

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

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CENTER FOR CONSTITUTIONAL RIGHTS, NATIONAL DAY LABORERS ORGANIZING NETWORK, ET AL.,	: : : No. 10 Civ. 3488 (SAS) (KNF) : :
Plaintiffs,	: : : ECF Case
v.	: :
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL.,	: <b><u>DECLARATION</u></b> : <b><u>OF DAVID J. PALMER</u></b> : : :
Defendants.	: :
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David J. Palmer, pursuant to 28 U.S.C. § 1746, hereby declares and states as follows:

1. I am the Deputy Associate General Counsel, Legal Counsel, in the Department of Homeland Security's (DHS) Office of the General Counsel (OGC). My responsibilities include the coordination of responses to Freedom of Information Act (FOIA) requests made of DHS headquarters components, and the programs they conduct, once those requests become the subject of contested litigation. I am personally familiar with DHS' procedures for responding to FOIA requests and with the FOIA request at issue in the instant litigation.

2. I present this declaration in support of the Government's opposition to Plaintiffs' motion for preliminary injunction. The statements I make in this declaration are based on my personal knowledge and my review of relevant documents and information provided to me by DHS employees in the course of their official duties.
3. On or about February 3, 2010, DHS's Privacy and Freedom of Information Office (DHS FOIA) received the request that is the basis of the instant litigation. The general subject matter of the request is the Secure Communities Program, which is a comprehensive plan to identify and remove criminal aliens. Operation of the Secure Communities Program is primarily the responsibility of Immigration and Customs Enforcement (ICE), with the participation of several agencies within and outside of DHS.
4. Plaintiffs' 21-page request consists of seven parts and is further divided into over 150 subparts. The request seeks "any and all records" related to virtually every aspect of the Secure Communities Program.
5. On or about March 5, 2010, DHS FOIA notified Plaintiffs that it had received their request. On or about March 3, 2010, DHS FOIA forwarded Plaintiffs' request to the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) Program, the Office for Civil Rights and Civil Liberties (CRCL) and the Office of the General Counsel (OGC), which are the programs/offices that might have responsive documents. CRCL and OGC are headquarters components, and US-VISIT is administered by the National Protection and Programs Directorate.
6. Plaintiffs' FOIA request includes requests for both expedited processing and a fee waiver. The DHS FOIA denied both requests due to the Plaintiffs' failure to establish

that it had met the statutory requirements to qualify for either expedited processing or a fee waiver.

7. On or about March 18, 2010, the DHS FOIA sent a preliminary consolidated fee estimate to Plaintiffs. On or about April 21, 2010, the DHS FOIA received a letter from Plaintiffs refusing to advance half of the estimated fee for their FOIA request pending resolution of Plaintiffs' appeal of the denial of their requests for fee waiver and expedited processing.
8. Plaintiffs appealed the denial of their requests for fee waiver and expedited processing on or about March 15, 2010. Plaintiffs filed the instant litigation on April 27, 2010.
9. The Department, through counsel, has repeatedly requested that Plaintiffs narrow their request so that DHS may provide a response to Plaintiffs' request. In conjunction with several other defendants, DHS initiated this process through counsel in an initial meeting with Plaintiffs on June 9, 2010.
10. Despite the lack of agreement between the parties concerning the scope of the request, DHS commenced searching for potentially responsive documents.
11. DHS determined that US-VISIT, OGC and CRCL would likely have responsive documents. The OGC began a search for documents responsive to the initial request as written and determined that in addition to the attorneys who serve US-VISIT, attorneys from the Operations and Immigration Divisions might have responsive documents. Attorneys from the Operations Division reviewed their e-mail correspondence and files and determined that they did not have any responsive documents. Those attorneys did not have any substantive involvement with Secure

Communities. Attorneys from the Immigration Division attempted a search, and determined that the number of responsive documents would be enormous given the breadth of the request.

12. Of the headquarters components, US-VISIT has had the most involvement with Secure Communities, though mostly from a technical standpoint. As discussed in greater detail below, despite US-VISIT's relatively limited role in Secure Communities, US-VISIT determined that the request, as written, would require the production of literally millions of pages of records.
13. US-VISIT manages the Automated Biometric Information System (IDENT), which is a database that houses more than 120 million unique fingerprint records. The overwhelming majority of those fingerprints were provided by foreign nationals in connection with their travel to and from the United States, the procurement of immigration benefits, or immigration enforcement actions.
14. Beginning in October 2008, IDENT became interoperable with the Department of Justice's criminal fingerprint database, the Integrated Automated Fingerprint Identification System (IAFIS). "Interoperability" refers to the ability of IDENT and IAFIS to share biometric and other data between the two databases in near-real time. This capability allows decision makers in the immigration management and border security community to simultaneously search both criminal and immigration records when screening an individual, including screening: visa applicants, foreign nationals seeking admission at the ports of entry, border patrol apprehensions, and background checks by the Office of Personnel Management for individuals pursuing federal employment.

15. An additional benefit of interoperability is its role in ICE's Secure Communities Program. In short, when a person is arrested by law enforcement officers in a jurisdiction that is participating in Secure Communities, that person's fingerprints are automatically checked against both IAFIS *and* IDENT.
16. As noted above, US-VISIT reviewed Plaintiffs' request as written and determined that the request would implicate literally millions of pages of records. For example, Plaintiffs' request for records pertaining to the "Subjects of Secure Communities Queries" and "Subjects of Secure Communities Matches" could, by themselves, implicate several million individual records stored in IDENT. Further, it determined that the search necessary to provide a complete response would require US-VISIT to dedicate a number of staff for months to nothing but the processing of this request.
17. CRCL has a relatively small number of responsive documents and, as discussed below, will be producing responsive, nonexempt documents by mid-December 2010.
18. On or about October 11, 2010, counsel advised DHS that Plaintiffs were seeking records on the "Opt-Out" issue as their highest priority. Headquarters components likely to maintain records related to the "Opt-Out" issue would be US-VISIT and CRCL.
19. CRCL has determined that it has documents relevant to the "Opt-Out" issue. These documents consist of e-mail correspondence, internal memoranda and what appear to be some publicly available materials. CRCL is collecting and reviewing potentially responsive documents, and will be in a position to provide a response by mid-December 2010. In addition, CRCL is prepared to conduct additional searches based upon any narrowed search criteria agreed to by the parties.

20. US-VISIT is currently reviewing its documents to determine what, if any, records it may have that are relevant to the "Opt-Out" issue.

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

Signed this 12th day of November, 2010.

Washington, DC

A handwritten signature in black ink, appearing to read "D. Palmer", with a large, stylized initial "D" and a long horizontal flourish extending to the right.

David J. Palmer  
Deputy Associate General Counsel  
Office of the General Counsel  
Department of Homeland Security