Pre-Secure Communities:** Dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively; and
- ii. **Post-Secure Communities:** Since the implementation of Secure Communities.

This request includes any such record pertaining to whether or not detainers were lodged, whether or not Notices to Appear were issued, and whether or not individuals were ordered removed and/or actually removed.

j. Removals:

Any records that contain data or statistical information on removals of individuals in Secure Communities jurisdictions, including:

- i. **Pre-Secure Communities:** Any removal resulting from apprehensions through the CAP dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- ii. **Post-Secure Communities:** Any removal of individuals who are subject to a Secure Communities Query since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;
- iii. **Post-Secure Communities through CAP:** Any removal resulting from apprehensions through the CAP following the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively.

¹¹ See Secure Communities Standard Operating Procedures, Appendix A, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

k. United States Citizens:

Any records that contain data or statistical information or any discussion or information whatsoever pertaining to United States Citizens:

- i. Identified through Secure Communities Matches;
- ii. Subjected to Immigration Detainers after being subject to a Secure Communities Query;
- iii. Detained by ICE after being subject to a Secure Communities Query;
- iv. Removed by ICE after being subject to a Secure Communities Query.

l. Demographic Data

Any records that contain data or statistical information on race, ethnicity, sex, age, or place of birth of:

- i. Subjects of Detainers
 1. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
 2. **Post-Secure Communities:** Individuals subject to detainers after being subject to a Secure Communities Query since the implementation of Secure Communities; in each Secure Communities Jurisdiction and cumulatively;
- ii. Subjects of Secure Communities Queries;
- iii. Subjects of Secure Communities Matches.

m. Vulnerable Groups

Any and all Records containing data or statistical information on Vulnerable Groups for:

- iv. **Pre-Secure Communities:** Individuals subject to detainers dating back through the last full fiscal year prior to the implementation of Secure Communities, or any sub-period thereof, in each Secure Communities Jurisdiction and cumulatively;
- v. **Post-Secure Communities:** Individuals subject to Secure Communities Queries since the implementation of Secure Communities, in each Secure Communities Jurisdiction and cumulatively;

3) Individual Records

The following Records pertaining to individuals subject to Secure Communities Queries or ICE detainers in Designated Jurisdictions from October 2007 through the present:

- i. Criminal Answer Required (CAR) and Criminal Print Identification (CPI) File Maintenance Messages;
- ii. Automatic Immigration Alien Queries (IAQs);
- iii. Immigrant Alien Responses (IAR) and IDENT Data Responses (IDR);

- iv. Form I-247, Immigration Detainer – Notice of Action (Immigration Detainer);
- v. Form I-213, Record of Deportable/Inadmissible Alien;
- vi. Form I-215c, Record of Sworn Statement in Affidavit Form;
- vii. Form I-200, Warrant for Arrest of Alien;
- viii. Stipulated Request for Final Order of Removal and Waiver of Hearing;¹²
- ix. Written Notice of Reinstatement of Removal;¹³
- x. Administrative Voluntary Departure;
- xi. Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent)
- xii. Form I-205, Warrant of Removal
- xiii. Form I-286, Notice of Custody Determination;
- xiv. Form I-862, Notice to Appear (NTA);
- xv. Initial Notice if Hearing in Removal Proceedings;
- xvi. Immigration Judge Bond Redetermination Order, EOIR Form 1;
- xvii. Notice of Entry of Appearance as Attorney or Representative before the Immigration Court, Form EOIR-28 or USCIS Form G-28;
- xviii. Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals, Form EOIR-27
- xix. Immigration Judge Orders: ordering individual removed, terminating proceedings, or granting relief;
- xx. Any other Records that contain any of the following information:
 - i. **Demographic Information:**
 - 1. The criminal history of, and the current charges against, the individual;
 - 2. The individual's age, race, gender, nationality, place of birth or status as a member of a Vulnerable Group.

¹² See Stipulated Request for Final Order of Removal and Waiver of Hearing, <http://www.scribd.com/doc/22093836/EOIR-Stipulated-Request-for-Removal-Order-and-Waiver-of-Hearing>

¹³ See 8 C.F.R. § 1241.8(b)

ii. **Immigration Detainers:**

1. Whether the Immigration Detainer was lodged on individuals who are subject to a Secure Communities Query;
2. Whether the Immigration Detainer was issued by the LESC, the CAP, a local ICE field office, a 287(g) officer, or some other entity;
3. How the determination to lodge an Immigration Detainer was made, including reference to any policy guidelines or “risk-based” assessment, such as guidance based on criminal history or factors such as age, gender, medical or mental health conditions, or dependent minor children;
4. For any individual identified following a Secure Communities Query for whom an Immigration Detainer was not lodged or was subsequently lifted and the reasons for that determination, including reference to any policy guidelines or “risk-based” assessment.

iii. **ICE Custody Determinations:**

1. Any notice or communication from the local or state facility with custody of the individual subject to an ICE detainer to ICE indicating when the individual is to be released from criminal custody or when ICE can and/or must assume custody;
2. The date and time the individual subject to the detainer was taken into ICE custody;
3. Whether and when the individual posted bond, if any;
4. What factors ICE considered in deciding whether or not to issue bond, how much bond to issue, whether to release someone on their own recognizance, whether to put someone on supervised release or intensive supervised release, whether to grant someone parole or prosecutorial discretion, or any other custody determination, including, for example, any worksheet or checklists utilized for any of the above determinations and reference to any policy guidelines or “risk-based” assessment, including, but not limited to, determinations based on:
 - I. Any categorization of criminal history or other risk-based assessment including, but not limited to, the “Secure Communities’ levels and offense categories”;¹⁴
 - II. Age or gender;
 - III. Medical or mental health conditions;
 - IV. Eligibility for T, U, S visas, or VAWA adjustment;
 - V. Eligibility for asylum, withholding or protection under the Convention Against Torture;
 - VI. Eligibility for other forms of relief from removal;
 - VII. Length of permanent residence in the United States and community ties; or
 - VIII. The existence of minor children dependent on the individual or other family members in the United States;

¹⁴ See Secure Communities Standard Operating Procedures, Appendix A, available at http://www.ice.gov/doclib/foia/secure_communities/securecommunitiesops93009.pdf, attached at Tab A.

5. Whether the individual's criminal case(s) were resolved at the time ICE assumed custody.

iv. **Immigration Charging Document:**

1. When a Notice to Appear is not issued after ICE assumes custody, whether the non-issuance is due to:
 - I. The existence of a prior deportation, exclusion, or removal order;
 - II. The existence of a stipulated order of removal;
 - III. The issuance of a Form I-851, Notice of Intent to Issue a Final Administrative Deportation Order, pursuant to the expedited removal statute;
 - IV. The issuance of a Final Administrative Order of Removal;
 - V. The issuance of a Form I-860, Notice and Order of Expedited Removal, pursuant to the expedited removal statute;
 - VI. ICE's determination that the individual is a United States citizen;
 - VII. ICE's determination that the individual is not removable;
 - VIII. ICE's exercise of prosecutorial discretion; or
 - IX. Any other factor.
2. The date and time that ICE:
 - I. Executed the Notice to Appear;
 - II. Served the Notice to Appear on the individual;
 - III. Filed the Notice to Appear with the Executive Office for Immigration Review.

v. **Immigration Bonds:**

1. Whether and when the individual requested a bond hearing;
2. Whether and when a bond hearing was held;
3. Whether and when an individual requested a redetermination of custody decision;
4. Whether and when a custody redetermination hearing was scheduled;
5. Whether and when a custody redetermination hearing was held;
6. Whether and when the individual requested a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing;
7. Whether and when a *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999), hearing was held;
8. The amount of the bond set by the Immigration Judge, if any;
9. Whether the individual appealed the bond determination;
10. Whether and when the individual posted bond, if any.

vi. **Removal Proceedings:**

1. If resolved, the final outcome of the individual's removal case;
2. If pending, the current status of the individual's removal case;
3. The date the individual's removal case was resolved;
4. Whether the individual was represented by counsel in the removal proceeding at any time.

vii. **Detention:**

1. When the individual was first detained by ICE;
2. If released, the date the individual was released from custody (or removed);
3. Each location and facility where the individual was detained and the dates of detention at each such facility.

4) **Fiscal Impact of Secure Communities**

- a. **Fiscal Impact on State and Local Secure Communities Jurisdictions and Potential Secure Communities Jurisdictions:** Any and all Records related to the fiscal impact or the actual, estimated, or projected cost on state and local Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions arising from or related to Secure Communities or to individuals subject to Immigration Detainers following a Secure Communities Query, including, but not limited to, costs, reimbursements, monetary agreements, and monetary incentives, including increased costs of detention.
- b. **Intergovernmental Service Agreements:** Any and all Records related to proposed, contemplated, existing, or prior Intergovernmental Service Agreements for detention facilities with Secure Communities Jurisdictions and Proposed Secure Communities Jurisdictions.
- c. **Contracts with Private Entities:** Any and all Records related to proposed, contemplated, existing, or prior contracts or communications with private companies or other private entities related to the development or implementation of Secure Communities.
- d. **Federal Costs of Secure Communities:** Any and all Records related to actual, estimated, or projected costs of the Secure Communities program to the federal government, including, but not limited to, Department of Homeland Security appropriations, and costs of increased detention and removal operations to ICE, EOIR, and United States Attorneys' Offices, and to the federal courts.

5) **Communications**

- a. **Any and all Records containing communications related to Secure Communities by, to, or between any of the following:**
 - i. **ICE:** ICE or any agent, officer, employee, or subdivision thereof;
 - ii. **DHS:** DHS or any agent, officer, employee, or subdivision thereof;
 - iii. **DOJ:** DOJ or any agent, officer, employee, or subdivision thereof, including, but not limited to EOIR, FBI, and FBI CJIS;

- iv. **State and Local Jurisdictions:** Secure Communities Jurisdictions, Proposed Secure Communities Jurisdictions, and any other state and local jurisdictions, including, but not limited to, any local or state LEAs, SIBs and Attorney Generals' offices;
- v. **The White House:** The White House, the President of the United States, his staff and advisors;
- vi. **United States Congress:** United States Congress, including, but not limited to, letters or emails to Senators or Representatives or staff members thereof, congressional committees, congressional briefings documents, congressional testimony, any other information provided to a member or employee of Congress, and any documents used in preparation of the aforementioned materials. Including but not limited to:
 - 1. Congressional inquiries regarding Secretary Napolitano's statements regarding Secure Communities in the week following the Criminal Alien Program presentation (November 2009);
 - 2. Information regarding ICE Assistant Secretary John T. Morton's meeting with the Congressional Hispanic Caucus on October 21, 2009;
 - 3. Briefings for Congress on 287(g) announcement on July 15, 2009;
 - 4. Briefing for Senate staff in September 2009 on fugitive operations and other issues related to Secure Communities; and,
 - 5. Briefing for Department of Justice Civil Rights Division in 2009.
- vii. **Non-Governmental Organizations (NGOs):** including emails, letters, or other documents distributed to NGOs or any documents used in preparation of such materials or in preparation for meetings with NGOs.

b. Public Statements

- i. **Press Releases:** Any and all Records related to or containing press releases or public internet postings that mention the phrase "Secure Communities" and any and all Records used in the preparation thereof;
 - ii. **Statements to Reporters or Media Outlets:** Any and all Records related to or containing statements by ICE or any official, officer, or employee thereof to a reporter or media outlet, including any opinion pieces or letters to the editor drafted for newspapers or internet media outlets and any Records used in the preparation thereof.
- c. Speeches:** Any and all Records related to speeches, statements, and presentations by ICE or any official, officer, or employee thereof, mentioning Secure Communities and any Records or drafts used in the preparation thereof.

d. Secure Communities Public Relations Approach:

Any and all Records related ICE's Secure Communities messaging, media, or communications approach. Including but not limited to:

- i. Any and all Records related to the development of the program's title, media approach, website, and public relations approach;
- ii. Any and all Records related to any media, communications, or consulting firm that assisted in the development or implementation of ICE's Secure Communities messaging, media, or communications approach, including any contract or agreement with such firm.

6) Secure Communities Program Assessment Records

- a. Any and all Records developed or used by ICE or DHS to evaluate, review, or monitor effectiveness or outcomes of Secure Communities.
- b. Any records containing assessments of the Secure Communities program, whether related to national assessments, assessments of specific Secure Communities Jurisdictions, related to any time period, or any interface or relation with any other ICE programs, divisions or initiatives.
- c. Secure Communities Stakeholder's Questionnaire:
 - i. Any and all Records related to the Form 70-008, ICE Secure Communities Stakeholder's ID Assessment Questionnaire (Stakeholder Questionnaire), OMB No. 1653-NEW, including earlier versions of the questionnaire, memoranda, communications, data gathered, or analysis of such data or questionnaire responses;¹⁵
 - ii. Any and all Records containing comments to the Stakeholder Questionnaire;
 - iii. Any Records containing follow-up communications related to the Stakeholder Questionnaire or other efforts to solicit community input;
 - iv. Any Records containing implementation, analysis, rejection, or other processing of the Stakeholder Questionnaire.

7) Secure Communities Complaint Mechanisms and Oversight

- a. Any and all Records related to a complaint mechanism or redress procedure for an individual, such as a United States citizen, erroneously subject to an Immigration Detainer following a Secure Communities Query or other Secure Communities related complaints.

¹⁵ Immigration and Customs Enforcement Secure Communities Stakeholders ID Assessment Questionnaire

- b. Any and all Records relating to oversight, monitoring, evaluation and supervision of federal, state, and local actors involved in Secure Communities, including, but not limited to, local LEAs, SIBs, and ICE Field Offices.
- c. Any and all Records related to complaints or grievances filed by community members, detained individuals, non-governmental organizations, Congressional representatives, ICE or DHS working groups, state or local entities or employees, federal entities or employees, including those filed with ICE, DHS, SIBs, DHS' Office of Civil Rights and Civil Liberties, the DHS Office of the Inspector General, ICE Office of Professional Responsibility, the United States Attorney General or the Department of Justice, state or local authorities or civil rights bureaus, or the United States Congress or any member or committee thereof.

If you deny any part of this request, please cite each specific reason or exemption to FOIA that you believe justifies your refusal to release the information, and notify us of appeal procedures available to us under the law. The Requesters expect release of all segregable portions of otherwise exempt material. 5 U.S.C. § 552(b). The Requesters reserve the right to appeal a decision to withhold information or a denial of fee waivers. 5 U.S.C. § 552(a)(6)(A)(i).

D. The Requesters

The National Day Laborer Organizing Network ("NDLON") is a non-profit organization founded in 2001 whose mission is to improve the lives of day laborers in the United States. Toward this end, NDLON seeks to strengthen, connect and expand the work of its member organizations in order to become more effective and strategic in building leadership, advancing low-wage worker and immigrant rights, and developing successful models for organizing immigrant contingent/temporary workers.¹⁶

The Center for Constitutional Rights ("CCR") is a not-for-profit, public interest, legal, and public education organization that engages in litigation, public advocacy, and the production of publications in the fields of civil and international human rights. CCR's diverse docket includes litigation and advocacy around immigration detention, post-9/11 detention policies, policing, and racial and ethnic profiling. CCR is a member of immigrant rights networks nationally and provides legal support to immigrant rights movements. CCR also publishes newsletters, know-your-rights handbooks, and other similar materials for public dissemination. CCR has published reports on various aspects of detention and the criminal justice system in the United States. These and other materials are available through CCR's Development, Communications, and Education & Outreach Departments. CCR operates a website, www.ccrjustice.org, which addresses the issues on which the Center works. The website includes material on topical civil and human rights issues and material concerning CCR's work. All of this material is freely available to the public. In addition, CCR regularly issues press releases and operates a listserv of over 50,000 members and issues "action alerts" that notify supporters and the general public about developments and operations pertaining to

¹⁶ NDLON has routinely been granted fee waivers in the past. *See e.g.*, Freedom of Information Act to Customs and Border Protection, March 18, 2009, Case Number 2009F7375.

CCR's work. CCR staff members often serve as sources for journalist and media outlets on immigration, policing and detention policies.

The Immigration Justice Clinic of the Benjamin N. Cardozo School of Law ("the Clinic") was founded in 2008 to provide quality *pro bono* legal representation to indigent immigrants facing deportation. Under the supervision of experienced practitioners, law students in the Clinic represent individuals facing deportation and community-based organizations in public advocacy, media, and litigation projects. In just over one year of existence, the Clinic has already established itself as a leader in the dissemination of critically important information about immigration enforcement operations to the public. In February 2009, the Clinic issued a press release and released previously unavailable secret memoranda and data related to ICE home raid operations to the press, resulting in widespread national media coverage. In July 2009, the Clinic published the first public study of ICE's home raid operations, playing a critical role in informing the public of widespread constitutional violations and other abuses, again attracting significant national media attention.¹⁷

E. Fee Waiver

The Requesters are entitled to a waiver of all costs because the information sought "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the [Requesters'] commercial interest." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). The Requesters have a proven track-record of compiling and disseminating information to the public about government functions and activities. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public's understanding of federal immigration enforcement actions and policies. Access to this information is a prerequisite for members of the local community organizations to meaningfully evaluate immigration enforcement actions and their potential detrimental effects.

The public has an interest in knowing about the manner in which the federal government involves state and local entities in the enforcement of federal immigration law. Secure Communities is a new program of which the public has limited information. There is almost no data in the public domain about the implementation of Secure Communities or whether and how ICE adheres to its congressionally sanctioned objectives to target and prioritize "dangerous criminal aliens."¹⁸ The information that is available is vague and seems to indicate that ICE is not executing its enforcement priorities.¹⁹ The Records sought in this request will inform the

¹⁷ See Constitution On ICE: A Report on Immigration Home Raid Operations, Cardozo Immigration Justice Clinic, available at http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICE-Home-Raid-Report%20Updated.pdf

¹⁸ U.S. Congress, FY2010 Conference Summary: Homeland Security Appropriations, October 7, 2009 (providing funding to "improve and modernize efforts to identify aliens convicted of a crime, sentenced to imprisonment, and who may be deportable.")

¹⁹ See U.S. Immigration and Customs Enforcement, News Release, *Secretary Napolitano and ICE Assistant Secretary Morton Announce That the Secure Communities Initiative Identified More Than 110,000 Criminal Aliens*

public of the scope and effect of the Secure Communities program on community policing and safety, racial profiling, and Constitutional or due process violations in immigration detention. The public has a strong interest in knowing when and how an individual arrested by local police might be subject to federal immigration database checks and swept into the immigration detention and removal system. Moreover, local communities need the requested information about how Secure Communities functions in order to determine whether their interests will be served by the introduction of the program.

As stated above, the Requesters have no commercial interest in this matter. The Requesters will make any information that they receive as a result of this FOIA request available to the public, including the press, at no cost. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress' legislative intent in amending FOIA. See *Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers of noncommercial requesters.'").

In the alternative, the Requesters seek all applicable reductions in fees pursuant to 6 C.F.R. § 5.11(d). The Requesters agree to pay for the first 100 pages of duplication. See 6 C.F.R. § 5.11(d). The Requesters agree to pay search, duplication, and review fees up to \$200.00. If the fees will amount to more than \$200.00, the Requesters request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). If no fee waiver is granted and the fees exceed \$200.00, please contact the Requesters' undersigned counsel to obtain consent to incur additional fees.

F. Expedited Processing

Expedited processing of this request is required because there is a "compelling need" for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I). A "compelling need" is established when there exists an "urgency to inform the public concerning actual or alleged Federal Government activity," when the requester is a "person primarily engaged in disseminating information," 28 C.F.R. § 16.5(d)(1)(iv), and also when there exists "a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence, 28 C.F.R. § 16.5(d)(1)(ii).

There is an urgent need to inform the public of the Secure Communities program. 28 C.F.R. § 16.5(d)(1)(iv). The Fiscal Year 2010 appropriations bill for DHS allocates \$200 billion to Secure Communities. To date, the program has been implemented in over 95 jurisdictions in eleven states. By 2013, ICE intends to operate the program in all 3,100 county and local jails across the country. In spite of this widespread fiscal and community impact, ICE has promulgated no regulations or agency guidelines regarding the operation of the program. ICE has not released the memorandums of agreement that it has entered into with local entities or disclosed precisely how Secure Communities will be implemented on a local level. As ICE continues to introduce Secure Communities in jurisdictions across the country, the public has an urgent need to understand the scope of the program.

in its First Year, Nov. 12, 2009 (citing that 110,000 "criminal aliens" have been identified, but indicating that some of these "criminal" aliens had only been *charged* but not *convicted* of crimes);

Given the vast implications of the program and the public uncertainty surrounding its implementation, Secure Communities is a “matter of widespread and exceptional media interest.”²⁰ Correspondingly, the media has raised serious questions about the Secure Communities program related to the “government’s integrity which affect public confidence,” including concerns that Secure Communities will serve as a dragnet instead of a mechanism to target dangerous criminal individuals, and will hinder community policing and lead to racial profiling.²¹

G. Certification

The Requesters certify that the above information is true and correct to the best of the Requesters’ knowledge. *See* 6 C.F.R. § 5.5(d)(3).

If you have any questions regarding the processing of this request, you may contact Bridget Kessler at (212) 790-0213 or Peter Markowitz at (212) 790-0340. Thank you for your kind consideration.

Please furnish all applicable Records to:

Bridget Kessler
Clinical Teaching Fellow
Cardozo School of Law
Immigration Justice Clinic
55 Fifth Avenue
New York, NY 10003


Sincerely,



Bridget Kessler
Clinical Teaching Fellow
Cardozo School of Law
Immigration Justice Clinic
55 Fifth Avenue
New York, NY 10003
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²⁰ Julia Preston New York Times, *U.S. Identifies 111,000 Immigrants With Criminal Records*, Nov. 13, 2009; New York Times, Editorial, *Wrong Paths to Immigration Reform*, Oct. 12, 2009; Jose M. Serrano, New York State senator, Letter to Editor, New York Times, *Threat to Immigrants*, Oct. 16, 2009; The Real Cost of Prisons Weblog, *Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens*, Jan. 19, 2009; N.C. Aizenman, Washington Post, *D.C. to help U.S. identify illegal immigrants in jail Federal program checks fingerprints of local crime suspects*, Nov. 13, 2009; *More Questions Than Answers About the Secure Communities Program*, Mar. 2009; *See* Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009;

²¹ *See* Michelle Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, 11, Nov. 2009 (noting the concern that Secure Communities raises questions about local police authorities’ ability to build strong, trusting relationship with their communities).



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