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From: Hannah Weinstein [hannahweinstein@gmail.com]
Sent: Monday, October 11, 2010 12:44 PM
To: Connolly, Christopher (USANYS); Cordaro, Joseph (USANYS)
Cc: Kessler, Bridget; Peter Markowitz; james.f.horton@gmail.com; phillipstarkweather@gmail.com; Darius Charney; Sunita Patel; hannahweinstein@gmail.com
Subject: NDLO v. ICE -1:10-cv-3488
Attachments: NDLO v ICE Opt Out Search Guidance_10.11.10.doc

Follow Up Flag: Follow up
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Dear Chris,

We write to follow up on our Wednesday, October 6 phone call, and inform you of a development that has created significant urgency in the need to set a date for the production of certain remaining categories of the Rapid Production List.

During a press conference on Wednesday, October 6, Department of Homeland Security Secretary Janet Napolitano stated that states and localities cannot opt-out of Secure Communities, contradicting prior statements by DHS, ICE and DOJ officials outlining a process to opt-out. As we stated in meetings on June 9, June 24, July 27 and September 21, records related to the opt-out question are of the utmost importance to our client.

On October 1, 2010 Plaintiffs requested that Defendants produce five items by October 15, 2010, specifically (1) -Concept of Operations (CONOPS), (2)-Records related to the ability of states or localities to opt-out of, or limit their participation in, Secure Communities, (3)-All agreements (formal and informal) between ICE/DHS and the FBI, (4)-All agreements (formal and informal) related to Secure Communities with states or localities that have not signed Secure Communities Memoranda of Agreement, and (5) -Records created in relation to the drafting of Section 1.0 of Secure Communities' Standard Operating Procedures (SOP), or Section VIII of the standard Secure Communities Memorandum of Agreement. Records containing ICE's plans to monitor for racial profiling or other Constitutional violations in local jurisdictions pursuant to Section 1.0 of the SOP, or Section VIII of the MOA, and records related to the evaluation of any state or jurisdiction pursuant to Section 1.0 of the SOP or VIII of the MOA.

These five categories correspond to Rapid Production List records that Defendants have not yet produced.

The requested records will shed light on the question of whether states and localities can opt-out of Secure Communities. Given the Secretary's recent statements, the need for our client and the public to have access to these records is more urgent than ever before. Therefore, if Defendants fail to produce records responsive to the five categories specified in our October 1, 2010 proposal by October 22, 2010, Plaintiffs will be forced to seek a preliminary injunction for the production of these records. We are happy to assist Defendants in locating responsive records. To that end, the attached document outlines types of records that may relate to the ability of states or localities to opt-out or limit participation in Secure Communities.

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Sincerely,
Hannah Weinstein

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10/11/2010

NDLON et al., v. ICE et al., 1:10-cv-3488**Search Guidance for Records Related to the Ability of States or Localities to Opt-out of or Limit Participation in Secure Communities**

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

Records related to the ability of states or localities to opt-out or limit their participation in Secure Communities, (Plaintiffs' Rapid Production List Section II), may include, but are not limited to:

- Records containing formal and informal agreements regarding the sharing of fingerprints between the FBI and State Identification Bureaus ("SIB"). Pre-existing agreements between the FBI and SIBs are relevant to the question of whether a state can opt-out of Secure Communities because they indicate the scope of the FBI's authorization to use the fingerprints and to share them with others.
- Legal memoranda regarding Secure Communities or procedures related to Secure Communities, including, but not limited to, legal memoranda relating to interoperability (fingerprint sharing between DHS IDENT and FBI IAFIS), Secure Communities Memoranda of Agreements, Secure Communities Statements of Intent, immigration detainers, or state or local law enforcement involvement in Secure Communities. These memoranda may originate from ICE (including, but not limited to, the Office of the Principal Legal Advisor), the FBI (including, but not limited to, the Office of the General Counsel) or the Office of Legal Counsel. Legal memoranda related to whether DHS considers Secure Communities or interoperability related procedures mandatory or voluntary are relevant to the question of whether states and localities may opt-out or limit participation in the program.
- Records relating to the technical operation of DHS IDENT/FBI IAFIS interoperability and response mechanisms, including, but not limited to:
 - when fingerprints are sent through IDENT/IAFIS interoperability;
 - the meaning of the activation (or automation) of IDENT/IAFIS interoperability;
 - the FBI's capacity to prevent or limit IDENT/IAFIS interoperability for states or other geographic subdivisions;
 - the FBI's capacity to prevent or limit IDENT/IAFIS interoperability for different categories of submissions within the same geographic subdivision (for example, those individuals convicted of Level 1 offense); and,
 - the FBI's capacity to prevent or limit the notification of ICE when there is a match in IDENT.

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Understanding the technical operation of interoperability is central to determining whether and how the FBI or DHS could allow a state or locality to opt-out or limit participation in Secure Communities.

- Records, including, but not limited to, communications relating to:
 - a state's refusal to sign a Secure Communities Memoranda of Agreement, and the reasons for that refusal;
 - a state's delay in signing a Secure Communities Memoranda of Agreement and the reasons for that delay;
 - requests by a state to opt-out, delay, or limit participation in Secure Communities or IDENT/IAFIS interoperability;
 - a state's negotiation of formal and informal agreements related to Secure Communities or IDENT/IAFIS interoperability;
 - a jurisdiction's negotiation of formal and informal agreements related to Secure Communities or IDENT/IAFIS interoperability;
 - requests by a jurisdiction within a state to opt-out, delay or limit participation in Secure Communities or IDENT/IAFIS interoperability; and,
 - the District of Columbia's rescission of the Secure Communities Memoranda of Agreement.

Specific states likely to have had such communications with ICE or the FBI, include, but are not limited to, New York, Massachusetts, California, Colorado, Washington and South Dakota.