

**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

1:10-cv-3488 (SAS) (KNF)

Plaintiffs.

[Rel. 10-CV-2705]

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 LAURA ROTOLO IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

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

1. My name is Laura Rótoló. I am a staff attorney with the American Civil Liberties Union ("ACLU") of Massachusetts. The ACLU of Massachusetts, a state affiliate of the national ACLU, aims to protect the rights protected by the Massachusetts Declaration of Rights and the US Constitution. In particular, we work to protect fundamental civil liberties including the right to due process, the right to equal treatment under the law, and freedom from discrimination for all persons, including immigrants and their families

2. For over a year, my colleagues at the ACLU of Massachusetts and I have joined with dozens of advocates around Massachusetts to oppose the Immigration and Customs Enforcement (ICE) agency program known as Secure Communities. We believe Secure Communities undermines public safety and interferes with the civil rights of immigrants and citizens by creating a dangerous link between local law enforcement and the federal government.

3. We have held educational meetings about Secure Communities with various state and local government officials, including the Governor's office, the Governor's Advisory Council on Refugees and Immigrants, the Mayor of Boston, Boston city council members, and the Boston Police Department (BPD). We have also met with Immigration and Customs Enforcement (ICE) officials, including ICE Director John Morton and Chief Public Engagement Officer Andrew Lorenzen-Strait, and officials from the Department of Homeland Security's (DHS) Office of Civil Rights and Civil Liberties, as well as members of the Massachusetts Congressional delegation.

4. In addition to these meetings with officials, we have undertaken various community outreach and education efforts, including panel discussions and vigils, and have advocated for localities and the State to opt out of the program. There is an urgent need for the purported legal justification which appears to be contained in the October 2 Memo to help inform these ongoing advocacy efforts

#### **Secure Communities in Massachusetts**

5. The history of Secure Communities' implementation in the State has been troubling, and has led to mistrust in the community and serious doubts about government transparency.

6. At first, the program was only activated in Boston. The ACLU of Massachusetts and its partners began educating local officials and the Governor's office about many of the negative consequences of the program, including the potential for increase in racial profiling, interference with community policing, the breaking up of families, and the lack of due process. We relied upon the documents released in this FOIA litigation as part of our outreach efforts with these officials and our advocacy for Boston and the state to opt out of the program. As a result of these efforts, local jurisdictions in Massachusetts, including Northampton, Cambridge, Springfield, and Amherst, began passing resolutions and ordinances opting out of Secure Communities.

7. Along with this series of local bills to prevent Secure Communities from being initiated in particular jurisdictions and following a series of town hall meetings sponsored by the Governor's office, the State of Massachusetts decided not to enter into a Secure Communities Memorandum of Agreement (MOA) with the Department of Homeland Security.

8. Despite Governor Deval Patrick's decision, made in an effort to protect law enforcement's relationships with communities and prevent further marginalization of immigrant communities, the federal government announced on August 5, 2011 that the MOAs were nullified. Therefore, the State's decision would not be honored.

#### **Secure Communities in Boston**

9. The flawed implementation of Secure Communities in Boston is similar to that of the state overall. Early in 2010, advocates became aware that Secure Communities had been launched as a pilot project in the City of Boston. The ACLU and its partners first met with officials from the BPD on September 1, 2010. We were informed that ICE had given the BPD a set of statistics relating to Secure Communities and the people who were being identified and

removed as a result, that later was shown to be inconsistent with the information released due to the present litigation.

10. The lack of transparency regarding such basic statistics on the impact of the program, along with the shifting messaging on the ability of localities to opt out of the program were main factors that led Boston Mayor Menino to send a strongly-worded message to DHS earlier this year. (*See* Patel Decl. Ex. H.) “Boston took part in Secure Communities as a pilot project, with the understanding that only the most serious criminals would be affected and the belief that our feedback would lead to improvements in the program,” Menino wrote in a letter to DHS. “It would be a further violation of the public trust if instead Secure Communities proves to be a knot that the federal government will not untie.” *Id.* It appears likely that the memo that ICE continues to withhold contains key information about the justification for the program’s mandatory nature.

11. Yet, rather than correcting their past lack of transparency and misleading statements about Secure Communities, the government is continuing to refuse to provide the public with full information about the mandatory nature—and, specifically, refusing to disclose the October 2 Memo. Given the continued rapid deployment of Secure Communities, for law enforcement and other authorities in Boston to properly determine the best mechanism to protect immigrant communities from the harm that the program will continue to cause, the public (and therefore advocates and policy makers) have an urgent need for that Memo.

#### **Urgent Need for Oct. 2 Memo**

12. Since becoming aware of Secure Communities, the lack of publicly available information has severely hindered our advocacy efforts by limiting our ability to fully and accurately educate state and local officials about the program, its legal basis, and its impacts.

Immigration and Customs Enforcement (ICE) has made inconsistent statements regarding the legal justification for Secure Communities, which has made our advocacy especially difficult.

13. In addition, I, along with many other advocates, have met with officials from ICE many times and have on several occasions asked them to cite a law that authorizes or mandates the program or makes it mandatory by 2013. Their responses have been inconsistent and vague, citing different seemingly irrelevant provisions at different times and leaving advocates without a concrete law to challenge or an understanding of the legal basis for the mandatory position.

14. While refusing to provide clear answers to advocates about the legal basis for making Secure Communities mandatory, ICE officials have met with law enforcement agencies throughout Massachusetts, including police chiefs in major Massachusetts cities, and told them that the program is legally mandated. I have learned this through my meetings with the police. Yet, again by refusing to disclose the October 2 memo, ICE continues to withhold information regarding the legal authority they perceive as making the program mandatory. Without this information, it is impossible for advocates to counter ICE's broad statements that are used to continue to roll out the program.

15. Time is of the essence. DHS has announced that by 2013, Secure Communities will be mandatory in all jurisdictions. Our governor has stated that he will not sign on to the program voluntarily but that he believes that in 2013 he will have no choice but to participate. I believe that if the documents that ICE currently is withholding show that there is a lack of legal authority for the mandatory nature of the program, advocates will be in a strong position to ask the Governor to oppose its implementation. Whatever the contents of the October 2 Memo, it is needed in order to allow community members and advocates to inform and educate their elected officials.

16. Perhaps more urgent, the October 2 Memo is needed to inform immediate policy decisions. Boston is currently the only jurisdiction in Massachusetts that is activated. Three of the remaining 14 counties in Massachusetts, namely Plymouth, Bristol, and Worcester are currently debating whether to join Secure Communities. Accurate information about the legal basis for Secure Communities could help these county officials and their constituents make well-informed decisions. Similarly, there is currently a draft bill in a committee in the Massachusetts state legislature that includes a directive for the state to activate Secure Communities state-wide. The October 2 Memo could inform the debate surrounding this bill. Moreover, with an election year approaching, there will be a push for state officials to take action or stake out their positions about Massachusetts' participation in Secure Communities within the next few months, making the release of the October 2 Memo urgent also to inform these policy debates and decisions.

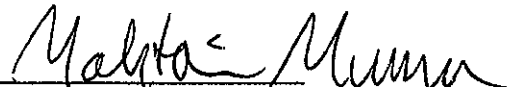
17. In addition, the October 2 Memo is essential for public officials and advocates working to limit the expected harm Secure Communities will cause. For instance, many advocates are looking for ways Boston can limit participation in Secure Communities, as well as various strategies surrounding immigration detainers, otherwise known as ICE holds. However, given past experience, it is difficult for advocates to devise strategies without knowing the legal underpinnings of making Secure Communities mandatory and thus potential avenues for limiting participation. The ACLU of Massachusetts, our partners, and various local and state advocates spent significant amounts of time and resources attempting to educate Boston and the state on the reasons to opt out of Secure Communities, only to first find that localities could not opt out and then that states could not. We worry our future advocacy efforts will result in a similar end, and thus urgently need the October 2 Memo to gain a better understanding of the government's legal basis for denying opt out.


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

Dated: Boston, Massachusetts  
November 18, 2011

  
LAURA ROTOLO

On this 18<sup>th</sup> day of November 2011, before me, the undersigned Notary Public, personally appeared Laura Rótolo, proved to me through satisfactory evidence of identification, which were a Massachusetts driver's license, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

  
Mahtowin Munro  
Notary Public

 Mahtowin Munro  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
August 2, 2013