

**UNITED STATES DISTRICT COURT  
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,

- against -

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

Defendants.

No. 10 Civ. 3488 (SAS)

**DECLARATION  
OF CATRINA  
PAVLIK-KEENAN**

Catrina Pavlik-Keenan, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Director of the Freedom of Information Act Office (the “ICE FOIA Office”) at United States Immigration and Customs Enforcement (“ICE”). I have been the Director of ICE FOIA Office since that office was created on December 18, 2006. Prior to holding this position, I worked for approximately four years in the FOIA office at the Transportation Security Administration — first as a Supervisory FOIA Analyst, then as Deputy Director for two years, and finally as Director. In total, I have 18 years of experience processing FOIA requests.

2. The ICE FOIA Office has been responsible for processing and responding to all Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received by ICE since January 17, 2010. Prior to that, two offices within ICE shared

the responsibility for processing and responding to FOIA and Privacy Act requests — the FOIA Office and the Information and Disclosure Unit (“IDU”) in the Mission Support Division within ICE’s Office of Investigations. Specifically, the IDU was responsible for processing and responding to FOIA and Privacy Act requests relevant to the operations of ICE’s Office of Investigations, while the ICE FOIA Office processed FOIA and Privacy Act requests directed to all the other components of ICE.

3. As the Director of the ICE FOIA Office, I am the individual primarily responsible for the oversight of how ICE processes FOIA and Privacy Act requests. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE. In connection with my official duties, I am familiar with ICE’s procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. Specifically, I am familiar with ICE’s handling of the FOIA request that the Center for Constitutional Rights (CCR), the National Day Laborer Organizing Network (NDLON), and the Immigration Justice Clinic of the Benjamin N. Cardozo Law School (Cardozo), the plaintiffs in the above-captioned action, submitted on February 19, 2010, which was assigned FOIA case number 2010FOIA2674.

4. I make this declaration in support of Defendants’ response to Plaintiffs’ motion for preliminary injunction in the above-captioned action. The statements contained in this declaration are based upon my personal knowledge, my review of documents kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

#### **I. SECURE COMMUNITIES**

5. ICE is a component of United States Department of Homeland Security (“DHS”). ICE was formed in 2003 by uniting several previously fragmented border and

security organizations into an integrated homeland security agency focused on investigations and enforcement. ICE's mission is to protect the security of the United States by vigilantly enforcing the nation's immigration and customs laws.

6. In October 2008, ICE launched Secure Communities, a comprehensive plan to identify and remove criminal aliens.

7. In order to identify criminal aliens for removal, ICE works in partnership with local, state, and federal law enforcement agencies to efficiently leverage information and resources.

8. Secure Communities focuses on three main objectives: 1) identifying criminal aliens through modernized information sharing; 2) prioritizing enforcement actions to ensure apprehension and removal of dangerous criminal aliens; and 3) transforming the criminal alien enforcement processes and systems to achieve lasting results.

9. As part of the first objective – identifying criminal aliens through modernized information sharing – Secure Communities has deployed linked systems which enable local law enforcement agencies (LEAs) to initiate a integrated check of criminal history and immigration status of persons charged with or convicted of a crime with the submission of a single set of fingerprints as part of the LEA's normal arrest and booking process.

10. This integrated check is the result of a cooperative effort between the DOJ Federal Bureau of Investigation (FBI) Integrated Automated Fingerprint Identification System (IAFIS) and the DHS United States Visitors and Immigrants Status Indicator Technology (US-VISIT) Automated Biometric Identification System (IDENT).

11. The interoperability of IAFIS and IDENT allows ICE to receive electronic information and conduct necessary criminal background checks on suspected criminal aliens

seamlessly. This has allowed ICE to better employ its limited resources in the field to make the maximum impact on public safety.

## **II. ADMINISTRATIVE PROCESSING OF PLAINTIFFS' FOIA REQUEST**

12. On or about February 19, 2010, Plaintiffs' FOIA request was received by ICE FOIA.

13. Plaintiffs' request totals 21 pages and seeks 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, received, or maintained in the full fiscal year prior to the launch of Secure Communities in October 2008.

14. Plaintiffs' request has the potential to implicate more than one million records within ICE. The agency has estimated that it would require thousands of man hours to search for possibly responsive records and initial cost estimates are in the hundreds of thousands of dollars.

15. On or about February 23, 2010, ICE FOIA transmitted a letter to Plaintiffs denying their request for expedited processing and advising Plaintiffs that they had not met their burden in establishing their entitlement to a full fee waiver pursuant to DHS regulations.

16. Although Plaintiffs allege that they appealed the denial of their requests for fee waiver and expedited processing on March 15, 2010, ICE FOIA has no record of receiving any such correspondence from Plaintiffs.

17. On or about March 17, 2010, ICE FOIA sent a partial fee estimate to the DHS Privacy Office.

18. On or about March 18, 2010, the DHS Privacy Office sent a preliminary consolidated fee estimate to Plaintiffs.

19. On or about April 21, 2010, DHS Privacy 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.

20. Plaintiffs commenced the instant litigation on April 27, 2010.

21. Based upon Plaintiffs' correspondence, I have determined that Plaintiffs have not satisfied the requirements set forth under DHS regulations that would entitle Plaintiffs to a fee waiver for the requested material.

22. As such, it is the agency's policy to attempt to negotiate with requesters, like Plaintiffs, to more accurately define the types and nature of the records being sought. ICE attempts to work with requesters to help pinpoint the specific information the requesters are seeking in the most efficient way.

23. In addition to the potential cost savings to the agency, this process is also intended to help requesters receive the information they are seeking in the most expeditious way and lower the fees such requesters may be responsible to pay.

24. I have been informed that following the filing of Plaintiffs' complaint, ICE, through DOJ representation, commenced communications with Plaintiffs in an effort to work with Plaintiffs to narrow the scope of the FOIA request by targeting issues related to Secure Communities for which Plaintiffs sought information.

25. I have been informed that attorneys from the Department of Justice met with Plaintiffs on June 9, 2010, but were unable to reach agreement on narrowing Plaintiffs' FOIA request.

26. Despite the lack of agreement, ICE commenced searching for potentially responsive documents and has established an agency search cut-off date of April 30, 2010.

### **III. PLAINTIFFS' RAPID PRODUCTION LIST AND SUBSEQUENT NEGOTIATIONS**

27. I have been informed that at a meeting between Plaintiffs' counsel and DOJ attorneys that occurred on June 24, 2010, the parties were unable to agree on a narrowing of the FOIA request, but Plaintiffs presented ICE with a "Rapid Production List" ("RPL"), which purported to identify records that plaintiffs were seeking on an expedited basis.

28. The RPL consists of five pages of categories of requested records, including a multi-page addendum which describes a list of specific records sought from ICE. It also includes a section on data and statistics which the parties agreed to hold in abeyance pending a meeting between Plaintiffs and ICE which was scheduled for late July 2010.

29. Even without the data and statistics records, the RPL potentially implicates many thousands of pages of records, particularly if email searches were to be included.

30. Despite the lack of progress in the discussions with Plaintiffs on narrowing the scope of the FOIA request, ICE nonetheless commenced work on the RPL.

31. A search was undertaken by the agency, including searches of the Secure Communities program office, the Office of Congressional Relations, Office of Public Affairs, and the Office of the Chief Financial Officer. Records that had been previously located as part of the agency's initial search for records based upon the FOIA request were also reviewed for records responsive to the RPL.

32. On August 3, 2010, ICE produced an initial release consisting of 926 pages of records.

33. On September 8, 2010, ICE produced a second release consisting of 791 pages of records.

34. On October 22, 2010, ICE produced a third release consisting of 22 pages of records.

35. To date, ICE has processed and released a total of 1,736 pages of records to Plaintiffs.

36. ICE has also posted an additional 556 pages of records to the ICE FOIA Electronic Reading Room since the date of Plaintiffs initial FOIA request.

#### **IV. PLAINTIFFS' REQUEST FOR OPT OUT RECORDS**

37. As part of the RPL, Plaintiffs requested records on "opt out", which were described in Plaintiffs' June 25, 2010 communication as: "National policy memoranda, legal memoranda or communication relating to the ability of states or localities to opt-out or limit their participation in S-Comm."

38. I have been informed that ICE agency counsel, Plaintiffs' counsel, and DOJ attorneys attended a meeting in New York City on July 27, 2010, at which time the RPL was discussed.

39. On October 11, 2010, Plaintiffs forwarded to ICE, via DOJ, a two-page document entitled "Search Guidance for Records Related to the Ability of States or Localities to Opt-out of or Limit Participation in Secure Communities".

40. The "Search Guidance" document expanded the definition of opt-out documents to include, among others, records related to the technical operation of DHS IDENT/FBI IAFIS interoperability and response mechanisms, a state's refusal to sign a Secure Communities Memorandum of Agreement and the reasons for that refusal, a state's delay in signing a Secure Communities Memorandum of Agreement and the reasons for that delay, and state and local jurisdictional negotiation of formal and informal agreements related to Secure Communities or IDENT/IAFIS interoperability.

41. The October 11, 2010 email correspondence also demanded that ICE produce five categories of documents, including opt out, by October 22, 2010. The email advised that



if ICE failed to produce the requested documents by October 22, 2010, Plaintiffs would move for preliminary injunction.

42. Upon receiving the “Search Guidance” document and Plaintiffs’ October 11, 2010 demand, ICE intensified its search efforts for the five categories of documents requested by Plaintiffs, focusing specifically on opt-out documents using Plaintiffs expanded parameters.

43. On October 18, 2010, Plaintiffs produced a six-page list of proposed search terms. An examination of the list reveals that no fewer than 128 terms refer to the opt-out issue. Plaintiffs’ proposal requested that the 128 terms be used in combinations that would result in over 2,300 separate search strings.

44. Given the status of the agency’s searches and the presentation of more than 2,300 proposed email search strings from Plaintiffs, the agency was unable to give Plaintiffs a concrete date for production on the newly expanded request for opt-out records.

45. On October 22, 2010, ICE produced the July 2008 Interoperability Memorandum of Understanding between the Department of Homeland Security and the Federal Bureau of Investigation as requested by the Plaintiffs.

46. DOJ advised ICE that in an October 22, 2010 email, Plaintiffs reiterated their position that they would not accept anything less than a date certain for the production of the opt-out documents.

47. ICE once again advised DOJ that it would be impossible for the agency to pinpoint an exact date for production of responsive, non-exempt documents.

48. ICE was advised by DOJ that Plaintiffs filed a motion for preliminary injunction on October 28, 2010 seeking the Court to compel ICE to produce the requested opt-out records.



49. The definition of opt-out records used in the Plaintiffs' motion again differed significantly from the description used in the October 11, 2010 "Search Guidance" document. The task of searching for responsive documents is complicated by the evolving definition of "opt-out" records supplied by Plaintiffs and the 128 proposed search terms.

50. Many of the search terms proposed by Plaintiffs would not result in productive searches as they are too commonly found within agency documents and would return too many results to act as a useful filter.

51. As of the date of this declaration, ICE continues to search for responsive documents and is attempting to work out a reasonable way to address the 2,300 search strings proposed by Plaintiffs.

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

Signed this 12<sup>th</sup> day of November,  
Washington, DC



Catrina Pavlik-Keenan  
Freedom of Information Officer  
Freedom of Information Act Office  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security