

**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 MICHELLE FEI IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANTS' MOTION FOR STAY**

I, MICHELLE FEI 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 Michelle Fei. I am the Co-Director of the Immigrant Defense Project (IDP) in New York City. The mission of IDP is to promote fundamental fairness and minimize the harsh and disproportionate treatment of immigrants accused and convicted of crimes.

2. IDP provides education and advice to people dealing with deportation. A primary concern of our organization is the wide net cast by Secure Communities. By reporting individuals at arrest, the program broadly funnels people into a fundamentally

unjust deportation system where individuals have minimal due process rights. IDP plays a central role in responding to the problems raised by the Secure Communities program on the local and national level. In particular, we are a resource for state and local officials about the program, as well as for community members. One problem with the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) policy of mandating state and local participation in Secure Communities is the lack of transparency and safeguards surrounding the program.

3. IDP has worked to form a coalition called the New York State Working Group Against Deportation (“Working Group”). The Working Group supports the complete termination of Secure Communities in New York. We spent over a year—spending countless hours and resources of organizations with small budgets—educating public officials and community members about the impact of Secure Communities, which contributed to the ultimate decision by Governor Andrew Cuomo, on June 1, 2011, to suspend the program in New York State. One of our important resources in this effort has been the Freedom of Information Act (FOIA) documents released as part of this case. I have read many pages of emails and internal documents to better educate the public and elected officials about the program.

4. The Governor’s decision to suspend Secure Communities in New York State was broadly supported by state and local law enforcement and elected officials. Representatives José Serrano and Nydia Velázquez of the United States Congress and fifty members of the New York State Assembly signed letters calling for an immediate end to participation in Secure Communities. Jack Mahar, Sheriff of Rensselaer County and President of the New York Sheriffs Association, David Favro, Clinton County

Sheriff, Joseph Gerace, Chautauqua County Sheriff, and Steven Krokoff, Chief of the Albany Police Department, joined in supporting the suspension of Secure Communities citing critical concerns over the confusion surrounding the program's implementation.

5. At the time, representations made by DHS and ICE led states and localities to understand opting out was possible. As a result, the majority of the Working Group's efforts were focused on garnering support to suspend the program in New York. After a wide range of state and local officials and advocates came out against the program, Governor Cuomo decided to suspend New York's participation in the program. Despite the Governor's decision and the expenditure of public resources and advocates' time, DHS and ICE announced on August 5, 2011, that the State's request to opt-out of the program would not be respected.

6. After all of our efforts to educate state and local public officials about Secure Communities, we were shocked by DHS and ICE's announcement that they would not respect New York's decision. We were devastated and lost trust in the democratic process, in which we believe everyday people should be informed about the government's policies and programs, so they can influence those policies through their elected representatives.

7. The Working Group now aims to support Governor Cuomo's decision to suspend Secure Communities through educational programs, outreach and advocacy in the communities, media campaigns, and working with public officials. I have attended meetings and negotiations with many elected and public officials since August 2011. It is clear from these meetings that state and local officials have concerns and confusion over why ICE is refusing to respect the state's decision to suspend the program and why DHS

and ICE states it can require the state and localities to participate in the program. The October 2 Memo is important for helping advocates in the Working Group answer these questions and develop our advocacy going forward. The information in the October 2 Memo will help state officials decide on the best course of action to protect New York residents and their families from the harmful effects of the program. For example, there is lack of clarity for some officials on what the state's role in data sharing will be moving forward.

8. Without an understanding of DHS and ICE's claims about the legal justification for mandating Secure Communities, we are unable to plan strategies and tactics effectively. Withholding the memo makes it difficult for state officials to decide on the best course of action and undermines public trust.

9. Obtaining the memo is also urgent because the removal rate due to Secure Communities in New York has surged in recent months. As of September 30, 2011, thirty-one counties in New York have been activated under Secure Communities. Between January and September 2011, 316 New Yorkers were identified through the program and removed. There were only 45 deportations as of April, so the rate of removal has increased significantly. *See* Joseph Spector, "Deportations grow in New York under secure communities program," Poughkeepsie Journal, Nov. 17, 2011, available at <http://www.poughkeepsiejournal.com/article/20111117/NEWS12/111170302/Deportations-grow-New-York-under-secure-communities-program>. The growing rate of removal of New Yorkers due to Secure Communities makes the development of a community response particularly urgent.

10. Through my advocacy work I have learned that there is widespread concern among community member and local officials about the impact that activation of Secure Communities will have on the communities' ability to cooperate with and trust law enforcement. In fact, at a forum on Secure Communities at the Vera Institute held on October 27, 2011, David Soares, the district attorney from Albany County, shared concerns about how Secure Communities affects his community's willingness to report crimes.

11. To address these growing concerns, advocates and local officials have focused on limiting jurisdictions' responses to ICE detainer requests. IDP and a coalition of other advocates have worked with New York City officials to enact a bill limiting the City's response to ICE detainer requests with the goal of limiting the destructive impact of Secure Communities. However, the bill cannot protect all people who are affected by the program and does not address the real problem—automatic information sharing and the increased central role of local police in immigration enforcement.

12. We urgently need a full understanding of DHS and ICE's understanding of the legal basis for mandating Secure Communities to assist New Yorkers determine their options for protecting our communities.

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

Dated: New York, New York  
November 18, 2011

  
MICHELLE FEI