

**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.

DECLARATION

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 SARAHI URIBE IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT'S MOTION FOR STAY**

I, SARAHI URIBE 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 Sarahi Uribe. I am the National Campaign Coordinator for the National Day Laborer Organizing Network ("NDLON"), a Plaintiff in the above-captioned matter. NDLON's mission is to improve the lives of day laborers in the United States by unifying and strengthening its member organizations to protect and expand their civil, labor, and human rights. NDLON has forty-two member organizations in fourteen states located throughout the country.

2. In my position at NDLO, I help coordinate the national Uncover the Truth campaign. The campaign's central purpose is to demand government transparency and accountability for the Immigration and Customs Enforcement ("ICE") Secure Communities program—a federal program that profoundly impacts both day laborers and public safety in general. NDLO's aim is to provide accurate information and analysis about Secure Communities' current operations and policies to government officials, community-based organizations, and the public.

3. As part of the Uncover the Truth Campaign, NDLO disseminates the information we obtain about Secure Communities to the public. In particular, we use the records produced in this action in our work with community groups that are impacted by Secure Communities. We also use the records produced in this action in our communications with state and local decision-makers who must grapple with public policy positions on Secure Communities. NDLO, through the use of our own expertise in conjunction with our review and analysis of the records produced in this FOIA action, attempts to address concerns about Secure Communities from state and local decision-makers and advocates. In the course of my work on the Uncover the Truth Campaign, I have met and corresponded with community groups and/or local officials across the country. Therefore, I am familiar with many of the hurdles faced by these jurisdictions in their attempts to get information from ICE about Secure Communities and determine the community response to the program.

Misleading States and Localities about Participation in Secure Communities

4. A huge topic of confusion, inconsistency, and obfuscation has been whether states and localities may opt out of Secure Communities and the legal authority

to require participation in the program. State and local officials nationwide, as well as advocates, have been deeply concerned about the effect of Secure Communities on issues such as community policing, racial profiling, family separation caused by deportation, and privacy. Those individuals have utilized a variety of measures to address the negative impact of Secure Communities in their jurisdictions, including engaging democratic local processes. However, these efforts have been undermined by misleading, inconsistent, or false representations by DHS and ICE about the programs' policies and legal basis.

5. Much of the initial resistance to Secure Communities came from localities such as Arlington, Virginia ("Arlington"), Santa Clara, California ("Santa Clara"), Washington D.C. and San Francisco, California ("San Francisco"). I worked closely with advocates and local officials in these jurisdictions who spent extensive time and resources to learn about Secure Communities, query DHS and ICE about whether opting-out from the program was an option, and consider the community response. DHS and ICE's public statements indicated opt-out was possible, and in 2010, Arlington, Santa Clara, San Francisco, and Washington, D.C. decided to opt-out of the program and make further inquiries about how to do so.

6. After this significant investment of effort, however, ICE announced in October 2010 that only states could opt-out of the program, not localities. DHS Secretary Janet Napolitano made a public announcement on October 6, 2010. This switch by ICE resulted in massive waste of time and resources by local community boards and other local elected officials, who had spent hours in meetings and debates about the program, only to discover that their expressed wishes would be rendered moot by ICE's change in

position. Advocates who had also invested time and resources to work with their local officials were also deeply frustrated that DHS announced such a significant policy shift in an informal statement to the press with no indication of the authority relied upon.

7. States around the country also mobilized to end or limit their participation in the program. Again, advocates invested a huge expenditure of time and resources to educate state officials about Secure Communities, answer their questions, and consult on solutions. The result was broad state-wide support in Illinois, New York, and Massachusetts for opting out of the program altogether. The three states chose to do so in 2011.

8. Other states attempted to negotiate a Memorandum of Agreement (“MOA”) with ICE to limit the impact of Secure Communities in their state. For example, the advocates in Colorado periodically consulted with me during their efforts to limit Secure Communities. For months at the end of 2010 and early 2011, Colorado participated in good faith negotiations with ICE to add more protections for its residents in the Memorandum of Agreement and require periodic data reporting to allow the state to monitor law enforcement and ICE activity within the state. California advocates have also taken a state-level approach.

9. I met with the head of public safety for Minnesota on June 16, 2011. He indicated his agency was confused by the conflicting information from ICE about the program and that they did not have imminent plans to sign the Memorandum of Agreement with ICE. At that time he, along with the broader public, believed that the MOA was a necessary condition to activate the program. He requested a number of documents to review and asked that we remain in contact about future findings. Internal

documents obtained through this litigation show that the previous Minnesota governor's administration expressed an unwillingness to share their arrestees' fingerprints with ICE.

10. Following the widespread opposition to participation in Secure Communities by the different states, however, DHS and ICE on August 5, 2011 declared that MOAs with the states were unnecessary for implementation of Secure Communities and unilaterally rescinded the 44 MOAs that had been painstakingly negotiated and signed with the states. This was again a shock to state officials and advocates who had devoted countless hours to opt-out at the state level after being told that localities could not opt-out, and represented a similar waste of time and resources due to ICE's misleading and inconsistent information and positions.

Need for October 2 Memo and Harm to NDLON

11. NDLON's counsel in this action have explained that ICE was supposed to produce documents relevant to the opt-out issue by July 2010. Unfortunately, because of ICE's delays we did not get opt-out records until January 2011. During the 7-month delay, DHS and ICE adopted the Mandatory in 2013 policy and wrote the October 2 Memo but did not disclose the reasoning behind the policy to the public. ICE's delay in producing documents in this litigation denied NDLON and other advocacy groups a meaningful opportunity to influence the discussion of ICE's Mandatory in 2013 policy when it was made by DHS and ICE in 2010 but not communicated to the public. ICE's continued delay in disclosing the October 2 Memo which comprehensively sets out its basis for mandating participation in Secure Communities has also irreparably harmed NDLON's efforts to advocate and participate in local and state political processes regarding Secure Communities. Any further delay similarly prejudices Plaintiffs' and

others' advocacy efforts moving forward. If the Government had provided the records by the agreed upon deadline the public and Plaintiffs would have been in a better position to participate in the democratic process.

12. The need for the October 2 Memo is urgent because of massive confusion among localities, states, and community organizations surrounding the legal basis Mandatory in 2013 policy supported by the October 2 Memo. Local and state officials and advocates in opt-out states and jurisdictions such as Arlington, Santa Clara, San Francisco, Washington, D.C., Massachusetts, New York, and Illinois, as well as Vermont and Connecticut, have approached NDLOM for guidance about the details of the mandatory Secure Communities policy. The FOIA documents have been instrumental in illuminating ICE processes and reasoning for these states and localities. Because of ICE's lack of transparency and misrepresentations, these documents have been the only option for states and localities to understand this program and its rationale. Without the comprehensive legal justifications found in the October 2 Memo, however, state and local policy-making has been negatively impacted. The October 2 Memo is the only document ICE has produced pursuant to our FOIA request that appears to comprehensively describe the law upon which ICE is relying to mandate nationwide participation in the program.

13. Concern about mandatory participation in Secure Communities is also growing across the country, adding to the need for the October 2 Memo. On October 14, 2011, I met with community groups in New Haven, Connecticut, who were afraid that Secure Communities was going to be activated in their state. The city of New Haven is concerned that they are going to lose their long-standing policy of drawing a bright line

between immigration enforcement and local police. I have also been in discussions with advocates in Vermont, another state that has yet to have activations into Secure Communities. Vermont Governor Peter Shumlin wants to know his options to limit Secure Communities, since he has been told by DHS that the program is mandatory. The Governor issued a new policy on November 4, 2011 directing his state police not to inquire about immigration status, but otherwise, state officials are in the dark about what they can do to opt-out of or limit the impact of Secure Communities in the state.

14. I also continue to receive questions from groups in California, Massachusetts, New York, Illinois, as well as the yet-unactivated states of Connecticut and Vermont on what to do now. These states are all confused as to what their advocacy options are, now that the states are being told that they cannot opt out.

15. The need for the memo is particularly urgent right now because the House of Representatives Subcommittee on Immigration Policy and Enforcement is anticipated to hold the first ever hearing on November 30, 2011 about Secure Communities. Local, state, and national advocacy groups are mobilizing to provide information to subcommittee members about the problems related to the program. Without the comprehensive legal justification for mandatory participation in October 2 Memo, these groups are hampered in their submissions to the congressional record.

16. As of the end of September 2011, ICE has deployed Secure Communities in 937 jurisdictions, bringing the total to 1595 jurisdictions spread over 44 states. *See ICE Secure Communities Monthly Statistics through September 30, 2011, available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2011-to-date.pdf.* In September 2011 alone, ICE deployed Secure Communities to 87 new

jurisdictions. *Id.* These jurisdictions need immediate access to the October 2 Memo to understand their obligations under the program, and whether they could have a meaningful choice as to their participation. Once these jurisdictions are activated, it becomes more difficult, or even impossible, for states and localities to have a meaningful choice to not participate. Once the program is activated, it is harder to muster the political will for jurisdictions to make changes. DHS is aware of this fact and has withheld records to make it easier to quickly roll out the program. As more jurisdictions become activated, the more Secure Communities becomes the new status quo.

17. This is the political moment in which states and localities are trying to make sense of their options with respect to Secure Communities. Washington, D.C., held an entire democratic process and was under the impression that once they terminated their MOA, they would not have to deal with Secure Communities. Now that nationwide rollout of Secure Communities is upon us, to be completed by 2013, localities and states like Arlington, Santa Clara, San Francisco, Washington, D.C., Massachusetts, New York, and Illinois, are all left to attempt to determine what the best policy approach is to handle their wishes to not be in the program, while being completely blind as to what the legal authority is. This makes drafting legislation or other policies immensely difficult. In addition, California and the yet unactivated states of Vermont and Connecticut are grappling with policy solutions on a state level

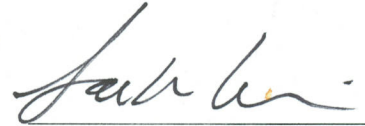
18. Without ICE disclosing the October 2 Memo, the legal authority for mandating participation in this program remains obscure. It is difficult for states and localities to assess whether the supposed Secure Communities mandate is on sound legal ground. ICE's refusal to disclose its legal authority is yet another example of ICE's lack

of transparency and accountability in the roll out of this program. NDLOn urgently needs access to the contents of the Oct. 2 Memo so that it can disseminate this information to the many community groups and elected officials grappling with how to respond to the federal government's unilateral Secure Communities mandate.

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

Dated: Washington, D.C.

November 18, 2011

A handwritten signature in dark ink, appearing to read "Sara Uribe", written over a horizontal line.

SARAH URIBE