

**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

Plaintiffs.

v.

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.

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**DECLARATION OF FRED TSAO IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

I, FRED TSAO, 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 Fred Tsao. I am the Policy Director at the Illinois Coalition For Immigrant and Refugee Rights ("ICIRR"). ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in civic, cultural, social, and political life of our diverse society. ICIRR educates and organizes immigrant communities to assert their rights, advocates on immigrant-related issues, and informs the general public about the contributions of immigrants and refugees. Particularly, we work on state and federal policy to promote the interests of our constituents.

2. Secure Communities directly affects ICIRR constituents. The program undermines trust between police and immigrant communities, particularly as nearly half of those arrested by Immigration and Customs Enforcement (ICE) under this program in Illinois are categorized by ICE's data as non-criminals. The closer local law enforcement agencies work with ICE, the more they risk burning their bridges with local immigrant communities. Many immigrant residents are discouraged from reporting crimes to law enforcement for fear of being arrested themselves, since fingerprint data is automatically transferred to ICE even if the criminal charges are eventually dismissed or are the result of an unlawful arrest.

3. ICIRR educates its constituents on the impact Secure Communities has on the community. By reading thousands of pages of internal documents released through this Freedom of Information Act litigation, we have been able to better educate our constituents, the public, and elected officials about Secure Communities.

4. ICIRR has worked with local jurisdictions throughout Illinois as well as the state government in efforts to end their participation in Secure Communities. We have worked on state legislation to limit Illinois's participation in Secure Communities, and urged Governor Pat Quinn to withdraw from the program – a step the governor decided to take.

5. However, these efforts have been thwarted by misleading and untruthful information disseminated to the public and elected officials by ICE and the Department of Homeland Security ("DHS"), as well as sudden changes in DHS and ICE policy.

6. Initially, ICE's representations that Secure Communities was a voluntary program, subject to Memoranda of Agreement (MOA) between ICE and the states,

galvanized Illinois to mobilize its political efforts and resources to craft a state-level opt out. On May 4th, 2011, Governor Quinn sent a letter to ICE terminating the Secure Communities Memorandum of Agreement between the Illinois State Police and ICE. Then, on May 5, 2011, the Illinois House of Representatives passed the Smart Enforcement Act, which would allow counties to opt out of Secure Communities..

7. Despite prior representations that participation in Secure Communities was voluntary, ICE ignored Governor Quinn's withdrawal from the MOA. On August 5, 2011, DHS announced that it was unilaterally annulling the MOAs signed between 44 states and DHS because, DHS claimed, the agreements were not necessary. ICE claimed then—and continues to claim—that participation in Secure Communities will become mandatory for states and localities nationwide by 2013. The sudden change in policy has confused officials and the public. It has also meant that public officials and advocates had wasted significant time and resources in pursuing policies that were later precluded.

8. Consistent misinformation from DHS and ICE about participation in Secure Communities has created an serious public need for clarification. The October 2 Memo appears as if it will provide crucial information that state and local officials, advocates, and the immigrant community need to explain ICE's rejection of Illinois' opt-out.

9. ICE's declaration that Secure Communities is a mandatory program has caused a strong reaction among advocates and the immigrant community in Illinois. After the misleading and confusing statements about whether local communities and states can opt out of the program, on August 17, 2011 the DHS-appointed taskforce on

Secure Communities held a public hearing in Chicago. The Chicago immigrant community unequivocally responded by stating that the only real solution to the Secure Communities problem is to terminate the program. ICIRR, the National Immigrant Justice Center, and other organizations asked the task force to identify the legal justifications for Secure Communities, but we were not given concrete answers. Frustrated and confused by the lack of answers, advocates and immigrants walked out of the meeting.

10. At the August 17, 2011, hearing, ICIRR, joined by elected officials, faith leaders, and several families harmed by immigration enforcement presented a letter signed by four Illinois Congressmen, two local sheriffs, 23 local elected officials, and dozens of community leaders and organizations condemning the Secure Communities Program to ICE Director John Morton. Letter from ICIRR, et al. to John Morton, Director, US Immigration and Customs Enforcement, available at <http://icirr.org/sites/default/files/S-CommSignOn.pdf>.

11. Elected officials in Illinois have also reacted strongly to ICE's stance on mandatory participation and have sought ways to limit the effects of Secure Communities and other ICE enforcement on residents. Cook County voted against honoring voluntary immigration detainers, non-mandatory requests by ICE that a jail hold an individual for 48 hours beyond when they could otherwise be released. Citing the prohibitive cost of such extended confinement, this ordinance requires that the county jail must release individuals subject to ICE detainers unless the federal government agrees in advance to pay the full costs of honoring the detainers.

12. In Illinois, State and local officials, as well as advocates, need the information contained in the October 2 Memo to help them understand ICE's position regarding mandatory participation in Secure Communities and what ability states and localities have to limit or end the program in their communities. State governments, counties, and localities must decide now—not next year—how to proceed with the FBI, ICE and DHS. In order to properly form a political strategy, and avoid wasting time and resources, advocates need the October 2 Memo to educate policy makers and inform the public.

13. Time is of the essence because ICE has not yet activated Secure Communities in all Illinois jurisdictions, including Cook County. However, we know that activation could occur at any time and that ICE plans nationwide activation in 2013. As a result, immigrants in Cook County are at risk of being put into removal (deportation) proceedings as a result of any encounter with local law enforcement, despite the fact that this occurrence would directly violate local ordinances. Cook County needs to know under what legal authority ICE officials claim they can do this.

14. Since the implementation of Secure Communities, advocates have been searching for answers for how we can limit participation in the program and address concerns raised by the community and public officials about the program. Because of ICE's refusal to disclose a comprehensive explanation of its legal basis for imposing this program on Illinois unilaterally, we have been consistently hitting walls in our efforts. The substantive material in the October 2 memo is crucial to ICIRR in serving its constituents in its advocacy against Secure Communities.

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

Dated: Chicago, Illinois
November 18, 2011

A handwritten signature in cursive script, appearing to read "Fred Tsao", is positioned above a horizontal line.

FRED TSAO