

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

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

ECF CASE

10 CV 3488 (SAS)(KNF)

[Rel. 10 CV 2705]

Plaintiffs.

v.

DECLARATION

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

Defendants.

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DECLARATION OF BRIDGET P. KESSLER
EXHIBITS A-V

I, BRIDGET P. KESSLER, declare pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am a licensed attorney and Clinical Teaching Fellow at the Kathryn O. Greenberg Immigration Justice Clinic of the Benjamin N. Cardozo School of Law (“IJC”), one of the three co-Plaintiffs in the above-captioned matter.

2. I submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction Compelling Defendants to Produce Certain “Opt-Out” Records Responsive to Plaintiffs’ Freedom of Information Act (“FOIA”) Request.

PLAINTIFFS' FOIA REQUEST AND ADMINISTRATIVE PROCESSING

3. Plaintiffs submitted FOIA requests ("the Request") to the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE"), Federal Bureau of Investigation ("FBI"), and Office of Legal Counsel ("OLC") on February 3, 2010.

4. Attached as Exhibit A is true and correct copy of the Request submitted to ICE. Plaintiffs submitted an identical request to DHS, FBI, and OLC. The attachments to the Request are omitted.

5. Attached as Exhibit B is a true and correct copy of Letter from David M. Hardy, Section Chief, Records Management Division, FBI, to Bridget Kessler, Clinical Teaching Fellow, IJC (Mar. 2, 2010) granting the Request expedited processing.

5. Attached as Exhibit C is a true and correct copy of Letter from Katrina M. Pavlik-Keenan, FOIA Officer, ICE, to Bridget Kessler, Clinical Teaching Fellow, IJC (Feb. 23, 2010) denying expedited processing.

6. Attached as Exhibit D is a true and correct copy of Letter from Sabrina Borroughs, Disclosure and FOIA Operations Manager, DHS, to Bridget Kessler, Clinical Teaching Fellow, IJC (Mar. 5, 2010) denying expedited processing.

7. Attached as Exhibit E is a true and correct copy of Letter from Paul P. Colburn, Special Counsel, OLC, to Bridget Kessler, IJC (Apr. 16, 2010) denying expedited processing.

8. Attached as Exhibit F is a true and correct copy of Letter from Bridget Kessler, Clinical Teaching Fellow, IJC, to Associate General Counsel, DHS (Mar. 15, 2010) appealing DHS's denial of expedited processing.

9. Attached as Exhibit G is a true and correct copy of Letter from Bridget Kessler, Clinical Teaching Fellow, IJC, to Associate General Counsel, DHS (Mar. 15, 2010) appealing ICE's denial of expedited processing.

PLAINTIFFS' RAPID PRODUCTION LIST

10. Attached as Exhibit H is a true and correct copy of Letter from Christopher Connolly, Assistant United States Attorney, to Bridget Kessler, Clinical Teaching Fellow, IJC, (Jul. 9, 2010).

11. Attached as Exhibit I is a true and correct copy of Plaintiffs' Rapid Production List (Jun. 25, 2010). The Appendix to the Rapid Production List is omitted.

DEFENDANTS' RAPID PRODUCTION LIST PRODUCTIONS

12. On August 3, 2010 ICE produced 926 pages of documents to Plaintiffs. On September 8, 2010, ICE produced an additional 791 pages of documents.

13. On August 13, 2010, the FBI produced 51 pages of documents to Plaintiffs.

14. Attached as Exhibit J is a true and correct copy of the Statement of Intent, one document included in Defendants' September 8, 2010 production.

15. On October 22, 2010, ICE produced one additional document to Plaintiffs. The document is titled "Memorandum of Understanding among Department of Homeland Security, the Department of Justice Federal Bureau of Investigation Criminal Justice Information Services and the Department of State Bureau of Consular Affairs for Improved Information Sharing Services," and dated July 1, 2008.

16. Despite the parties' agreements, it appears that Defendants have not yet processed or produced all, or even the bulk of, records relevant to opt-out. Defendants offered to produce Opt-Out Records on a rolling basis but would not commit to a date certain for productions. Due

to the urgent public need for the Opt-Out Records, Plaintiffs were forced to seek court intervention.

CORRESPONDENCE RELATING TO “OPT-OUT”

17. Attached as Exhibit K is a true and correct copy of Letter from Richard S. Gordon, President, San Mateo County Board of Supervisors, to John Morton, Assistant Secretary, ICE (Jul. 21, 2010).

18. Attached as Exhibit L is a true and correct copy of Letter from Zoe Lofgren, Chairwoman, Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, to U.S. House of Representatives to Janet Napolitano, Secretary of Homeland Security, DHS and Eric Holder, Attorney General, U.S. Department of Justice (Jul. 27, 2010).

19. Attached as Exhibit M is a true and correct copy of Letter from Miguel Marquez, County Counsel, Santa Clara County to David Venturella, Executive Director, Secure Communities, DHS (Aug. 16, 2010).

20. Attached as Exhibit N is a true and correct copy of Letter from Janet Napolitano, Secretary of Homeland Security, DHS, to Zoe Lofgren, Chairwoman, Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, U.S. House of Representatives (Sept. 7, 2010).

21. Attached as Exhibit O is a true and correct copy of Letter from David Venturella, Assistant Director, Secure Communities, ICE to Miguel Marquez, County Counsel, Santa Clara County (Sept. 27, 2010).

22. Attached as Exhibit P is a true and correct copy of Letter from Cathy L. Lanier, Chief of Police, D.C. Metropolitan Police Department, to Phil Mendelson, Chairman, Committee on Public Safety and the Judiciary, Council of the District of Columbia (July 22, 2010).

23. Attached as Exhibit Q is a true and correct copy of Letter Barbara M. Donnellan, County Manager, Arlington County to John Morton, Director, ICE (Oct. 7, 2010).

24. Attached as Exhibit R is a true and correct copy of Letter from Ronald Weich, Assistant Attorney General, DOJ, to Zoe Lofgren, Chairwoman, Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, U.S. House of Representatives (Sept. 8, 2010).

25. Attached as Exhibit S is a true and correct copy of Alex Johnson, *Cities, Counties Can't Stop Federal Immigration Checks*, msnbc.com (Oct. 15, 2010)
http://www.msnbc.msn.com/id/39576754/ns/us_news-security/.

26. On October 27, 2010 at 7:51 PM, I conducted a Google search for “Secure Communities” and “opt-out” and the search yielded “[a]bout 11,000 results” within the past month.

DECLARATIONS

27. Attached as Exhibit T is a true and correct copy of the Declaration of Michael Hennessey, Sherriff of the City and County of San Francisco (Oct. 27, 2010).

28. Attached as Exhibit U is a true and correct copy of the Declaration of Sarahi Uribe, National Day Laborer Organizing Network, (Oct. 27, 2010).

29. Attached as Exhibit V is a true and correct copy of the Declaration of Melissa Mark-Viverito, Council Member for the 8th Council District of New York, (Oct. 27, 2010).

Dated: New York, NY
October 28, 2010



Bridget P. Kessler