

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

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

Plaintiffs. :

v. :

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

Defendants. :

No. 10 Civ. 3488 (SAS)(KNF)

[Rel. 10 CV2705]

**DECLARATION**

**DECLARATION OF CRYSTAL RENE SOUZA**

I, Crystal Rene Souza, declare pursuant to 28 U.S.C. Section 1746, and subject to the penalties of perjury, that the following is true and correct:

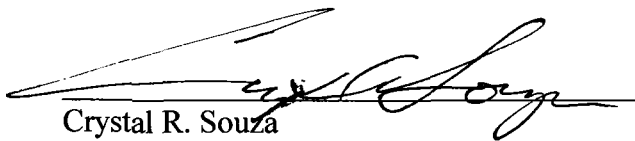
1. I am a Supervisory Freedom of Information Act Specialist for the U.S. Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) Office of the General Counsel (OGC).
2. I am familiar with the procedures in processing Freedom of Information Act (FOIA) requests through EOIR.
3. The information provided herein is based upon my review of the information available to me in my official capacity.
4. The EOIR was created in 1983 as a separate agency within the DOJ. EOIR is responsible for adjudicating immigration cases. Under the delegated authority of the Attorney General, EOIR interprets and administers federal immigration laws and regulations by conducting immigration court proceedings, appellate reviews, and administrative hearings in certain types of immigration-related cases. EOIR is independent of the Department of

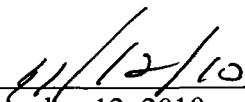
Homeland Security (DHS), which is charged with enforcement of federal immigration laws. EOIR's mandate is to provide fair, expeditious, and uniform interpretation and application of immigration law. This is accomplished through various adjudicative functions including immigration hearings and appellate review of decisions in immigration matters. These proceedings provide a process through which individuals can defend themselves against government immigration charges, complaints, or denial of benefits, or through which they can seek relief from penalties imposed on or against them.

5. On or about February 12, 2010, EOIR received a FOIA request from Bridget Kessler, Clinical Teaching Fellow at Cardozo School of Law and Sunita Patel, Staff Attorney for the Center for Constitutional Rights to conduct a search for any and all records received, maintained, or created by any government agency or subdivision, about the Secure Communities program related to: (1) policies, procedures and objectives including documents created prior to March 28, 2008; (2) data and statistical information prepared, compiled, or maintained by the DHS Immigration and Customs Enforcement (ICE) or any agency or subdivision thereof related to or pertaining to Secure Communities beginning the last full fiscal year prior to the implementation of Secure Communities in each jurisdiction through the present, excluding records from individual alien files; (3) individual records pertaining to individuals subject to Secure Communities queries or ICE detainers in designated jurisdictions from October 2007 through the present; (4) fiscal impact of Secure Communities; (5) communications related to Secure Communities by, to or between agencies; (6) Secure Communities program assessment records; and (7) complaint mechanisms and oversight records.
6. On or about February 19, 2010, EOIR mailed Ms. Kessler a response indicating that it was processing the request for documents under assigned FOIA control number 2010-5934. The letter also informed the requesters that fee waiver requests would be addressed in a separate letter.
7. On or about March 1, 2010, the FOIA Service Center instructed the components within EOIR (the Board of Immigration Appeals (BIA), the OGC, and the Office of Legislative and Public Affairs (OPLA)) to conduct a search for records for electronic and paper files. The FOIA Service Center also conferred with the Office of Planning, Analysis and Technology (OPAT) to ascertain whether the EOIR database called Case Access System for EOIR (CASE) contained any data fields designating respondents as coming from the DHS Secure Communities initiative. OPAT indicated that no such data was maintained.
8. OGC, OPLA, and the BIA produced responsive information in the form of paper documents and electronic mail messages to the FOIA Service Center. The FOIA Service Center's initial review of the information revealed that it would need to refer some of the documents for processing.
9. As EOIR was processing its response, on or about May 6, 2010, EOIR received notice that the plaintiffs had filed litigation in Federal Court in this matter. As a result, no response was provided to the initial request. However, since that time EOIR continued to work with agency counsel to obtain clarification regarding the scope of the request. Furthermore, EOIR reviewed and is processing documents consisting of approximately

2,000 pages.

10. On or about May 11, 2010, the EOIR OGC issued a Litigation Hold to each of the EOIR components instructing them to preserve documents or information regarding "secure communities." OGC instructed employees to provide hard copy documents to the FOIA Service Center and to notify OGC of any electronic data found.
11. On or about July 14, 2010, EOIR was provided a Rapid Production List (RPL) the plaintiffs had provided to agency counsel. EOIR reviewed the RPL; but it did not possess any documents responsive to the request.
12. On or about October 29, 2010, EOIR was notified that Plaintiffs filed a motion for preliminary injunction requesting the disclosure of records related to opt-out records defined as "the existence or nonexistence of a procedure for states and localities to decline or limit participation in Secure Communities, and the technological capacity of ICE and the FBI to honor requests to opt-out, opt-in or limit participation by ensuring that fingerprints are not transmitted from the FBI to ICE ("Opt-Out Records")."
13. Based on the mission of EOIR, as noted in paragraph four, and ongoing searches conducted to date in response to this request, EOIR does not believe that it has any documents originating within EOIR that are relevant to the current request for opt out records. Nevertheless, should any information related to this current request be located EOIR will process and produce the records as part of its ongoing efforts to respond to the request.

  
Crystal R. Souza

  
November 12, 2010